

FREEDOM OF INFORMATION AND SECRETY IN GOVERNMENT

HEARING
BEFORE THE
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-FIFTH CONGRESS
SECOND SESSION
ON
S. 921
AND
THE POWER OF THE PRESIDENT TO WITHHOLD
INFORMATION FROM THE CONGRESS

APRIL 16, 1958

PART 2

Printed for the use of the Committee on the Judiciary



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FREEDOM OF INFORMATION AND SECRECY IN GOVERNMENT

WEDNESDAY, APRIL 16, 1958

UNITED STATES SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 357, Senate Office Building, Senator Thomas C. Hennings, Jr. (chairman of the subcommittee) presiding.

Present: Senators Hennings, O'Mahoney, Ervin, Watkins, and Hruska.

Also present: Charles H. Slayman, Jr., chief counsel and staff director; William D. Patton, first assistant counsel; and Wayne H. Smithey, professional staff member, Committee on the Judiciary.

(S. 921 is as follows:)

[S. 921, 85th Cong., 1st sess.]

A BILL To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 161 of the Revised Statutes of the United States (5 U. S. C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Senator HENNINGS. Will the committee please come to order? Since it is just a little past the hour of 10, I am sure that other members of the subcommittee will be along shortly if they do not have conflicts. The Judiciary Committee has so many subcommittees—I happen to be on 6 of them—that we often run into conflicts, and, of course, a man cannot be in 2 places at the same time. I know that all of the members of this committee as well as the members of the Senate are vastly interested in this field that we are undertaking to cover in this inquiry.

This, of course, for the benefit of the men of the newspaper profession who have been good enough to come here today, is a continuation of the freedom of information hearings on S. 921. The list of these witnesses to be heard by the subcommittee today could have been, of course, extended much to our benefit, but again, we have legislation on the floor of the Senate today upon which we are voting, and upon which we were voting last night until quite late. The Senate does convene at 12 o'clock, as you gentlemen know.

These hearings were begun, I might say for general information, on March 6 by the Subcommittee on Constitutional Rights, on the

freedom of information bill which would amend section 161 of the Revised Statutes, title 5, United States Code, section 22, to make clear beyond any doubt that this mere—and I quote—"housekeeping statute" does not authorize withholding information from the public, with certain qualifications, of course, related to the national defense and security, and such matters as relate to the safety of the country.

On March 6 the subcommittee heard the Attorney General, Hon. William P. Rogers, present his views on S. 921. That again is the so-called "housekeeping statute," as he termed it, and as others have termed it. Later, on March 13, the Attorney General supplemented his testimony by sending a letter for inclusion in the record. Because of what some of us considered to be glaring contradictions between Mr. Rogers' original testimony on March 6 and the statements made in his letter to me dated on March 13—and I say that very respectfully of the Attorney General—I invited him to return today and more fully explain his views on S. 921.

Unfortunately, he has declined to appear as requested and clarify his testimony, but he has stated in a letter to me on April 4—and I quote him:

I have no objection to passage of the Senate 921—

that is the bill which I introduced—

if it is amended so as to recognize explicitly the constitutional executive privilege—

about which there is no area of disagreement.

I think, too, that it is fair to say that this represents the present view of Attorney General Rogers respecting this bill, S. 921.

So that the subcommittee might also have the benefit of the views of the heads of the departments affected by S. 921, we invited all the Cabinet officers to appear at this hearing and present their views on this bill. They all declined, but in letters sent to me as chairman of the subcommittee they have indicated in effect that they would rely on testimony already given on this subject to this subcommittee by the Attorney General, the chief legal officer of the Government.

So at this point, without objection, I will include in the record a copy of the letter of invitation sent to each Cabinet officer, together with the replies of the respective gentlemen.

(The letters referred to follow:)

(The following letter was sent by Senator Hennings to the heads of all executive departments, except the Department of Justice, inviting them to testify on S. 921:)

APRIL 2, 1958.

DEAR _____: On Wednesday, April 16, 1958, the Senate Judiciary Subcommittee on Constitutional Rights will resume hearings in Washington on S. 921, a bill to amend section 161 of the Revised Statutes (5 U. S. C. 22).

Inasmuch as section 161 pertains directly to the heads of the various executive departments, it would be desirable if you, as the head of the _____, would appear before the subcommittee on April 16 and present your views on S. 921. As you may know, the Attorney General already has appeared before the subcommittee and given us the benefit of his views.

In case you cannot testify on April 16, the subcommittee would appreciate receiving any written statement you may care to submit for the record.

A copy of S. 921 is enclosed for your convenience.

Sincerely yours,

THOMAS C. HENNINGS, Jr., Chairman.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., April 14, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate.

DEAR SENATOR HENNINGS: Thank you for your invitation of April 2, 1958, to testify on April 16, 1958, with respect to S. 921, a bill to amend section 161 of the Revised Statutes (5 U. S. C. 22), with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

This Department recommends against enactment of the proposed legislation. In this connection, we believe the statement of Attorney General Rogers on March 6, 1958, before your subcommittee, as supplemented by his letter of March 13, 1958, to you, fully reflects the Department's views with respect to the bill. Therefore, it appears unnecessary for this Department to testify at the hearing.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

E. T. BENSON.

THE SECRETARY OF COMMERCE,
Washington, D. C., April 10, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: I am replying to your letter of April 2, 1958, inviting me to appear and testify before your subcommittee on April 16, 1958.

Unfortunately, because of the pressure of other engagements, it will not be possible for me to accept your invitation. However, this Department has previously given its views on the subject matter of your hearing. We have not changed our position. We are still firmly against enactment of S. 921 or any similar legislative proposal.

In this respect, we have carefully examined the testimony which the Attorney General gave before your subcommittee on March 6, 1958. We are in complete agreement with the views and the position he expressed at that time regarding S. 921.

We have on numerous occasions said that it is the function of this Department to provide to the Congress and the public all the information which can be furnished consistent with any limitations imposed by law or the national interest. We have, in our operations, sought, scrupulously, to adhere to this principle.

We do not know what different policy, if any, enactment of S. 921 would require on our part. We would, like the Attorney General, be at a loss to understand just what the effect of this legislation would be. We are, therefore, opposed to its enactment.

Sincerely yours,

SINCLAIR WEEKS, *Secretary of Commerce.*

THE SECRETARY OF DEFENSE,
Washington, April 8, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
United States Senate.*

DEAR MR. CHAIRMAN: I shall be in Europe in connection with a NATO meeting on April 16, 1958, the date on which you invited my testimony regarding S. 921, a bill to amend section 161 of the Revised Statutes.

I believe, however, that the views of the Department of Defense on S. 921 are rather fully stated in the Department's report on the bill. Consequently, I am accepting your offer to receive a written statement by enclosing an additional copy of this report, which was submitted under date of April 17, 1957, to the Honorable James O. Eastland, chairman, Committee on the Judiciary.

Sincerely yours,

NEIL H. McELROY.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D. C., April 17, 1957.

Hon. JAMES O. EASTLAND,

Chairman, Committee on the Judiciary,

United States Senate.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on S. 921, 85th Congress, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes (5 U. S. C. 22) now provides that: "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

S. 921 would amend this statute by adding thereto the following sentence: "This section does not authorize withholding information from the public or limit the availability of records to the public."

This proposed amendment purports to affect the duty of the Executive to safeguard certain information in the public interest. It is the view of the Department of Defense that it does not do so.

The Defense Department's view is based on its understanding that section 161 in its present form is declaratory of existing fundamental law. As it stands, this section reflects the recognition by Congress of the necessity of certain reasonable procedures employed by the Executive in the execution of the duties imposed by the Constitution, particularly the duty to faithfully execute the laws. The suggested amendment, which attempts to qualify this recognition with respect to the duty to safeguard certain information, could only create uncertainty as to the source and extent of the Executive's responsibility in this area.

The Department of Defense considers that the safeguarding of certain information is essential to the proper functioning of government, and is, accordingly, in the public interest. The categories of information which should be protected are carefully described in regulations promulgated by the Secretary of Defense—Department of Defense Directives 5200.1 and 5200.6.

A good example of information requiring protection is that gathered in the course of an investigation. It is considered that failure to safeguard the sources of information supplied on a confidential basis would necessarily result in a reluctance on the part of people who are approached by investigative agents to cooperate with such agents. In addition, the investigative process may develop information which is hearsay or otherwise unreliable, the indiscriminate dissemination of which might do great and unjust harm to individuals. Moreover, certain communications between individuals are privileged from disclosure on the basis of historical principles of law, such as in the case of the doctor and patient. It would be anomalous for the Federal Government to adopt a policy in relation to its own officers and employees at variance with this long-established legal principle. Equally cogent and compelling reasons can be offered with respect to each of the other categories covered in Department of Defense directives to demonstrate that the public interest may be best served by nondisclosure of this information.

It is worthy of note that Congress, itself, has recognized the importance of protection of certain types of information by the enactment of various statutes, such as those dealing with trade secrets and financial data (18 U. S. C. 1905), with information on income-tax returns (26 U. S. C. 6103), and with information in census statements (13 U. S. C. 9).

It is considered that the regulations of the Department of Defense, including those of the military departments, are reasonable and adequate for keeping the public fully informed as to the Department's activities, while at the same time assuring the protection of information which should be safeguarded in the overall national interest.

For the above reasons, the Department of Defense strongly recommends against the enactment of Senate bill 921 to amend section 161 of the Revised Statutes.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

ROBERT DECHERT.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
April 9, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: In the Secretary's absence, I am replying to your letter of April 2, 1958, inviting the Secretary to appear before your subcommittee on April 16, 1958, and present his views on S. 921, a bill to amend section 161 of the Revised Statutes.

Section 161 of the Revised Statutes (5 U. S. C. 22) authorizes the heads of executive departments listed in section 158 of the Revised Statutes (5 U. S. C. 1) to prescribe regulations for the government of their departments, the conduct of their personnel, the performance of their business, and the custody, use, and preservation of departmental records, papers, and property.

S. 921 would amend this section to add the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Inasmuch as the Department of Health, Education, and Welfare was not listed in section 158 of the Revised Statutes until the enactment of Public Law 852, 84th Congress, approved July 31, 1956, section 161 did not until that date, apply to this Department. Thus, in prescribing regulations on these matters, we have relied on other statutory authorities, such as reorganization plans establishing or affecting the Department (principally Reorganization Plan No. 1 of 1953), pertinent Executive orders and delegations, and various other statutes applicable, generally, to Federal agencies or applicable, specifically, to this Department and its programs and functions. We would, therefore, defer to the views of other executive departments on the merits of this bill.

In view of this Department's lack of experience with section 161 of the Revised Statutes, as explained above, we request that, in lieu of his appearance before your subcommittee, you accept this letter as a statement of his views on S. 921.

Sincerely yours,

(Signed) E. L. RICHARDSON,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington D. C., April 12, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR MR. HENNINGS: Thank you for your letter of April 2 concerning the hearings scheduled by your Subcommittee on Constitutional Rights. On the date you have suggested for my appearance, April 16, I am already scheduled to be out of the city. In any event, in view of the extended appearance and statement of the Attorney General on the subject of S. 921, I do not feel that my appearance before your committee would aid you in your deliberations on this subject.

I am informed that we have already reported on a series of House bills similar to S. 921 and if you so desire, we shall provide your committee with a report on the bills now pending before you.

Sincerely yours,

(Signed) FRED A. SEATON,
Secretary of the Interior.

DEPARTMENT OF LABOR,
Washington, April 16, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: In further response to your letter of April 2, 1958, there is attached hereto a statement of the views of the Department of Labor respecting S. 921, a bill to amend section 161 of the Revised Statutes.

Sincerely yours,

JAMES P. MITCHELL, *Secretary of Labor.*

STATEMENT OF THE DEPARTMENT OF LABOR RESPECTING S. 921

It is the firm policy of the Department of Labor to make all material in its possession available to the greatest extent possible consistent with the public interest and the efficient administration of our statutory duties. This policy, which reflects that of the administration, is based on the theory that an informed public is important to the successful operations of the democratic form of government. As the Attorney General stated in a letter to Representative George Meader of Michigan made public on March 17, 1958, the present administration has furnished more information to Congress and the public than was ever before furnished.

