

ARTICLE APPEARED
ON PAGE 2

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Security vs. civil rights?

By David Rogers
Globe Staff

WASHINGTON — Richard Welch was the son of an established Rhode Island family who graduated from Harvard with honors in Greek and classical languages; he was shot to death six years ago last Christmas shortly after being publicly identified as the CIA station chief in Athens. Last week in Congress, he was remembered as another Rhode Islander, John Chafee, pushed



CHAFEE

through the Senate a controversial bill making it a crime for anyone — including journalists — to reveal the identity of agents operating undercover abroad. A conference must still be held with the House, which has adopted similar legislation, but last week's roll call marked the end of a fight running back through at least the last Congress and posing a classic confrontation between questions of national security and civil liberties.

As much as Welch's murder contributed to demands for the legislation, Chafee was the sponsor of the principal amendment sought by the CIA, and if agents are better protected as a result, reporters and the First Amendment, perhaps, are not.

As reported by the Senate Judiciary Committee, the bill was already unprecedented in making it a crime for a journalist or private citizen to reveal the identity of an intelligence agent, even if the information comes from nonclassified sources. Fines of up to \$15,000 and up to three years imprisonment could be imposed in these cases, and where Chafee's amendment went further was in setting a standard of proof to make it easier for the government to prosecute.

Instead of the criminal standard of "intent," the new language set a broader rule requiring only that it be shown the disclosures were made with "reason to believe" that the revelations would impair or impede intelligence operations. It was the same provision the CIA had sought unsuccessfully in the last Congress, but with pressure from the Reagan Administration, the agency prevailed first in the House last September and more importantly now in the Senate.

The thrust of the bill is to make it possible for the government to prosecute a relative handful of people who have systematically published lists of undercover agents, and as the final votes indicated, there is broad agreement with this goal. Where the differences lay was in how far the government could intrude on the First Amendment, and the CIA's success reflects a greater conservatism. In both houses and a willingness in Congress, as an institution, to put more trust in the agency.

Two years ago, Sen. Edward Kennedy was chairman of the Judiciary Committee and able to make his own imprint on the same bill. Last week, the Massachusetts Democrat was neither chairman nor in the majority as he spoke vainly against the amendment.

"No senator approves of intentional efforts to endanger our covert intelligence officers or to end their usefulness," Kennedy said. "The question is how to punish such attempts without rendering our legislation unconstitutional and without unnecessarily chilling a vigorous free press."

Among the 16 Republican freshmen, only three opposed the Chafee amendment, but as easy as it may be to see a trend in Congress, it is not as simple to type Chafee himself.

Secretary of the Navy during part of the Vietnam War, the Rhode Island Republican is a Marine veteran of World War II and Korea and a ranking member of the Senate Intelligence Committee. Former CIA Director Stansfield Turner, who lobbied for the agent identities legislation during the Carter Administration, was once a former aide to

Chafee in the Navy.

"Set alongside these credentials is the fact that Chafee has one of the strongest civil rights records of any senator, and the same conservatives who targeted liberal Democrats in the 1980 elections have added him to their list this year. Politically, the CIA needed the freshmen to win, but it also needed a sponsor who could prevent the debate from becoming too ideological and pick up critical support from moderate Republicans.

"I think we could have beaten them if they didn't have Chafee," said an opponent of the CIA amendment, and with this victory, Chafee may have a special responsibility to clarify what has been won.

Those who tamper with constitutional rights may intend to do no harm. But if they have "reason to believe" damage has been done, they must live with the same standards they set for others.

In the final day, Chafee successfully resisted a change in his own amendment. Before the conference is done, there will be time for report language to spell out again what protections remain.