tion 6 of the act was intended to, and should be interpreted to, include the Canal Zone within its compass.

Your Legal Adviser points out that several proclamations and regulations issued pursuant to the provisions of section 6 employ the term "United States," which raises a question of interpretation as to their geographical scope. I agree with him that an amendment to these proclamations and regulations is desirable so as to make clear the scope within which it is desired that they be effective.

Respectfully,

MATTHEW F. McGUIRE,
Acting Attorney General.

POSITION OF THE EXECUTIVE DEPARTMENT REGARDING INVESTIGATIVE REPORTS

It is the position of the Department of Justice, restated now with the approval and at the direction of the President, that all investigative reports are confidential documents of the executive department and that congressional or public access thereto would not be in the public interest.

This accords with the conclusions reached by a long line of predecessors in the office of Attorney General and with the position taken by the President from time to time since Washington's administration; and this discretion in the executive branch has been upheld and respected by the judiciary.

APRIL 30, 1941.

Hon. CARL VINSON,
Chairman, House Committee on Naval Affairs.

MY DEAR MR. VINSON: I have your letter of April 23, requesting that your committee be furnished with all Federal Bureau of Investigation reports since June 1939, together with all future reports, memoranda, and correspondence of the Federal Bureau of Investigation, or the Department of Justice, in connection with "investigations made by the Department of Justice arising out of strikes, subversive activities in connection with labor disputes, or labor disturbances of any kind in industrial establishments which have naval contracts, either as prime contractors or subcontractors."

Your request to be furnished reports of the Federal Bureau of Investigation is one of the many made by congressional committees. I have on my desk at this time two other

such requests for access to Federal Bureau of Investigation files. The number of these requests would alone make compliance impracticable, particularly where the requests are of so comprehensive a character as those contained in your letter. In view of the increasing frequency of these requests, I desire to restate our policy at some length, together with the reasons which require it.

It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the laws be faithfully executed," and that congressional or public access to them would not be in the public interest.

Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

Disclosure of the reports at this particular time would also prejudice the national defense and be of aid and comfort to the very subversive elements against which you wish to protect the country. For this reason we have made extraordinary efforts to see that the results of counterespionage activities and intelligence activities of this Department involving those elements are kept within the fewest possible hands. A catalogue of persons under investigation or suspicion, and what we know about them, would be of inestimable service to foreign agencies; and information which could be so used cannot be too closely guarded.

Moreover, disclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation. As you probably know, much of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass informants—sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keep-

ing of faith with confidential informants as an indispensable condition of future efficiency.

Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious or misinformed people. Even though later and more complete reports exonerate the individuals, the use of particular or selected reports might constitute the grossest injustice, and we all know that a correction never catches up with an accusation.

In concluding that the public interest does not permit general access to Federal Bureau of Investigation reports for information by the many congressional committees who from time to time ask it, I am following the conclusions reached by a long line of distinguished predecessors in this office who have uniformly taken the same view. Examples of this are to be found in the following letters, among others:

Letter of Attorney General Knox to the Speaker of the House, dated April 27, 1904, declining to comply with a resolution of the House requesting the Attorney General to furnish the House with all papers and documents and other information concerning the investigation of the Northern Securities case.

Letter of Attorney General Bonaparte to the Speaker of the House, dated April 13, 1908, declining to comply with a resolution of the House requesting the Attorney General to furnish to the House information concerning the investigation of certain corporations engaged in the manufacture of wood pulp or print paper.

Letter of Attorney General Wickersham to the Speaker of the House, dated March 18, 1912, declining to comply with a resolution of the House directing the Attorney General to furnish to the House information concerning an investigation of the smelter trust.

Letter of Attorney General McReynolds to the Secretary to the President, dated August 28, 1914, stating that it would be incompatible with the public interest to send to the Senate in response to its resolution, reports made to the Attorney General by his associates regarding violations of law by the Standard Oil Co.

Letter of Attorney General Gregory to the President of the Senate, dated February 23, 1915, declining to comply with a resolution of the Senate requesting the Attorney General to report to the Senate his findings and conclusions in the investigation of the smelting industry.

Letter of Attorney General Sargent to the chairman of the House Judiciary Committee, dated June 8, 1926, declining to comply with his request to turn over to the committee all papers in the files of the Department relating to the merger of certain oil companies.

In taking this position my predecessors in this office have followed eminent examples.

Since the beginning of the Government, the executive branch has from time to time been confronted with the unpleasant duty of declining to furnish to the Congress and to the courts information which it has acquired and which is necessary to it in the administration of statutes. As early as 1796, the House of Representatives requested President Washington to lay before the House a copy of the instructions to ministers of the United States who negotiated a treaty with Great Britain, together with the correspondence and other documents relating to that treaty. In declining to comply with the request, President Washington said:

"* * * as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office * * * forbids a compliance with your request." (See Richardson, Messages and Papers of the Presidents, v. 1, pp. 194, 196.)