The statutory obligations of the Department of Labor are to advance the opportunities and well-being of the wage earners of the country and thus the welfare of the Nation as a whole. To a large extent the Department is a service agency which can carry out its duties and functions only by reaching the greatest number of people possible with its information, data, and services. This necessitates the broadest kind of dissemination of material to the press, public, Congress, Federal and State agencies, business and labor groups, research specialists, and all other interested individuals or groups.

In accordance with this policy, the Department makes the information in its possession available except where (1) Congress has expressly directed it by statute to impose restrictions, or has imposed an obligation which the Department finds will be defeated if access to some of the information submitted to it is not restricted, or (2) the information is of such nature that its disclosure would invade the right of privacy, reveal business secrets, or is subject to security classification for national defense purposes.

Section 161 of the Revised Statutes, which S. 921 would amend, is basically a codification of section 2 of the 1789 act establishing a Department of Foreign Affairs and its counterparts for the other early executive departments (1 Stat. 28, 49, 65, 68, 558). As the Attorney General has pointed out to this subcommittee, the historical antecedents of the section show that this type of legislation was predicated on recognition by Congress of the constitutional doctrine of separation of powers, pursuant to which the Constitution created three independent branches of the Government, the legislative, the executive, and the judicial. Each of these branches has its own functions to perform, and in performing them and in exercising the prerogatives assigned to each by the supreme law of the land, the branches must be kept separate and independent of each other.

In its present form section 161 expresses and carries out the separation of powers doctrine by authorizing department heads to prescribe appropriate regulations governing the custody of documents. The Constitution itself, not the statute, established this doctrine so that reliance upon the section is in substance reliance upon the Constitution. By enacting section 161 and its predecessors Congress also recognized that there are areas in which the interests both of the public and the Government require that protection be afforded to material in the possession of the executive departments. Grave injury to the public and to the conduct of the Government's affairs would result from attempting to restrict the prerogative of the executive branch to extend this protection when necessary for the public welfare.

The Department of Labor remains strongly opposed to the enactment of S. 921, as stated in our report of April 30, 1957, to the Senate Judiciary Committee. We concur in the Attorney General's opposition to this bill, expressed in his statement of March 6, 1958, submitted to the subcommittee and his letter of March 13 supplementing this statement.

POST OFFICE DEPARTMENT,
BUREAU OF THE GENERAL COUNSEL,
Washington, D. C., April 9, 1958.

Hon. THOMAS C. HENNINGS, Jr.

Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: This will acknowledge receipt of your letter of April 2, 1958, inviting the Postmaster General, if he so desires, to appear before your subcommittee and present his views on S. 921.

You state in your letter that the Attorney General has already appeared before your subcommittee and given it the benefit of his views. We believe that the Attorney General has ably presented the views of the entire executive branch of the Government. We are not aware of any additional information that this Department might present to aid your committee in its deliberations. In view of this, the Postmaster General has directed me to advise you that the Department does not wish to be heard at this hearing.

Sincerely yours,

HERBERT B. WARBURTON,
Acting General Counsel.

DEPARTMENT OF STATE,
Washington, April 8, 1958.

Hon. THOMAS C. HENNINGS, Jr.

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: The Secretary has asked me to acknowledge your letter dated April 2, 1958, and advise you that he regrets he will be unable to appear before your subcommittee on Wednesday, April 16, 1958. He notes that you have suggested, as an alternative, that he might submit a written statement for the record.

The Secretary, taking advantage of your suggestion, merely wishes to state that his views respecting S. 921 are in accord with those expressed by the Attorney General when he appeared before your subcommittee on March 6, 1958, as they were supplemented in the Attorney General's letter to you dated March 13, 1958.

Sincerely yours,

JOHN S. HOGHLAND, 2d,
Acting Assistant Secretary for Congressional Relations.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, April 15, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: Reference is made to your letter of April 2, inviting us to appear before your subcommittee on April 16 or to submit any written statement we care to make on S. 921.

The bill would add a sentence to section 161 of the Revised Statutes (5 U. S. C. 22), declaring that the section does not authorize withholding information from the public or limiting the availability of records to the public.

As you indicated, the Attorney General has appeared before your committee and given you the benefit of his views. The issues involved appear to be legal issues affecting the entire executive branch on which the views of the Attorney General would guide the executive branch. While we appreciate very much your invitation to appear, in these circumstances we feel that we would not have further material to submit.

Sincerely yours,

(Signed) **FRED C. SCRIBNER, Jr.**
Acting Secretary of the Treasury.

Senator HENNINGS. We are very fortunate indeed today to have some representative and distinguished members of the newspapers profession with us. I will take these witnesses in order on the list handed to me by the committee counsel, Mr. Slayman, who sits on my left, and will first call upon Mr. Herbert Brucker, chairman of the freedom of information committee of the American Society of Newspaper Editors, who is also the editor of the Hartford (Conn.) Courant, which we all know as a grand, distinguished newspaper of the country.

Without further preliminaries, Mr. Brucker, we would be very happy to hear from you, sir. You may proceed in any manner you please, either by reading, if you have a prepared statement, or by

speaking extemporaneously. We are delighted to have you with us here today, sir.

Mr. BRUCKER. Thank you, Senator Hennings.

STATEMENT OF HERBERT BRUCKER, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, AMERICAN SOCIETY OF NEWSPAPER EDITORS; ALSO EDITOR, THE HARTFORD (CONN.) COURANT

Mr. BRUCKER. My name is Herbert Brucker, editor of the Courant and chairman of the freedom of information committee of the American Society of Newspaper Editors. I speak here for the American Society of Newspaper Editors and for myself. The reason I appear is because of a declaration of principles adopted by the ASNE in convention at San Francisco last year. If that declaration is not already a part of your record, I would like to enter it into the record now.

Senator HENNINGS. We would be glad to have it. Without objection, it will be made a part of the record, Mr. Brucker.

(The declaration follows:)

A DECLARATION OF PRINCIPLES BY THE AMERICAN SOCIETY OF NEWSPAPER EDITORS

(Adopted July 12, 1957, in convention at San Francisco)

The American people have the right to know, as the heirs of Magna Charta, the inheritors of the privileges and immunities of the English Common Law and the beneficiaries of the freedoms and liberties guaranteed them by the Constitution and the Bill of Rights of the United States.

To exercise this right citizens must be able to gather information at home or abroad, except where military necessity plainly prevents; they must find it possible to publish or relate otherwise the information thus acquired without prior restraint or censorship by Government; they must be free to declare or print it without fear of punishment not in accord with due process; they must possess the means of using or acquiring implements of publication; they should have freedom to distribute and disseminate without obstruction by Government or by their fellow citizens.

The members of the American Society of Newspaper Editors, as citizens partake of and share in this right to know in their own names, and, as editors, reporters, and writers they act, besides, as agents and servants of other citizens whose right to knowledge they invoke. They are therefore twice-concerned and doubly alarmed by measures that threaten the right to know, whether they involve restrictions on the movement of the press to sources of news and information at home or abroad, withholding of information at local, State or Federal levels, or proposals to bring within the purview of the criminal statutes those who do not place security of the Nation in jeopardy, but whose only offense is to disagree with Government officials on what may be safely published.

The officers and directors of the American Society of Newspaper Editors are authorized and instructed by the members of the Society to resist by all appropriate means every encroachment upon the right so indispensable to the exercise of their profession, so essential to the liberties of every free people, and so inseparable from all the other rights essential to self-government.

Mr. BRUCKER. I will not take the time to read it. I would simply call attention to its opening statement, which is:

The American people have the right to know—
and to a subsequent statement saying:

To exercise this right citizens must be able to gather information at home or abroad * * *.

Under this declaration, I wish to support S. 921, which would amend section 161 of the Revised Statutes, or title 5, United States Code, section 22, by adding this sentence:

This section does not authorize withholding information from the public or limiting availability of records to the public.

I do not need to rehearse to you where that sentence would be added.

Senator HENNINGS. Mr. Brucker, would you mind suspending for just a moment? I am pleased to introduce to you gentlemen the distinguished Senator from Nebraska, Senator Hruska, a member of this committee.

Senator HRUSKA. I am sorry I am late, Mr. Chairman.

Senator HENNINGS. And here comes Senator Ervin, the Senator from North Carolina.

We are glad to have you here this morning as a distinguished and diligent member of this committee.

I am sorry about the interruptions, Mr. Brucker.

Mr. BRUCKER. That sentence I have just read would, of course, be added to the 1789 statute setting the Government up in business, by authorizing the heads of its departments to prescribe regulations for the custody, use, and preservation of the records, papers, and property of their departments. This amendment, this addition, we support without reservation.

The ASNE is an organization of almost 600 individualists, and in a sense no one has any right to speak for them all on anything. They are quite jealous of their ability and power to speak for themselves.

Senator HENNINGS. It might be said that in some respects it is a little like the United States Senate.

Mr. BRUCKER. And yet I would like to point out that there has been quite a bit of attention paid to this amendment, and in the ASNE, no single voice has been raised against it. I would be very much surprised if there ever would be.

It was the ASNE that found, through its counsel, Harold Cross, that it was this 1789 law that was used as authority for withholding from the public information about the public business. It seems that this statute was largely ignored until people began to ask questions of the departments as to where their authority came from to withhold information, and then they began to cite this statute. Yet it seems to me plain that if the law meant to give authority for secrecy, it would have said so. In other words, it would have added, say, the words "and secrecy" to its other stipulations, so that it would read in that part that I have quoted—

to prescribe regulations * * * for * * * the custody, use, preservation, and secrecy of the records—

and so forth. Or, if that had been deemed too much, it might have qualified it by giving the department heads authority to prescribe regulations for the custody, use, preservation, and, "if he deems necessary, the keeping secret" of the records, papers, property, and so forth.

Because the law did not say that, I do not see how it could have meant that.

I would like also to point out that this amendment has nothing to do with national security or any other reason there may be for secrecy, if there are any other reasons.

We all know that there is plenty of authority in other legislation for secrecy where it is necessary. I sometimes think there is plenty of authority for secrecy where it is not necessary.

What it seems to us your amendment would do is simply to make it certain that what the 1789 law plainly meant in the context of history, when it was framed, and in its language, is understood clearly and not abused today.

I note that the question has also been raised as to whether title 5, United States Code, section 22, bears on the question of Presidential privilege to withhold information from Congress and the people. I am not a constitutional lawyer. I do have some experience in collecting information, including information about Government, and making that information plain to the public. In the light of that experience, it seems to me incontrovertible that executive privilege is irrelevant to S. 921.

If executive privilege exists—and I for one have no doubt that it does—it is inherent in the checks and balances of our system of government; that is, in the Constitution itself, or perhaps in the play of political forces that make that Constitution work. It seems to me it has nothing to do with our subject in one way or another, which is to make sure that we today understand and use the 1789 law as originally intended.

There has been no evidence of change in the American people in wanting their Government to do its business in an orderly fashion, but certainly there has been no change, either, in their will to support the fundamental principle of free government. And government remains free only as long as the people have all the facts, the good, the bad, and the indifferent together.

Therefore, I would like to associate myself with Attorney General Rogers in his March 6 statement to you that title 5, United States Code, section 22 is a housekeeping or bookkeeping statute. But I simply do not understand his subsequent letter to you of March 13, in which he says:

Section 161 is a legislative expression and recognition of the executive privilege.

I just do not understand how Congress by legislation can add to or take away from anything that is in the Constitution. That is why I think this is irrelevant.

Senator HENNINGS. As I said, that was the reason we hoped the Attorney General might come back to us and undertake to clarify this matter for the benefit of the committee and the country.

Mr. BRUCKER. Yes.

