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OPINION

Foreign Courts Take Aim at Our Free Speech

By **ARLEN SPECTER** and **JOE LIEBERMAN**
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Our Constitution is one of our greatest assets in the fight against terrorism. A free-flowing marketplace of ideas, protected by the First Amendment, enables the ideals of democracy to defeat the totalitarian vision of al Qaeda and other terrorist organizations.

That free marketplace faces a threat. Individuals with alleged connections to terrorist activity are filing libel suits and winning judgments in foreign courts against American researchers who publish on these matters. These suits intimidate and even silence writers and publishers.

Under American law, a libel plaintiff must prove that defamatory material is false. In England, the burden is reversed. Disputed statements are presumed to be false unless proven otherwise. And the loser in the case must pay the winner's legal fees.


Consequently, English courts have become a popular destination for libel suits against American authors. In 2003, U.S. scholar Rachel Ehrenfeld asserted in her book, "Funding Evil: How Terrorism Is Financed and How to Stop It," that Saudi banker Khalid Bin Mahfouz helped fund Osama bin Laden. The book was published in the U.S. by a U.S. company. But 23 copies were bought online by English residents, so English courts permitted the Saudi to file a libel suit there.

Ms. Ehrenfeld did not appear in court, so Mr. Bin Mahfouz won a \$250,000 default judgment against her. He has filed or threatened to file at least 30 other suits in England.

Fear of a similar lawsuit forced Random House U.K. in 2004 to cancel publication of "House of Bush, House of Saud," a best seller in the U.S. that was written by an American author. In 2007, the threat of a lawsuit compelled Cambridge University Press to apologize and destroy all available copies of "Alms for Jihad," a book on terrorism funding by American authors. The publisher even sent letters to libraries demanding that they destroy their copies, though some refused to do so.

To counter this lawsuit trend, we have introduced the Free Speech Protection Act of 2008, a Senate companion to a House bill introduced by U.S. Rep. Pete King (R., N.Y.) and co-sponsored by Rep. Anthony Weiner (D., N.Y.). This legislation builds on New York State's "Libel Terrorism Protection Act," signed into law by Gov. David Paterson on May 1.

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Our bill bars U.S. courts from enforcing libel judgments issued in foreign courts against U.S. residents, if the speech would not be libelous under American law. The bill also permits American authors and publishers to countersue if the material is protected by the First Amendment. If a jury finds that the foreign suit is part of a scheme to suppress free speech rights, it may award treble damages.

First Amendment scholar Floyd Abrams argues that "the values of free speech and individual reputation are both significant, and it is not surprising that different nations would place different emphasis on each." We agree. But it is not in our interest to permit the balance struck in America to be upset or circumvented by foreign courts. Our legislation would not shield those who recklessly or maliciously print false information. It would ensure that Americans are held to and protected by American standards. No more. No less.

We have seen this type of libel suit before. The 1964 Supreme Court decision in *New York Times v. Sullivan* established that journalists must be free to report on newsworthy events unless they recklessly or maliciously publish falsehoods. At that time, opponents of civil rights were filing libel suits to silence news organizations that exposed state officials' refusal to enforce federal civil rights laws.

Now we are engaged in another great struggle -- this time against Islamist terror -- and again the enemies of freedom seek to silence free speech. Our legislation will help ensure that they do not succeed.

Mr. Specter is a Republican senator from Pennsylvania. Mr. Lieberman is an Independent Democratic senator from Connecticut.

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