In 1825, the House of Representatives requested President Monroe to transmit certain documents relating to the conduct of the officers of the Navy of the United States on the Pacific Ocean, and of other public agents in South America. In his reply, President Monroe refused to comply with the request, stating that to do so might subject individuals to unjust criticism; that the individuals involved should not be censured without just cause, which could not be ascertained until after a thorough and impartial investigation of their conduct; and that under those circumstances it was thought that communication of the documents would

not comport with the public interest nor with what was due to the parties concerned. (See Richardson, Messages and Papers of the Presidents, v. 2, p. 278.)

In 1833, the Senate requested President Jackson to communicate to that body a copy of a paper purporting to have been read by him to the heads of the executive departments, dated September 18, 1833, relating to the removal of the deposits of the public money from the Bank of the United States. President Jackson declined. (See Richardson, Messages and Papers of the Presidents, v. 3, p. 36.)

In 1835 the Senate passed a resolution requesting President Jackson to communicate copies of the charges, if any, which might have been made to him against the official conduct of Gideon Fitz, late surveyor general south of the State of Tennessee, which caused his removal from office. In reply President Jackson again declined to comply. (See Richardson, Messages and Papers of the Presidents, v. 3, pp. 132, 133.)

This discretion in the executive branch has been upheld and respected by the judiciary. The courts have repeatedly held that they will not and cannot require the executive to produce such papers when in the opinion of the executive their production is contrary to the public interests. The courts have also held that the question whether the production of the papers would be against the public interest is one for the executive and not for the courts to determine. *Marbury* v. *Madison*, 1 Cranch 137, 169; *Totten* v. *United States*, 92 U. S. 105; *Kilbourn* v. *Thompson*, 103 U. S. 168, 190; *Vogel* v. *Gruaz*, 110 U. S. 311; *In re Quarles and Butler*, 158 U. S. 532; *Boske* v. *Comingore*, 177 U. S. 459; *In re Huttman*, 70 Fed. 699; *In re Lamberton*, 124 Fed. 446; *In re Valecia Condensed Milk Co.*, 240 Fed. 310; *Elrod* v. *Moss*, 278 Fed. 123; *Arnstein* v. *United States*, 296 Fed. 946; *Gray* v. *Pentland*, 2 Sergeant & Rawle's (Pa.), 23, 28; *Thompson* v. *German Valley R. Co.*, 22 N. J. Equity 111; *Worthington* v. *Scribner*, 109 Mass. 487; *Appeal of Hartranft*, 85 Pa. 433, 445; *2 Burr Trials*, 533–536; see also 25 Op. A. G. 326.

In *Kilbourn* v. *Thompson*, *supra*, the Court said:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers

intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other."

In *Appeal of Hartranft, supra*, the Court said:

"* * * We had better at the outstart recognize the fact, that the executive department is a coordinate branch of the Government, with power to judge what should or should not be done, within its own department, and what of its own doings and communications should or should not be kept secret, and that with it, in the exercise of these constitutional powers, the courts have no more right to interfere, than has the executive, under like conditions, to interfere with the courts."

The information here involved was collected, and is chiefly valuable, for use by the executive branch of the Government in the execution of the laws. It can be of little, if any, value in connection with the framing of legislation or the performance of any other constitutional duty of the Congress. We do not undertake to investigate strikes as to their justification or the lack of it, but confine investigation to alleged violations of law, including of course violation of statutes designed to suppress subversive activity, and to general intelligence to guide executive policy. Certainly, the evil which would necessarily flow from its untimely publication would far outweigh any possible good.

I am not unmindful of your conditional suggestion that your counsel will keep this information "inviolate until such time as the committee determines its disposition." I have no doubt that this pledge would be kept and that you would weigh every consideration before making any matter public. Unfortunately, however, a policy cannot be made anew be-

cause of personal confidence of the Attorney General in the integrity and good faith of a particular committee chairman. We cannot be put in the position of discriminating between committees or of attempting to judge between them, and their individual members, each of whom has access to information once placed in the hands of the committee.

Of course, where the public interest has seemed to justify it, information as to particular situations has been supplied to congressional committees by me and by former Attorneys General. For example, I have taken the position that committees called upon to pass on the confirmation of persons recommended for appointment by the Attorney General would be afforded confidential access to any information that we have—because no candidate's name is submitted without his knowledge and the Department does not intend to submit the name of any person whose entire history will not stand light. By way of further illustration, I may mention that pertinent information would be supplied in impeachment proceedings, usually instituted at the suggestion of the Department and for the good of the administration of justice.

It is for the reasons given that I feel it my duty to decline your request, believing that in them you will find justification for my refusal.

Respectfully,

ROBERT H. JACKSON.

RETIREMENT OF NAVAL RESERVE OFFICER

Section 309 of the Naval Reserve Act of 1938, providing for the transfer to an honorary retired list of officers and enlisted men of the Naval Reserve upon reaching the age of 64, is applicable to officers of the Fleet Reserve.

MAY 15, 1941.

THE SECRETARY OF THE NAVY.

MY DEAR MR. SECRETARY: Reference is made to the letter dated March 31 from the Acting Secretary of the Navy requesting my opinion as to the legality of the order of the Acting Secretary of the Navy, dated September 26, 1940, transferring Captain Henry M. Gleason, an officer of the