Behind all this, I think, is something rather deep. Your amendment is simple, clear, and obvious. The opposition to it, that is, the attempt to twist title 5, United States Code, section 22, into an excuse for secrecy, reflects a philosophy of Government that is fundamentally alien to our whole history and tradition, to all that we believe in and live by.

In that connection, I would like to call to your attention, if it is not already in your records, an article in the Saturday Review for

April 5, 1958. It was written by Thomas Braden, publisher of the Oceanside, Calif., Blade-Tribune. In it, he documents the existence here in Washington of the philosophy that Government has the right to control the flow of news to the American public. In it he says:

I learned that my newspaper was reporting the news but the news was false. That is the kind of thing that happens if secrecy is permitted.

May I enter this in the record?

Senator HENNINGS. Yes, indeed. We are glad to have it. Unless there is objection, it will be made a part of the record. That is the article from the Saturday Review?

Mr. BRUCKER. From the Saturday Review, that explains what is happening under secrecy.

Senator HENNING. Thank you.

(The article follows:)

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WHY MY NEWSPAPER LIED

Without Journalists a Republic would be as helpless as a hospital without surgeons. And the good journalist takes the accuracy and honor of his work as seriously as the good surgeon does his. Yet since the end of World War II the journalist has practised his craft with increasing difficulty. Bureaucracy, operating behind thick, selfprotective hedges, has grown to stupefying dimensions; perhaps the most important functions of the Government operate behind a second, even thicker hedge of "security classification." How all this strikes one American newspaper editor is the subject of the article here by Thomas Braden, currently publisher of the Oceanside (California) Daily Blade-Tribune, a writer, formerly a teacher at Dartmouth College, New Hampshire.

(By Thomas Braden)

Last month I learned that the newspaper I publish had again unwittingly lied to its readers. It had reported as fact what the Atomic Energy Commission said was fact—that underground explosions could be kept secret. It had implied what the AEC apparently intended newspapers to imply—that, since nuclear tests could be kept secret, hope for disarmament agreements through mutual detection was ended.

A year ago I would have been surprised to find out what a Congressional committee had just enabled the world to find out—that what the AEC said was simply not true. But I lost my innocence last fall, when I left the small daily which I publish in Oceanside and came to Washington for three months. I wanted to find out whether we were doing a good job of informing our people about what was happening. I learned that my newspaper was reporting the news but the news was false.

Shortly after I arrived in Washington, I learned that the Soviet had successfully fired an intercontinental ballistic missile. Then, three days later, I took the manila wrapper off my own newspaper and I saw the news down at the bottom of the page.

It occupied a space usually reserved for amusing features about lost parakeets or cats stranded high in palm trees. The headline read, "Soviet Rocket Boast Pooh-Poohed." The total impression to be gained from the story I knew to be a lie. I had worked in government. During my visit to Washington, I had looked up old friends in government. I had talked to them about the subject that was most on their minds—the missile race with Russia. Whatever was being said for publication purposes, they had no doubts about the fact that Russia had the ICBM. It was no boast.

It didn't help much to learn that across the country most other publishers had passed on the same lie to their readers. And, since I was in Washington where the news about missiles was coming from, I was determined to find out why my newspaper did not accurately represent the facts.

I got part of my answer a short time later, when I attended a Washington dinner party. Seated across the room from me was a very high-ranking army general. We were talking about the metal nose cone which had been displayed over television during a talk by the President. The nose cone had re-entered the atmosphere without burning up. The general was obviously proud of that nose-cone. I asked a simple and perhaps a naive question: "How fast did the thing come down?"

His expression changed to one of chilly severity. "The answer to that question," he replied, in tones of rebuke, "is highly classified."

I couldn't understand why the question had so obviously annoyed the general, and I took the problem to Stewart Alsop, a Washington newspaperman who, with his brother, has written more about missiles than any other columnist. Alsop explained at once. The nose-cone had re-entered the atmosphere, he said, at a speed lower than that required for an operational long-range missile. So the "re-entry" problem, which we had been led to believe had been solved, was really not solved at all.

The President, Alsop explained, had been given some facts by the Defense Department before he made his speech. These facts were in themselves accurate enough. But the net impression to be gained from the facts was not correct. For example, we have heard a great deal about the Snark as one of our valuable assets in the world balance of power. It is reported to have a range of 5,000 miles. This is true, as Alsop pointed out. But it doesn't travel very fast. In fact, as I found out for myself by the simple process of telephoning the Press Department of the Air Force, the Snark travels at below the speed of sound. It would be a sitting duck for the Soviet air defenses.

For another example, we have been led to believe that the B-52 jet bomber is "standard in our Strategic Air Command." But the fact, as I verified for myself in the same manner, was that only four—less than a tenth—of the Strategic Air Command's forty-five wings are fully equipped with the B-52.

In listening to Alsop's explanation, I realized that I had the answer to my question. Few Government officials will consciously and deliberately lie, either to newspapermen or to the public. But a tailored version of the truth—a part of the truth—can in the net impression it conveys be a lie. Thus, my newspaper had given a tailored version of the truth to its readers because the Government had given a tailored version of the truth to a reporter. My readers, and other readers of other newspapers across the country, had been deprived of their right to know.

The answer to my question was more disturbing than ever. It merely raised more questions. Why did the Government tailor the truth? And what could newspapers, radio, and television do to give the people the whole truth? I didn't know the answers. I wanted very much to know.

For surely the problem is important. We are in a life-and-death race with the Russians. Lacking accurate information about the realities of the race, we may not even know that we are losing it. We may go on believing that the important debates are about the state of the economy or the expense of foreign alliances until we are confronted with a pistol at our heads. In the moment that is left, there will be no time for debate. The decision, if any remains, will be a very simple one—to surrender or die. James Madison summed it succinctly: "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, perhaps, both."

And yet the problem is very different from the usual problems involving freedom of the press on which Madison is so often quoted. In the past American newspapermen have argued against the unwillingness of Government officials to hold press conferences, make public appearances, give out news. The problem today—the problem my newspaper and others were facing—had no such easy solution. The Government was giving out news. But the news, to use the phrase of James Reston of The New York Times, was "managed news." It was wrapped, as the Alsop brothers are fond of remarking, in "gobs of soothing syrup."

The more I studied the problem of reporting today, the more it seemed to me that no newspaper job had ever been more difficult. The first reason is that our race with the Russians is being run with and for complicated new weapons requiring new tactics, new strategies, and even new vocabularies. Under the threat of warfare by means of hydrogen rockets delivered in minutes from half a world away the mind, as Henry Adams remarked, "will need to jump." The minds of reporters, trained and educated to ask the right questions on the basis of understanding American politics, need to jump a long way in

order to ask the right questions on the basis of understanding the difference between fission and fusion, the advantages and disadvantages of air-breathing and ballistic missiles or of liquid and solid fuels.

The second reason the job of reporters is difficult is "security." Until World War II any reporter of average intelligence could write accurately about military and defense problems because the information was easy to get. If he wanted to compare the strengths of any of the world's navies, for example, he had only to consult a ready reference book called "Jane's Fighting Ships." The divisional strengths of the world's armies were also regularly published. As a final resort, a reporter could, in those days, go direct to the horse's mouth. The horse's mouth was any high official responsible for and attentive to the problems of defense. But today the horse's mouth is often closed.

The secrecy syndrome in our Government is now so widespread that it has been said that even the wrapping-paper in the Pentagon is marked secret. Officials like AEC Chairman Lewis Strauss clutch their secrets to their breasts much in the spirit of schoolboys taunting their fellows with the cry "I've got a see-crut you don't know"—this despite the fact that their see-cruts are not secrets from the Russians, but only from the American people.

And when the horse's mouth opens, it is likely to tell only that part of the truth which Government wants to have told. For an example of this "selective security," consider the case of Charles Wilson's happy announcement some months ago that intelligence had reported a sharp cutback in Soviet production of their Bison long-range bomber. Wilson used this top-secret intelligence to support his policy of cutting back on production of our own B-52's. But he conspicuously failed to make public another piece of secret intelligence—the remarkable Soviet progress in the field of the long-range missile. This progress was the real reason, of course, why the Soviets cut back on their long-range bombers.

There is a third reason why the job of the press is difficult. This reason lies in a tradition of which the American press is justifiably proud: that newspapers should not argue with the news. They should not editorialize in their news columns. They should report what a man says, and let it go at that, even when they know that what he says is wrong, or likely to mislead, or even a flat, provable lie.

The tradition is a proud one when there is public debate. When the press can report what one man says, and give equal prominence to a rebuttal of what he says, the public is permitted to choose. "Knowledge," Madison said, "will forever govern ignorance." But when there is only one voice—and that the official voice—no comparison or choice is permitted. The tradition turns sour.

What is a reporter to do, for example, when after the first Russian satellite is launched a high official says that it didn't raise his apprehensions? Or what is a reporter to do when the Secretary of Defense, nearly three months after Washington had certain knowledge that the Russians had tested a missile of intercontinental range, says that he doesn't think they have such a missile and that the United States is still ahead in the race?

"Russ Not Ahead in Missile Race, Wilson Declares," was the way my own newspaper headlined that story, and across the country most others gave it similar treatment. To some extent, therefore, the press of the United States, like the press of Russia, becomes a vast sounding board, reverberating to the beat of the official drumstick. Journalism, confronted with the new problems of the new life-and-death reporting, records its own failure.

True, the failure is not complete. While my newspaper and many others were giving the "pooh-pooh" treatment to the life-and-death fact that the Russians had achieved an intercontinental ballistic missile, the Washington Post played the story straight. I looked into this, and I found out why the Post succeeded where others had failed.

On the night that the Soviet Government officially announced its new weapon, the Post's managing editor, Alfred Friendly, remembered that about a month previously he had read a column in his own newspaper by Stewart Alsop in which Alsop flatly stated that Russia had tested an intercontinental ballistic missile. Friendly also remembered that in 1949, when the Russians announced they had fired an atomic bomb, the then Secretary of Defense, Louis Johnson, had suggested that the bomb was a fake. Friendly had his guard up. Then he looked at the story written by one of his reporters who had checked out the Russian announcement with the Defense Department. It belittled the achievement in officially authorized style. Friendly put in a call for a Post veteran, Ed Folliard, and they talked it over. Folliard made a few more calls. Friendly

made up his mind. Next morning the Post played the story straight, and played it as the lead. So did the New York Times, which previously had been fooled into giving credence to Pentagon denials of the original Alsop story.

As I looked over the records of reporters in Washington who were doing the new power-balance reporting, it was clear that the Alsop brothers weren't the only two who were on top of the difficult news. The Washington Post's Chalmers Roberts and The New York Times' James Reston are examples of the ability and initiative being put to work in Washington by a number of well-trained and knowledgeable correspondents. As far back as 1947 these men had reported that the Russians were at work on an intercontinental missile and a satellite, and predicted that they would succeed before the United States did. In 1955 they reported that the United States would try to launch an earth satellite in 1957. But unless the project was tackled with a sense of urgency the Russians, they said, would get there first, "and would gain enormous prestige in the scientific world, as well as registering a huge propaganda victory if they were first to break the bonds of gravity."

Again and again they had complained that United States officials had no sense of urgency about the new weapons. "The United States has tested only one intermediate missile," they reported last summer. "The Soviet Union has been testing such missiles for eighteen months at the rate of five per month." Finally, in July 1957, weeks before the Russians verified the news, the Alsops broke the story of the greatest Soviet success of all, the successful testing of the ICBM. John Lear, in *The Saturday Review*, by going to Canadian sources, scored an equally clean beat.

If some reporters could succeed, it seemed to me there must be some way of getting around the difficulties. I decided to observe the Alsops at work.

How did the Alsops learn to distinguish between truth and approximations of truth or half-truth in the news handouts or in public statements? Watching them it seemed to me that they followed two basic rules. The rules are not patented. Any reporter can learn to use them.

Rule one is to go to school. Understanding the new weapons and the new strategy is half the battle, as my own encounter with the army general at the Washington dinner-party proved. I had asked the general a question, and by sheer happenstance it turned out to be the key question. But Alsop understood why the answer was chilly, and I did not. Alsop knew the difference between re-entering the atmosphere at a speed of Mach 14 and a speed of Mach 21, and I did not. More simply, he had studied the new weapons, and I had not. Neither had the reporters in Washington upon whom my newspaper and others rely.

Rule two is to examine with critical skepticism what emerges from the horse's mouth. During the London Conference last spring, the State Department issued one bulletin after another heralding the United States plan for world disarmament. My newspaper and others headlined the "news." In fact, however, the Alsops were able to predict with utter confidence, "there will be no disarmament agreement." What they did was to study the package deal that Mr. Dulles was making up in Washington. Clearly, it was one the Russians could not accept, no matter how bravely Harold Stassen might talk in London about the possibilities of negotiation.

When a reporter refuses to accept complacently from the horse's mouth such facts as the horse wishes to have accepted, the horse is likely to turn around and kick, as many Washington reporters have discovered. Despite James Hagerty's expressed "surprise," The New York Times sticks to its story that "the Administration practice of having gumshoes shadow reporters to detect their sources for delicate news stories continues unabated."

In testifying before a Congressional committee, Joseph Alsop has mentioned another kind of kick: "You have in the last five or six years had a very novel technique which has been employed in the Federal Government to prevent the publication of information which the Government desires, for one reason or another, to keep secret. It is a rather simple technique. The newspaperman who ventures to publish what he regards as a life-and-death fact of considerable national importance is ordered to be investigated." At least five times the Alsops, themselves, have been investigated.

I do not pretend that the diligent application of these rules will always insure that the American people will know how they stand in the life-and-death race—or in other matters involving their security. But they may help.

The American Founding Fathers were not concerned with creating a perfect government. Their concern was to create a government in which errors would be forced out into the open. This is another way of describing checks and bal-

ances. It is essential even for good men in office and a matter of life and death when bad men get in. Nor is this a matter of political labels. Both administrations since the end of the war have attempted to avoid the unpleasant consequences of error. The climax came when the first Russian sputnik was launched and Defense and State Departments rushed to the public with complacent, reassuring statements designed to hide the truth.

The whole truth was available, as we now know. When Allen W. Dulles, Director of Central Intelligence, testified before the Johnson Committee, he cited instance after instance in which Russian missile progress had been reported to the National Security Council. But, unlike the days of the Marshall Plan and of Greek-Turkish aid, when unpleasant facts were made publicly available in order to support a policy for dealing with them, the facts Allen Dulles reported went no further. They did not fit the Government policy. "They didn't," Allen Dulles has been quoted as saying in response to a Senatorial question, "seem to have any impact."

When facts officially reported to Government officials have no impact, we can hardly expect the press, reporting unofficially to the people, to make up for it. Only the Russian satellites had the necessary impact to arouse the Government and the public, too. For that we may, as Allen Dulles has also said, "thank Heaven."

Still, there is no proof that the next shock will permit a period of awakening, or be susceptible, however briefly to the amusing "pooh-pooh" treatment. It would be well for Americans to bear in mind that the battle of the press to get the whole truth from Government is their battle, and that the people own the right to know. Government officials have to be reminded, from time to time, that they are granting no favors when they show the facts; they are doing what they are put there to do.

Mr. BRUCKER. Under this strange philosophy, the idea seems to be that there exists something rather shapeless, hard to put your finger on, known as the public interest, that requires Government to control the flow of news to the American people.

I would like to ask: Who is to decide what the public interest is, if it is not the public itself? If you set up any other standard, no matter how noble your motive, inevitably, you are in the business of doctoring the news, the kind of thing this article refers to. That, I submit, is something alien to our whole way of life. In fact, it betrays our professed stand for freedom before the world. And, perhaps, the existence of this kind of thinking is one reason why we are in so much trouble in supporting freedom in the world; namely, that we do not, ourselves, practice the freedom we preach.

I think there is no substitute for telling the facts about government, all of the facts. Let the people decide which are good and which are not good. There is nothing in the Constitution or in law that gives a public official, big or little, appointed or elected, or just plain hired, the right to consider that he owns and that, therefore, he may control that fragment of the public business that is temporarily in his care. In fact, I think the whole thing was said long ago simply and in few words:

Ye shall know the truth, and the truth shall make you free.

S. 921, by helping the American people know the truth, will help to keep them free.

Thank you.

Senator HENNINGS. Mr. Brucker, thank you for your excellent statement. With your indulgence, there may be some questions that my colleagues may want to ask you in further expansion of your views. Would you mind?

Mr. BRUCKER. I would be glad to answer them.

Senator HENNINGS. Senator Ervin, do you have anything to ask Mr. Brucker?

Senator ERVIN. I was very much impressed by your statement, and I find myself in virtually complete agreement with it. I have always liked the statement of Thomas Jefferson:

When the press is free and every man able to read, all is safe.

I represent a State in which about 230,000 people are employed in textile plants. We have a lot of difficulty arising out of the foreign trade agreements, in the textile industry. I contacted the State Department and the Department of Commerce, to get information reported to them by the American consul in Japan with reference to so-called voluntary quotas on the exportation of textile products. They gave it to me, but they stamped it "Classified," not to be divulged, and I am not to make it public.

That is the only source to which I could go for that information, and yet it is classified. As the Senator of one of the American States that are very much concerned with the matter of foreign trade, the only information I am able to get that throws any light on the matter is marked "Classified," and I am, in effect, forced to receive it under a pledge of secrecy that I will not divulge it.

This sort of action is completely out of my experience, because in North Carolina we have a practice that every record of any kind that is in a public office is available to any citizen of North Carolina. I could walk in any public office there and see any of its records.

I want to commend you on your excellent statement.

Mr. BRUCKER. Thank you.

Senator ERVIN. I think this matter has to do with one of the substantial rights of the American people, which you gentlemen of the fourth estate have called the right of the people to know. Thank you.

Senator HENNINGS. Thank you very much, Senator.

Senator Hruska, have you any questions to address to Mr. Brucker?

Senator HRUSKA. I think his statement was a very fine one. I think it sets out the proposition very well, Mr. Brucker. I am impressed by your fairness and by your concession, apparently, that there are matters which must, as a matter of public policy, be retained by the executive department. I gathered that from your statement.

Mr. BRUCKER. On this question of executive privilege, I think our history shows that there at least is something to be said on that side. My point is simply, I do not see what that has to do, one way or another, with this particular statute and the proposed amendment.

Senator HRUSKA. Yes; that is the precise point I make. It is not an unqualified and unlimited power and right to know, is it, on the part of the citizens, nor even on the part of the press of the Republic. It cannot be that, can it, Mr. Brucker?

Mr. BRUCKER. No, I think, as chairman of our freedom of information committee, I would have to say that this right to know, like all rights, is not absolute. No one right can override all the others. My point is that the other rights and this one we are speaking of have plenty of authority behind them, and I think it is highly necessary to stress this right to know, which is limited, but it seems to me that it is limited too much.

Senator Hruska. In other words, you would undertake the point that the abuse of that right is probably of such degree and such nature as to account for much of the objection directed in this field. Would that be another way of putting it?

Mr. BRUCKER. Yes, as I understand it.

Senator Hruska. I am awfully glad to see that qualification in your statement, because so often there is a tendency to get behind a slogan which is highly popular, such as the "right of the people to know," or "Ye shall know the truth and it shall make you free," and sometimes that is construed as being based upon an idea that there would be an unlimited and absolute right to know.

Of course, as reasonable men we know that cannot be, not only in Government, but even in business.

I have an idea that perhaps even in executive sessions of the board of directors of some corporations things are said and things are done and communications are exchanged which cannot be, as a matter of policy, disclosed to all the stockholders. We can readily imagine situations of that kind.

Mr. BRUCKER. Yes, but that, of course, is in private business, and is a little bit different from the Government business.

Senator Hruska. That is right. And yet we have the right of a stockholder, who says, "I am a part owner, I have a right to know, and the truth shall make me free, and either it shall acquit or convict you of any charges of wrongdoing or improper handling of funds or matters of corporate business."

Mr. BRUCKER. I have no doubt you are right that those qualifications exist, but our concern is that the burden of proof should be on him who would suppress. What should be established is the right to know, and if there are qualifications and limitations, they should be proved, rather than that the burden of proof should be put upon the citizen who seeks information.

Senator Hennings. Gentlemen, may I present to you the learned Senator from Utah, a member of this committee, Senator Arthur Watkins.

We are very glad to have you here, Senator, and appreciate your coming.

Senator Hruska. I have before me a brief paragraph of the St. Louis Post-Dispatch of May 10, 1948, which was written and bears on this very subject. I should like permission, Mr. Chairman, to read just one brief paragraph of this article on the idea of limitation of the right to know.

Senator Hennings. Yes.

Senator Hruska. This paragraph reads thus:

No Congressman would think of demanding conference transcripts or personnel records or any other private papers from the Supreme Court. The third equal branch of Government, the President, cannot demand the records of private congressional committees sessions. The Supreme Court makes no such demand on either Congress or the President. No more should Congress try to destroy the President's right to a reasonable and necessary privacy in his department.

On that occasion, in 1948, we were considering in the Congress here a resolution which was directed at an order of the President of that time, directing that any demand or subpoena for certain files from sources outside of the executive branch should be declined and the demand or subpoena referred to the Office of the President. So

there was a similar issue raised at that time. There were many other instances where that right, that limitation of that right to know was recognized freely and fully even by members of our fourth estate, with its highly individualistic characteristics.

Mr. BRUCKER. Perhaps that is another reflection of what I was saying, that this thing undoubtedly exists, but I do not see what it has to do with this particular amendment.

Senator HRUSKA. No. I fully agree with you. And again I want to say, the reason for my line of questioning is simply to emphasize that while there are frequent references in discussion of this amendment to the right to know and that you shall know the truth, and the truth shall make you free, the conclusion should not be based upon those statements that the right to know and the right to have the truth are unlimited and without any restrictions.

Senator HENNINGS. The Senator is aware, of course, that the amendment S. 921 does not relate to executive privilege.

Senator HRUSKA. Well, no, I cannot say that I am, because insofar as the statute which it seeks to amend goes into the executive department, and the President can act only through the executive department, I cannot say that I would quite agree with that statement in its totality, Mr. Chairman.

Senator HENNINGS. Possibly, Senator, we can clear that up by undertaking to sum up by a few questions on the basic proposition stated by Mr. Brucker, and I think we can possibly clarify that.

Mr. Brucker, I have prepared several questions, if you would be good enough to indulge me for a few minutes.

As I gather from your testimony, there is no question in your mind that title 5, United States Code, section 22, has been miscited by many executive departments and agencies as authority to withhold information.

Mr. BRUCKER. That is right. There is no question whatever about that.

Senator HENNINGS. I thought I understood you very clearly on that.

Mr. Brucker, does either the bill, S. 921, or the so-called house-keeping—or, as the Attorney General has referred to it as well, the bookkeeping—statute, the statute that S. 921 is seeking to amend, have any relation to the so-called executive privilege, in your opinion?

Mr. BRUCKER. No, I do not think that it has any relation whatever.

Senator HENNINGS. That has been my view of it, I might say. I believed I was on solid ground when I undertook to offer this amendment.

Mr. BRUCKER. You cannot change the Constitution by passing a law.

Senator HENNINGS. No, of course not.

Now, sir, if S. 921 were enacted into law, do you know of any way in which it would interfere with the proper classification of military secrets? Would it, in your opinion, in any way jeopardize the defense, security, or safety of our country?

Mr. BRUCKER. I do not see how it possibly could. It has nothing to do with that. Those provisions were separate.

Senator HENNINGS. That, too, has been my understanding.

Do you know of any way, Mr. Brucker, in which S. 921, if enacted into law, would interfere with the work of such security agencies as

the FBI? Is it not a fact that the security of FBI files is amply protected by other statutes, including the O'Mahoney Act passed last year following the decision in the famous and celebrated Jencks case?

By the way, Senator O'Mahoney is a member of this committee. Although he is not here yet today he is going to try to get here.

Mr. BRUCKER. That is right, those are all separate matters, and they do not have to do with this amendment.

Senator HENNINGS. Mr. Brucker, there are now on the statute books of the United States literally scores of statutes restricting the furnishing of information by Government departments and agencies. Do you think the authority granted executive officers under these other statutes would be affected in any way by this amendment?

Mr. BRUCKER. I do not see how it could be.

Senator HENNINGS. No, sir. I find myself again in entire agreement with you, because that is not what we were trying to do by this amendment.

Do you know of any way, Mr. Brucker, in which S. 921, if passed, would interfere with such confidential matters as income tax returns, trade secrets, financial data, and census statements? Do you not think, sir, this is a fact, that these things are now protected by other statutes, none of which will be affected by S. 921?

Mr. BRUCKER. Yes, I agree with that entirely, because this, as I have said, is simply a general statement for orderly business. Those are separate matters, separately covered.

Senator HENNINGS. I thought your testimony was very clear on that. For example, title 18, United States Code, section 1905, protects trade secrets and financial data; title 26, United States Code, section 6103, protects income tax returns; title 13, United States Code, section 9, protects information found and gathered by the Census Bureau. Those are typical of many other statutes that protect certain matters that are and should be properly confidential.

Mr. BRUCKER. Exactly. That is right.

Senator HENNINGS. And it would not be in the public interest, were they to be disclosed.

Mr. BRUCKER. I agree with that entirely.

Senator HENNINGS. Since Senator Watkins has come to the committee, we would like to give you the opportunity, Senator, if you would care to, to ask Mr. Brueker some questions. He has been kind enough to say that we might interrogate him by way of expanding his remarks this morning.

Senator WATKINS. I cannot, obviously, go into the same questions you have, because I just got here. But I have often wondered why the press did not put on a crusade to point out what is going on in congressional executive committee meetings.

Mr. BRUCKER. Sir, I wonder if we have not done that. I did not think it was my place to bring it out here, but in our ASNE convention tomorrow I am going to mention it, that we are tremendously heartened by the work of the Hennings committee here and the Moss committee in the House. We think it would be fine if the same principle were extended to Congress itself. I believe the records will show that about one out of three committee meetings, for example, in the first quarter of this year, were secret. We think it is fine that two of them were open. We would like it if they were all open.

Senator WATKINS. I mention that because, while those sessions are supposed to be secret, within 10 minutes after the committee has recessed they are usually not secret, and all the press gets is a garbled account of what went on.

Senator HENNINGS. It has been ever thus, has it not?

Senator WATKINS. It has been ever thus, and I am very much in favor of making nine-tenths of those executive meetings open to the press and the public generally.

Mr. BRUCKER. That experience you cite, I think, shows one of the evils of secrecy.

Senator WATKINS. It is not actually secret.

Senator HENNINGS. It is quasi-secret, in a sense.

Senator WATKINS. It is supposed to be secret, let's put it that way, but it is not.

Senator HENNINGS. And then the result is often distorted beyond all reality.

Senator WATKINS. That is right, a version that reflects no credit to the committee, and judging by my own experience, I think the activities of the committee would be greatly dignified if the people could look in on them.

Senator Hruska. Would that same process of reasoning apply to the judicial conferences prior to the Supreme Court reaching a decision? And if there is a difference, what makes it different?

Senator WATKINS. I do not know that there is any difference in principle. However, I do not think the Supreme Court would uphold such a law.

Senator ERVIN. I think there is a substantial difference between that and a judicial body. The only effect of a judicial body is in its decisions. All the conversation of the judges that goes back of the decision has no force.

Senator WATKINS. I would agree with that, and I think that probably that is a good explanation.

Senator HENNINGS. The ultimate is the decision, certainly, and not the intent as expressed in the decision, not the discussions preceding the decision which is a matter of public record.

Senator WATKINS. Mr. Chairman, there is one more observation on that point. I think that, of course, there are times when certain matters before committees should be discussed in executive session. But my experience here has been that I have not seen anything in these 12 years that was actually secret but that, within a little while afterward the committee recessed, the subject was leaked some way, leaked by somebody. I have never known by whom. But it is usually a version that does not reflect any credit on the committee, and sometimes it is very unfair to the committee, and particularly to some members of the committee.

Senator HENNINGS. Sometimes it reflects great credit upon the member of the committee who leaks it.

Senator WATKINS. At least, he gets praise in the columns after a while. There is usually an indication who did it. It is never expressed publicly, but you do know who did it by reason of the praise that is given to certain Members of Congress. That is the way the informers are paid off.

Senator HRUSKA. Reverting to the Supreme Court, I have heard it said on occasion in recent months that it does some legislating on its own account. If it does, I cannot quite see the difference between the procedures there and here. I do not want to pass on the merit of the suggestion that the Supreme Court does legislate. But there has been that statement made from time to time; and if so, maybe we ought to have the sessions in the Supreme Court open, even when they are supposed to be executive, on the basis that when they legislate, at least, they should let the members of the public in, and also members of the press.

Senator HENNINGS. When would they admit that they were legislating?

Senator HRUSKA. They would not admit it.

Senator WATKINS. I think as far as the Supreme Court is concerned, it is very seldom you ever hear anything that goes on there which is intended to be executive. Actually, one of the complaints I have against the committee meetings that are supposed to be executive sessions is that if it is intended to be secret, they actually are not, even when it is justified. That is what I had in mind. Of course, actually the press and everybody might want to know what the judge was thinking, what he said if he talked out loud. They might allege that he ought to have it taken down to let the people know; and if he talks to himself, let us know his thoughts. You can go to great extremes on this matter.

But Congress is usually making so many demands on the executive department for information, I wonder, if the executive department asked to see all of our minutes up here of all of our executive sessions, if we would yield at any one instance? I think we would.

Senator HRUSKA. Mr. Chairman, I should like to return to the idea that S. 921 does not impinge upon the executive privilege to withhold records. We had in the 1948 resolution, for example, that was considered, pretty much the same sort of thing, a resolution which, as I understood it, would just about accomplish what the amendment to S. 921 would. On that occasion, it was the present Speaker of the House who said—and I am quoting—when the resolution was passed:

The President says to his Cabinet officer, "You are my agent. You are my alter ego. Do not give that information to the Congress." What are you going to do about it? You might have an unseemly session, an unseemly row upon the House floor, or of the House of Representatives. What are you going to do about it? Are you going to meet the President of the United States because he says the giving up of certain information is not in the public interest?

I submit that even if under the housekeeping statute one of the heads of the departments would say, "No, I am not going to surrender this, I do not consider it in the public interest," maybe he can refer to this section if he wants to. Basically, however, he is still relying upon the constitutional privilege.

So I say I do not know how you can get away from the implication in actual practice that S. 921 does not get into that field.

Senator HENNINGS. That is, in the executive.

Senator HRUSKA. Yes, in the executive. And the departments which S. 921 relates to are in the executive department.

Senator HENNINGS. Of course, that involves a further question that might be amplified, does it not, Senator? How far down the

line may the President delegate to his agents and surrender the right to refuse certain information?

Senator HRSUKA. Well, through the years, for 178 years now, or 176, they have gone pretty far down the line. The question has arisen under all the Presidents, as I understand the memorandums and the precedents which have been furnished to us. So it is not a matter which has happened in recent years. It is a problem that has plagued the American people and the press, I might say, for 17 decades.

That is all, Mr. Chairman. Thank you.

Senator HENNINGS. Thank you.

Are there any further questions?

Mr. BRUCKER, we appreciate very much your being here this morning. We know that your convention and annual meeting is now underway, and it entailed considerable sacrifice for you to leave your colleagues and come here for the public benefit.

Mr. BRUCKER. I am most grateful for the opportunity.

Senator HENNINGS. And we thank you for your splendid statement, which is buttressed even further by the fact that you are chairman of the freedom of information committee of the American Society of Newspaper Editors. If I may express this on behalf of the members of the committee, we are grateful and I am sure the Senate is grateful, and the country should be.

Thank you very much, sir.

Mr. BRUCKER. Thank you, sir.

Senator HENNINGS. The next witness is the distinguished chairman of the freedom of information committee of the celebrated and well-known journalistic fraternity, Sigma Delta Chi. He is also the managing editor of the Tampa (Fla.) Morning Tribune, Mr. V. M. Newton, Jr.

I am very glad to hear from you, Mr. Newton, and have you proceed in any way that you desire.

Mr. NEWTON. Thank you, Senator Hennings.

STATEMENT OF V. M. NEWTON, JR., MANAGING EDITOR, TAMPA (FLA.) TRIBUNE, AND CHAIRMAN, SIGMA DELTA CHI FREEDOM OF INFORMATION COMMITTEE

Mr. NEWTON. I have a statement that I would like to present to the committee.

I submit herewith for the records of the Senate Subcommittee on Constitutional Rights the 1957 report of the national freedom of information committee of Sigma Delta Chi, the professional journalistic fraternity which has 20,000 publishers, editors, and newsmen as members, of which I am chairman.

Senator HENNINGS. Without objection, the report to which Mr. Newton has adverted will be accepted and made a part of the record of these proceedings.

Mr. NEWTON. Thank you.

(The report referred to follows:)

**REPORT OF THE ADVANCEMENT OF FREEDOM OF INFORMATION
COMMITTEE OF SIGMA DELTA CHI**

(Adopted by the 48th Anniversary Convention of Sigma Delta Chi, Professional Journalistic Fraternity, November 16, 1957)

PART I.—THE FEDERAL GOVERNMENT

I. FEDERAL SECRECY—A THREE-PRONGED PROBLEM

Bureaucratic secrecy attained new heights in Federal Government during 1957. It engulfed virtually all of executive government and in many areas deprived the people, the Congress, and the press of legitimate information of the records of Government and the actions of our public servants.

There are three basic problems underlying this widespread secrecy and they must be solved if the inherent American right to know about government is to be preserved. These problems are:

1. The Eisenhower Security Order 10-501, which gives the heads of 17 Federal agencies the privilege of censoring information in the sacred name of national security, has been widely abused and has done nothing to stop overclassification of documents of government that threatens the effectiveness of the whole classification system. There was no effective declassification under the Eisenhower order, and one Department of Defense committee openly admitted that things were in a mess.

2. Executive agencies have twisted and tortured the so-called housekeeping statute (5 U. S. C. 22) and the 1946 Administrative Procedures Act (5 U. S. C. 1002) into authority for withholding information from the press, the public and Congress. These agencies are actively opposing legislation which would prevent use of these laws as authority for arbitrary secrecy.

3. The broadest and most offensive secrecy claim continues to be the policy that the executive branch of Government can hide anything but final decisions on grounds it is "confidential executive business." This policy was set out in President Eisenhower's May 17, 1954, letter to Secretary of Defense Charles E. Wilson, and the administration has refused to back down from this position. It is used for the ultimate in "managing the news" in that the executive department can pick and choose which information to make available.

Executive agency heads do not even give very good lipservice to the principle of free and open government records. They insist that nonsecurity information should be withheld on grounds of "right of privacy," "public interest," or "administrative feasibility." They insist also that they have need for the three lines of defense which they are now using so effectively in barring the press, the public, and Congress from finding out how they are handling the people's business.

Their first line of defense is the secrecy classification on grounds of "national security." This has been stretched to hide anything that could conceivably be associated with national security, and a good many things where such a classification is ludicrous. Government commissions have admitted the abuse of overclassification and failure to declassify Government papers. This misuse of "national security" has resulted in a democracy-throttling secrecy, and an expensive accumulation of paper in Government storage. The Eisenhower administration has refused to change its order or its attitude.

The second line of defense for the secrecy-minded bureaucrats is the so-called "housekeeping statute." This is the law (5 U. S. C. 22) which charges the agencies with the responsibility for keeping Government records in a safe place, and assuring they will be handled in such a way they will not be destroyed. When the "national security" excuse has been demonstrated as not proper, many administration executives have used the housekeeping statute as their authority to hide Government papers. The Moss subcommittee of the House Committee on Government Operations has been critical of misuse of this law, and has sought to amend it by simply adding: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

However, representatives of 10 key executive agencies have notified the Moss subcommittee that they will oppose any change in the existing laws.

The bureaucrats' third line of defense is the broad use of "executive privilege" as set out in a letter President Eisenhower wrote to Defense Secretary Charles E. Wilson on May 17, 1954. This is the doctrine that executive departments can treat communications between various agencies and within an agency as "confidential executive communications" and outside of the power of congressional subpoena. This is such a broad secrecy policy that it has been applied to all but the final decisions of an agency. It can be arbitrarily used to imprint "secret" on practically any papers or communications on which it is proven "national security" and the "housekeeping statute" should not be used.

The Moss subcommittee and other congressional Committees state there is no law to support this arbitrary claim of a right to refuse to divulge Government business. However, the Eisenhower administration has persisted in insisting that it can shut the Government door against the press, the public or the Congress by arbitrarily asserting that the information sought is confidential executive business.

II. THE MOSS SUBCOMMITTEE MAKES A FIGHT

The Moss subcommittee has been the center of the fight in Washington against excessive secrecy in the executive departments and independent Government agencies. It has received the complaints of newspaper organizations and newspaper reporters and it has followed through in forcing Government agencies to go on record as to their reasons for withholding information.

It is significant that the complaints about Government secrecy have not all originated with the press. The Moss subcommittee has received a majority of the complaints of unjustified Government secrecy from persons outside of the newspaper field—lawyers, businessmen, scientists, and historians.

These citizen groups have found that arbitrary and unreasonable Government secrecy can hurt them directly, as well as indirectly, when press freedom is restricted. Lawyers have found that Government secrecy jeopardized the rights of their clients. Businessmen have found secrecy hampering their operations.

It is important that your committee emphasize this fact so that more and more citizens come to realize that they have a direct stake in open Government records, and that it is not just a problem for reporters and editors.

The Moss subcommittee has followed through for these citizens in the same way that it has carried the ball for the press. It has compiled lists of the complaints. It has written letters, and it has conducted hearings.

The Moss subcommittee had a significant part in some gains in the fight against secrecy, yet these gains hardly dented the suffocating curtain of censorship over Federal Government. And they did not come close to solving the three underlying problems.

The year's gains on the Federal freedom-of-information front may be summarized as follows:

1. The Department of Defense withdrew its directive which had restricted press releases and speeches to those making a constructive contribution to the department operations. The Moss subcommittee felt this directive had epitomized the attitude of some Government officials who sought to manage news.

2. Export records are being made available to the press for the first time in more than 15 years. The Journal of Commerce was interested in greater access to export records, and for months had received a typical bureaucratic run-around in its efforts to get the policy changed to open these records. The Journal of Commerce took its problem to the Moss subcommittee, and action was forced in the several Government departments involved.

3. The Office of Strategic Information was abolished. The creation of this agency had been under fire by the American Society of Newspaper Editors since its origin. This agency was set up in the Department of Commerce by an order of the National Security Council, and its operations showed an effort to set up a control of information released by other Government agencies. It set itself up as a clearinghouse for information that was not secret, but that might be of use to the enemy. Editors attacked its as embodying the idea of a far-reaching censor in all agencies. The Moss subcommittee took up the fight for editors, the House Appropriations Committee cut off funds for OSI, and the administration finally killed it.

4. The Treasury Department agreed to make available all information on imports except the name of the importer. The name of the importer can be

withheld only upon request by the importer himself. Regulations had allowed the importer, exporter, or master or owner of a ship docking at a United States port to impose a total secrecy over importing operations. This secrecy covered the name of the person receiving goods, the type of material imported, the amount, the value, the name of the ship. The information to be made available under the new policy is copied from the incoming ship manifests filed with the collector of customs. But it took 5 months for the Moss subcommittee to bring this matter to a decision with top Treasury and Customs officials.

5. Under the pressure of the Moss subcommittee, the Foreign Claims Settlement Commission has abandoned its plan for making all employees of the agency sign a statement that they will not reveal information from agency files under penalty of discharge. However, Whitney Gilliland, Chairman of the Foreign Claims Settlement Commission, has continued to reiterate other broad secrecy policies which could be a blanket approval for withholding almost any information. He has set out three major areas of justifiable secrecy under the labels "right of privacy," "public interest" and "administrative feasibility." This is still under study by the Moss subcommittee, which finds Gilliland's secrecy doctrine as incompatible with free open government.

III. PENDING LEGISLATION FOR FREEDOM OF INFORMATION

The work of the Moss subcommittee over the last 2 years has reached a point where there appears to be a good chance for legislation to eliminate some of the secrecy gimmicks used by the Federal bureaucrats.

Specific legislation now pending in Congress includes the following:

1. Bills were introduced in the House and the Senate which would prohibit Government officials from using the so-called housekeeping statute as an excuse for refusing access to Government records. The legislation is in the form of an amendment to title 5, United States Code, section 22, the law which makes officials responsible for the proper "custody, use and preservation" of Government records. Chairman Moss and two members of his committee have introduced the legislation in the House side which states:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

Similar legislation has been introduced in the Senate by Senator Thomas Hennings (Democrat, of Missouri).

2. Bills were introduced in the House and Senate to prohibit Government officials from interpreting the 1946 Administrative Procedure Act (5 U. S. C. 1002) as authority for imposing secrecy on nonsecurity matters. Representative Moss has charged that Federal agencies have seized on a few phrases in this law to keep information secret, not only from the public but also from Congress. The legislation introduced by Representative Moss in the House and Senator Hennings in the Senate would state that the only administrative information which can be restricted is that which is already held confidential under other laws, facts which must be kept secret to protect national security, or information which would result in unwarranted invasion of personal privacy. This proposed legislation would also require the agencies to make public all of its regulations and policies on public information, and the availability of records, files, papers, and documents received by the agency.

This legislation also would force each agency to set out and publish its policies, and not hide records when embarrassing under such vague terms as "in the public interest," for good cause found" or because it relates to "internal management."

Under the proposed legislation, the public records would include, but not be limited to, "all applications, petitions, pleadings, requests, claims, communications, reports, or other papers and all records and actions by the agency thereon, except as the agency by published rule shall find that withholding is required."

The proposed legislation would also require that "every individual vote and official act of an agency be entered on record and made available to the public."

3. Representative Dante Fascell (Democrat, Florida) was successful in getting the House to pass legislation to eliminate the secret operations of Government advisory committees. These advisory committees have been set up by various department heads, and have had a great deal of influence in establishing Government policy. However, they have operated in many cases with a secrecy that prevented Congress and the press from finding out the names of the members, the precise function, or the matters taken up at their meetings.

Representative Fascell's bill does not bar the use of advisory committees, but would make it mandatory that there be a public notification of the establishment of the committees, the membership of the committees, and that records of the advisory committee deliberations be kept.

The proposed law provides that this information shall be public in the following paragraph:

"It is intended that such official record shall be available to the Department of Justice, General Accounting Office, and law-enforcement agencies of the Government, as well as to the Congress and the public, subject only to security and other restrictions specifically provided by law."

This legislation was opposed by almost all of the executive departments of Government, and can be expected to have some strong opposition in the Senate.

4. The House Ways and Means Committee approved legislation which would provide for public inspection of applications filed by organizations seeking tax-exempt status. These applications have been regarded as secret by the Internal Revenue Service.

For several years top officials of the Internal Revenue Service and the Treasury Department have agreed that it did not make sense to put a secrecy cloak around the representations of organizations making a claim to tax-exempt status. However, no decision was made on removing the secrecy administratively and it was left to the Moss subcommittee and the House Ways and Means Committee to initiate legislation.

The legislation coming out of the House Ways and Means Committee provides that the Government can withhold any information relating to a "trade secret, patent, process, style of work, or apparatus of the organization" if it is felt disclosure would adverse affect the organization. But even this corrective law has a dangerous qualification insofar as potential abuse by the bureaucrats and the interests of the people are concerned.

IV. PHILOSOPHY OF THE BUREAUCRATS

The Coolidge Committee report has been probably the most significant document produced in the last year in connection with the misuse of security classifications. This five-man committee was set up by Secretary of Defense Wilson to study the security problem.

Its report does away with the necessity for further work to document the fact that the Pentagon has too many people putting "secret" and "top-secret" labels on too many documents, and that practically nothing is being done to declassify papers that have been classified.

Although the Coolidge Committee defended President Eisenhower's Executive Order 10-501 as being reasonable in theory, it was admitted that in practice it has been a failure.

The report states:

"The Department of Defense is accused of failing to accomplish both the dual objectives of the system; it withholds too much information and too much leaks out. We think both criticisms are justified; there are both overclassifications and harmful disclosures."

The report pounced on this philosophy as tending to create overclassification.

"A subordinate may well be severely criticized by his seniors for permitting sensitive information to be released, whereas he is rarely criticized for overprotecting it."

This report blamed the "overclassification" for much of the attitude that results in harmful leaks of information. The report stated further:

"The press regards the stamp of classification with feelings which vary from indifference to active contempt. Within the Department of Defense, itself, the mass of classified papers has inevitably resulted in a casual attitude toward classified information, at least on the part of many."

The Moss subcommittee found that the Coolidge Committee had corroborated fully the complaints of excessive secrecy under the Eisenhower Executive Order 10-501.

However, getting something done about this has been difficult. The Coolidge Committee estimates that all the secret documents in the Department of Defense would fill a file drawer 575 miles long.

The physical problem of merely examining the documents to see if they should be declassified is a staggering one, and the problem gets worse as the time passes.

In a spectacular and perfect illustration of the philosophy that permeates most of Federal Government, Murray Snyder, Assistant Secretary of Defense, was

responsible for what is considered one of the most nonsensical claims of "executive privilege." In September he refused to let the Moss subcommittee see the file on the "security clearance" review of a book written in 1879 by a Confederate Army general.

The book review was written by Maj. Gen. Ulysses S. Grant III. It discussed a new edition of a book by Lt. Gen. Richard Taylor, originally published in 1879 under the title "Destruction and Reconstruction."

The book review was submitted to the Defense Department for a security review by William H. Zierdt Jr., editor of *Armor* magazine. He told the Moss subcommittee he submitted it because the memoirs of General Taylor were critical of the Reconstruction period, and hence critical of the Government.

Obviously this book review material could not be refused the Moss subcommittee on "security grounds" and apparently it couldn't have been gotten under the housekeeping statute or Administrative Procedures Act under the widest stretch of imagination.

So, Assistant Defense Secretary Snyder used the umbrella of "executive privilege" and "separation of powers." He wrote the Moss subcommittee as follows:

"The files of the Office of Security Review generally contain information respecting communications between members of the Department of Defense, and in many cases, between the members and representatives of other agencies of the executive branch, which are merely advisory or preliminary in nature and which do not represent any final official action.

"As you know, since President Washington's time, general access by congressional committees to such material has been denied under the principle that such access was incompatible with the public interest and the proper preservation of the separation of powers among the three great branches of Government."

Moss declared that Snyder's position "would be laughable if it were not part of such a serious problem.

Snyder's position demonstrates the ultimate in Executive secrecy possible under the doctrine set out in President Eisenhower's letter of May 17, 1954.

It further demonstrates how this "executive privilege" doctrine can be used to impose almost total secrecy even if President Eisenhower's controversial security order 10-501 is eliminated, and laws are enacted to bar executive agencies from using the "housekeeping statute" and the "Administrative Procedures Act" as authority for hiding Government business.

It must be understood that the broad claim of "executive privilege" represents the most sweeping and reprehensible of all of the secrecy claims being made. It provides a broad tent of secrecy under which executive officials of all ranks are arbitrarily telling the public, the press, and Congress that records will not be made available, and testimony will not be given even under a congressional subpoena.

In past years, Presidents have claimed that under the doctrine of separation powers the Congress could not force a President to testify. It had been generally regarded that this privilege also extended to the President when he was taking advice from such top aids as the Cabinet officers and the Joint Chiefs of Staff.

However, in 1954, the Department of Justice prepared a letter for President Eisenhower's signature and attached a list of so-called "precedents" for withholding from Congress all communications within the executive department except final decisions.

This doctrine was set forth on May 17, 1954, in a letter from President Eisenhower to Defense Secretary Wilson. It was authority for a Department of Defense lawyer to refuse to testify in the Army-McCarthy hearings, and it was viewed generally as a blow at the late Senator McCarthy. As such, the letter won some editorial endorsement as a fine restatement of the philosophy of the separation of powers. It was not until it was used against a half dozen investigating committees, and to bar the press from information that its secrecy potential was realized.

Congressional committees have condemned this broad secrecy doctrine as having no foundation in law, or in the decisions of the courts. The Moss subcommittee has repeatedly asked the Department of Justice for its authority for this broad doctrine and its seeds of Executive dictatorship.

The Department of Justice has produced no law and no court decision for the Moss subcommittee, or for reporters who have asked for the legal authorities. The Department of Justice has smugly held its position with an attitude that it needs no authority for its interpretation of "executive privilege."

Although a number of congressional committees have complained bitterly, there has usually been a partisan split within the committees. Or, in other cases, the issue was not dramatic enough to make a big issue of it.

The leadership in the Senate and House have failed to recognize that this doctrine is a severe blow at the prestige of Congress. It is an assertion of the philosophy that Congress should appropriate the billions of dollars each year, but has no real authority to dig deeply into the executive departments to find out how these taxpayer dollars were spent.

President Eisenhower has continued to support those who have asserted this doctrine in the ultimate. He constantly assures the press and the public that he would never allow this executive secrecy to hide any crimes or wrongdoing. However, in doing so he reiterates his belief that the various departments of the executive branch have the inherent right to refuse to tell Congress anything but final decisions. The studies in the executive branch, the recommendations, the names of persons taking part in decisions and the conversations leading to the decisions can all be properly withheld from Congress, President Eisenhower claims.

And this philosophy is the major problem of freedom of information in Federal Government today.

V. CONFLICTING STATEMENTS FROM THE WHITE HOUSE

On January 30, 1957, in answer to a question at a White House press conference from Mr. Pat Munroe, correspondent for the Albuquerque (N. Mex.) Journal, concerning the release of information on expenditure of public funds by junketing Congressmen, President Eisenhower said:

"As far as I am concerned, I stand on this general truth, there is no expenditure of public moneys except only involving that where public security itself is involved, that should not face the light of day any time any citizen inquires for it."

That is a mighty statement in behalf of freedom of information and any and every editor of the free American press will say amen! Yet your committee reports the following general truths:

1. The records of the expenditure of the billions of Federal tax dollars are *not* open to the inspection of citizens, as are the records of city, county, and State governments throughout the land.

2. Audited reports of the expenditure of the billions of Federal tax dollars are *not* open to inspection of the citizens, as is the case in city, county, and State governments throughout the land.

On April 4, 1957, the Associated Press, in reporting on the Republican Women's Conference at Washington, said:

"President Eisenhower invited the American people to be 'watchful' of their Government leaders to make sure there is 'no looseness, no squandering, no racketeering, no lining of the pockets' in the big 'spending for peace.'"

Yet, in view of the closed records of Federal Government and the absence of audited reports on the expenditure of the billions of Federal tax dollars, your committee feels impelled to ask the question, how in the world can the American people be watchful of their Government leaders?

On May 17, 1954, in a letter to Secretary of Defense Wilson, President Eisenhower wrote:

"Because it is essential to efficient and effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations and communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would be benefited by such disclosures."

The President's letter, of course, was prompted by the current political struggle between the executive and legislative branches of Federal Government. Yet, throughout 1956, the officials of 19 key Federal agencies and Bureaus paraded before the House Subcommittee on Government Information and testified that they were using the President's letter as a precedent not only to withhold legitimate information of Government from the Congress but also from the American people.

In a White House conference September 6, 1957, with Mr. Gerald D. Morgan, special assistant to the President on legal matters, including the press, your chairman brought up the matter of these conflicting statements from the White House.

Mr. Morgan replied that Mr. Eisenhower's letter to Secretary Wilson had been misunderstood, that it meant private communications among agencies which under ordinary circumstances would not interest the public.

Your chairman countered with a question concerning a current case wherein the Secretary of Agriculture had declined to make available lists of soil subsidy payments to a newspaper in Mississippi.

"Those soil subsidy payments should be made public," declared Mr. Morgan.

Then your chairman asked about a recent case at Fieldale, Va., wherein the Post Office Department had declined to reveal the terms of a new lease.

"Why, carbons of that lease should have been given the press," said Mr. Morgan.

"That is why I am sitting in your office," replied your chairman.

Mr. Morgan observed that perhaps the President should issue a positive statement on what news of Government should be available to the press.

"That would be very helpful," replied your chairman.

VI. GOVERNMENT MANAGEMENT OF THE NEWS OF GOVERNMENT

The "leak" of the Yalta papers by the Department of State to the New York Times in March, 1955, is still smoldering deeply and bitterly within the press corps at Washington today, over 2 years later, and it spotlights a growing trend in Federal Government wherein our public servants seek to manage or manipulate the news of Government for their own advantage, be it political or otherwise.

A number of prominent Washington correspondents wrote bitter comments about this to your committee. None blamed the New York Times; all lashed bitterly at the Government. The subsequent leak of the General Ridgway retirement letter and other key news stories to the same newspaper heightened the feeling.

A typical example was the leak of a high altitude photograph of the carrier *Forrestal* by the Air Force to the New York Times. This came in the middle of the running internecine warfare among the services, and it apparently was the intent of the Air Force to show how vulnerable the Navy's carriers could be under attack. Subsequently, Life magazine asked the Pentagon for the photograph, learned that at least 100 had been taken, but could not gain clearance for a single one.

A similar example was the leak of only part of a public opinion poll on foreign policy by the Department of State to the New York Times and the Washington Star. A subsequent investigation by a congressional committee revealed that the part of the poll leaked was slanted and that the expenditure of the public's tax funds on this project was illegal.

Throughout the warm congressional debate of 1957 over the national budget, administration spokesmen, from the President on down, gave out information affecting national security in defense of the budget. Of course, there is the argument that it is better to reveal key security facts than to suffer reductions in military funds. Yet your committee sadly observes that had the press, on its own initiative, dug out and printed these security facts, it would have been severely criticized by our public servants, regardless of the reason.

Illustrating this, newspapers were denied information on the production of B-52 bombers, a top-secret classification. General LeMay, testifying before the Symington Senate Investigating Committee, said he could not, for security reasons, discuss in public the size of the B-52 wings. Yet, at the same time, Secretary of Defense Wilson, under the political pressure of the Symington investigation, was announcing at a press conference that B-52 wings had been increased from 30 to 45 planes.

Pentagon officials said the decision to make this disclosure was reached reluctantly after weighing the public interest against giving our enemies such vital information.

It is in the Pentagon where our public servants make the greatest efforts to manage the news of Government, including that involving the expenditure of the taxpayer dollars, to their advantage. On March 29, 1955, Secretary Wilson issued a directive that all defense releases, speeches, etc., must make a "constructive contribution" to the Department.

This slanted approach on the part of our public servants to the release of news of Government provoked a storm of protests in the press and was climaxed by a congressional investigation. Finally, on August 17, 1957, Secretary Wilson issued a new directive which eliminated the constructive-contribution limitation but substituted the following:

"Material originating within the Department of Defense shall not be cleared for public release until it is reviewed for violations of security and for conflict with established policies or programs of the Department of Defense, or those of the National Government, since such material may have national or international significance."

Thus this new yardstick on defense news, based on the established policies or programs of the Department of Defense or of the national Government, constitutes a far broader censorship approach than the constructive-contribution limitation, and can lead to outright censorship of any and all news of Government for just about any reason under the sun.

It is through such qualifying gobbledegook language, originating with American public servants, that the American people have been deprived of much legitimate news of their Government during the last 25 years.

The Air Force goes beyond this gobbledegook governmental language in its attempt to manage the news of Government and borrows the slick language of Madison Avenue. In its propaganda program, which lists specific campaigns lasting through mid-1958, the Air Force advises its key people:

"Flooding the public with facts is very helpful. But facts, facts and more facts are quite useless unless they implant logical conclusions. Facts must be convincing, demonstrated living salesmen of practical benefits. These are the only kind of facts that mold opinion and channel the vibrant tensions of public thinking."

From this prime example of the ridiculous, we move to the sublime in reporting a final case of management of governmental news. Intelligence estimates of the Central Intelligence Agency are of the highest order of secrecy. Yet on November 19, 1956, on the eve of the testimony of CIA officials before congressional committees on the effectiveness of their activities, the CIA "leaked" to favored newspapers the fact that it had given the White House 24 hours notice that a British-French-Israel attack would be launched on Egypt.

Your committee cannot help but observe that had the CIA's report to the White House been to the opposite effect it doubtless would have been too "top secret" to even think about it—or had it not been scheduled for a congressional review, no word ever would have been released. Such are the ways of our public servants of 1957.

VII. FOUR DIRECT GOVERNMENT ATTEMPTS TO THROTTLE THE PRESS

Government made 4 outright attempts during 1957 to tighten the screws of censorship on the press, all of them concerned with stoppage of the leaks of information from behind the locked doors of the executive session. These were:

1. The Wright Commission on Government Security proposed that an editor or publisher could be fined \$10,000 and sent to prison for 5 years for publishing secret information of Government.

2. The Coolidge Committee on Classified Information proposed that newsmen be summoned in grand-jury investigations in order to discover the source of the leak of security information from the Government to the press.

3. The civil rights bill, as first passed by Congress, carried a provision that would make it a jail crime for anyone, including newsmen, to use information from behind the locked doors of the executive sessions of a racial commission, to be appointed under the provisions of the bill.

4. Senate Bill No. 2461, introduced by Senators Jackson and McClellan, would make it a crime punishable by a fine and jail sentence for anyone to reveal information, including statements, actions and even how the Board members voted on matters of the people's business, from behind the locked doors of the executive sessions of the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Trade Commission, the Securities and Exchange Commission, the Federal Communications Commission, and the Federal Power Commission.

A flood of protests from Sigma Delta Chi and other national journalistic groups effectively killed the first three. The protests were so strong that they mowed down the Wright recommendation before it left the ground, and editorials in newspapers from coast to coast buried it.

Yet the Wright recommendation, even if it is a dead duck at the moment, should give the entire free press cause for serious consideration of the whole problem of American censorship of news of Government. It not only brought out into the open the thinking of many bureaucrats on this censorship, but it illustrated clearly on paper the growing philosophy in American Government

that, once elected or appointed, the bureaucrat regards government as his private domain and that, in his opinion, the people who pay the taxes should be satisfied with the decisions of Government after they are made and should be content with spoon-fed information of Government.

Anyway, it marked the first time that the free American press has had to cope with this problem since the nefarious Sedition Act of 1800, which sent editors to jail for the great crime of printing facts of Government.

In the case of the Coolidge recommendation, Secretary of Defense Wilson hurriedly brushed it under the carpet and declared that such matters belong in the realm of the Department of Justice and not in his Department.

In the subsequent interrogation of Chairman Charles A. Coolidge before the Moss House Subcommittee on Government Information, it was disclosed that the Department of Defense had conducted an investigation of the source of a New York Times story which reported an impending reduction of 800,000 in American Armed Forces. Mr. Coolidge testified that more than 150 persons in the Pentagon had perhaps handled this information, that it was impossible to pinpoint the exact Pentagon official who had leaked the story, and that the investigation had been dropped.

The censorship provision of the civil rights bill went entirely unnoticed throughout the torrid summer of debate on the racial issue in Congress. The Des Moines Register and Tribune finally broke the story on page 1 after the bill had passed both the House and the Senate.

The resultant uproar in the press had a marked effect upon Congress and both Senators and Representatives joined in condemning the censorship provision. This pressure was such that House-Senate conferees chopped it out of the final version of the bill. But, since it originated in the office of the Attorney General, it once again illustrated the thinking in our bureaucratic circles.

The Jackson-McClellan censorship bill is still before Congress; it probably will be fought out in the 1958 session; and your committee hereby lays it before the American press as the most dangerous menace yet proposed to the free flow of information of Federal Government.

Most of Federal executive Government—the approximate 2,000 active agencies, bureaus and departments and the more than 5,000 advisory bureaus—is conducted in the secrecy of the executive session. As an example of this curtain of secrecy, the 5,000 advisory bureaus do not make even their meeting minutes available for inspection of the citizens who pay the taxes.

Thus, most of the news of the people's business reach the people through leaks of information from behind the locked doors of these executive sessions. The Jackson-McClellan bill is designed to stop these leaks from the six Federal regulatory commissions.

If this legislation is adopted, it probably will serve as a guide and a forerunner of future legislation to stop all leaks of information from a bulging bureaucratic Government to the people who pay the bureaucrats' salaries.

The Jackson-McClellan bill was prompted by a Senate investigation of a "leak" of a Civil Aeronautics Board decision to permit Northeast Air Lines to fly the profitable New York-Miami route. Certain private interests, using this inside information, were reported to have made a handsome profit in the stock market.

The chairman of your committee has conducted a spirited correspondence of protest with Senator Jackson on this matter. The Senator maintains that such a censorship provision will not handicap the press, that it simply will stop the "inside" disclosures which permit the favored few to make a profit.

Your committee maintains that if all the closed executive sessions of the commissions were open, there would be no inside information through which the few could profit; that secret Government always begets political privilege; that the protection of the interests of the many through the restraint of public opinion is far more important to free Government than the profits of the few; and that, after all is said and done, these regulatory commissions are doing the people's business and the people should know about this business at the time and not after the fact, when too often in history it has been too late.

There was a very good example of this in the advisory Budget Bureau during the year. The press discovered that certain private interests were profiting from the leak of inside information from the closed executive sessions of this agency and promptly notified key officials. These officials just as promptly made all the information available to all the people; this stopped the private profiteering; and none was hurt. Such always is the case on free government.

VIII. THE BUREAUCRATS, THE PRESS AND PATRIOTISM

The minute a man dons the toga of the American bureaucrat, he apparently assumes he had a monopoly on patriotism. And the next minute he points a finger, usually at the press. Such was the case with the Wright Commission and the Coolidge Committee, both of which based their reports on the general premise that the press was promiscuous in disclosing American security information for the benefit of the enemy.

The Wright Commission was particularly vicious in its criticism of the press. Said its report on June 22:

"The final responsibility for the difficult decisions of what shall be secret must be confined in those loyal and devoted public servants who are qualified to make the judgment."

It then pronounced that most of the press "had lived up to those limits," but added the report:

"There are a few exceptional cases which for some reasons have escaped prosecution. The purveyor of information vital to national security, purloined by devious means, gives aid to our enemies as effectively as the foreign agent."

The press promptly called upon Mr. Loyd Wright, chairman of the Commission, to define the standards of "those loyal and devoted public servants who are qualified to make the judgment" and to make public the names of those in the press who had "purloined by devious means" our security information.

On June 30, Mr. Wright replied, stating that he knew of certain dark chapters of betrayal but could not talk about them. "An unnamed Government official persists in stamping the cases secret," he said, "and has buried them forever in the bureaucratic graveyard of a maze of files."

Under questioning, Mr. Wright gave a general indictment of the press without naming names, then he fell back on World War II and said that a story in the Chicago Tribune had informed the Japs that we had broken their code.

Three weeks later, at San Francisco, J. Russell Wiggins, executive editor of the Washington Post and Times Herald, rose on the floor of the American Society of Newspaper Editors convention and gave documentary evidence that the Chicago Tribune had in no way informed the Japs of the code breaking.

Whereupon, Mr. Wright, on the ASNE platform at the time, promptly apologized to the Chicago Tribune.

In the middle of the controversy, Maj. Gen. Guy S. Meloy, Jr., the Army's Public Information Chief, told the House Subcommittee on Government Information that "he had never heard of any secret information being purloined or stolen from military files by the press." This prompted Chairman John E. Moss, of the House committee, to label the Wright charges as an unsubstantiated indictment of the American press.

The Coolidge Committee was not so outspoken as the Wright Commission, yet it harped throughout its report and later in the questioning by the House Subcommittee on Government Information on the matter of "leaks" of security information to the press. Furthermore, Chairman Charles A. Coolidge, of the Commission, named names in the press.

On March 11, Mr. Coolidge testified that the Wall Street Journal had "leaked" the national security secret of the list of Air Force contractors building ballistic missiles. An investigation of this charge showed that the so-called leak was a news story of August 3, 1956, which reported accurately the public speech of a top Air Force general to the Air Force Association at New Orleans, in which he listed the names of nearly a score of firms working on the project.

Similarly, Mr. Coolidge accused the press of "leaking" national security information in the form of the speed of the flight of the jet X-2. An investigation disclosed the accusation was based on a story in the New York Times of August 2, 1956, which reported, again accurately, on a public speech by Secretary of the Air Force Donald C. Quarles. Previously, the Pentagon had declined to reveal this information and one of its public relations officials gave "the ebb and flow of Secretary of Defense Wilson's indigestion" as the reason.

Again on March 11, Mr. Coolidge testified before the House Subcommittee on Government Information that the press had provided the enemy with key information in printing a picture of four bombers being refueled. But on March 12, he voluntarily corrected the record on this so-called leak by stating he had learned the picture had been cleared for publication by both the Navy and the Department of Defense.

During the year, your committee had occasion to peruse thousands of pages of Government documents, testimony and charges, all involving the question

of national security and the press, and it found not a single case, despite the charges of the bureaucrats, wherein the press, on its own volition, printed a national security secret that gave aid and comfort to the enemy. On the other hand, your committee time and again ran head-long into a curtain of unnecessary secrecy that barred the American people from its rightful knowledge of their Government, even down to the ridiculous.

IX. THE PENTAGON CORRESPONDENTS SPEAK OUT!

On September 6, your chairman lodged an official protest against the Pentagon secrecy in a conference with Mr. Murray Snyder, Deputy Secretary of Defense for Public Affairs, the key man in the release of all Pentagon news, at Washington. Mr. Snyder said:

"All legitimate news of the Pentagon is available to the press. You can have any news of the Pentagon you want. In fact, on my entry into the Department of Defense, I was amazed at the amount of information which is available to the press."

On the same day, your chairman conferred with a dozen Pentagon correspondents, including all the wire services, and he repeated to them Mr. Snyder's words.

The correspondents replied with a long, loud, and unanimous hoot of derision:

For 1 hour, they poured out to your chairman indignant stories of how the curtain of secrecy over the Pentagon blocks them from all legitimate news of the Department of Defense, even down to the ridiculous. Without exception, these working reporters, charged with the obligation of gathering news of the expenditures of the people's tax funds for the people's defense, related how the bureaucrats employed every trick of the trade to hide legitimate information of Government behind the sacred censorship of national security.

Typical statements of these correspondents follow:

"We are buried under a mass of directives."

"The No. 1 brains of Government draw the directives; the No. 8 brains abuse them."

"A million people wield the stamp of secrecy; 500,000 do the stamping; the other 500,000 check on the stampers."

"The real stumbling block is at the civilian level."

"Every item of news, regardless, must go through the redtape of policy clearance. Somewhere along the line somebody always stamps 'for official use only' upon it. Even the most trivial news takes days, weeks, and months to negotiate these roadblocks into the light of day."

"It's all due to fear—fear of reprimand and loss of job—and to just plain stupidity."

"The most important problem is the attitude at the top—at the White House and in the Department of State. Until that is changed, the guys at the pick-and-shovel level will be afraid to put out information."

"The real problem is not necessarily military security but control for policy reasons."

"Information is being put out in a quantity to use the press merely as a vehicle to form public opinion in favor of the administration. They are using the Madison Avenue technique."

"In 1950 and in 1951, when a press release came out, we used to be able to go to a source and ask background information. Now they refuse to give background information; they say they can give no more information than what is in the press release."

"Most important thing to break this information barrier is to get to the President. It's not the problem of the press releases in this building; it's the attitude of Government that the people should be spoon-fed and this attitude comes right from the White House."

"The Secretaries of the Army, Navy, and Air Force are the top policymakers and I don't know why they refuse to hold press conferences. Maybe it is an element of caution with everybody afraid to talk because the guy above him might get mad. If they had press conferences, we could get more information; we could bring an information restriction to their attention and get it sprung."

"They have developed a new standard form of mimeograph language—a sort of 'release-eze,' and they hold up information for days to get it into that language."

Not a single voice among these working Washington correspondents was raised in support of Mr. Snyder's somewhat fanciful theory that all legitimate information of the Pentagon now is available to the press.

X. CASES OF NEEDLESS DEFENSE SECRECY IN FEDERAL GOVERNMENT UNDER PRESIDENT EISENHOWER'S EXECUTIVE ORDER NO. 10-501

1. Department of Defense experts, testifying before the House Government Information Subcommittee, stated that more than a million Federal employees are classifying security information, and that this classification is running at a higher rate today than during World War II. The fact that 1 out of every 175 Americans has the privilege of withholding from 174 million Americans information concerning their tax dollars spent on defense is very dangerous to the well-being of the American people; it invites wholesale violation in the matter of legitimate Government information; if 1 million Americans know our security secrets, it is doubtful if these will be withheld from the enemy; and, the Government employee being a human being, that information which is "leaked" usually is slanted and no doubt is responsible for the general confusion which characterizes American Government today.

2. A case in point is the total censorship which has been slapped upon the firings of our missiles. Thousands of residents in the areas of the firings and thousands of Government employees involved in the firings know all about them. It is ridiculous to assume that all these thousands will keep silent and the result has been a steady flow of slanted and often erroneous information to the general public. The general American impression is that our missile experiments, upon which billions of American tax dollars have been spent, are a failure; whereas, the enemy no doubt has complete and accurate information.

3. President Eisenhower's Executive Order No. 10-501 expressly limited the use of such classifications as "confidential" to security information, yet the Department of State and the International Administration not only freely used this classification but also the classification "for official use only" to withhold from the American people the results of their polls of public opinion, paid for illegally with taxpayer dollars, on foreign policy. Only part of the information obtained in the polls was "leaked" to the Washington Star and the New York Times, thereby misleading the public. The release of all of the information would not have affected national security.

4. A big chunk of our direct military aid goes to our Far East allies, Formosa, Korea, and Vietnam. The total for this area is made public. Under pressure from the press, the Department of Defense has recommended that it be declassified further by allotments to the various countries. But the Department of State says "no" on the apparent grounds that revelation of the individual amounts would make our mutual security clients jealous. But, under the secrecy, how can the American people ascertain whether their tax billions are being honestly spent at the terminal points?

5. Department of State officials denied to the press the number of nonofficial Russians now traveling in the United States and the number of nonofficial Americans in Russia. The official excuse was lack of information, yet who but the Department of State has this information and how could its release affect national security?

6. The Army Intelligence Division declined clearance of a book by Lt. Col. Robert B. Rigg on the history of United States Army Intelligence, even though he offered to limit it to the intelligence operations of General Washington, based on material discovered in 1921. This is a perfect case of the ridiculous.

7. As an example of the bureaucratic roadblocks that customarily hinder the free flow of Federal Government information to the people, it took the Journal of Commerce 2 years of negotiations with the Department of the Treasury, Bureau of Customs, Department of Defense, Department of State, Bureau of the Budget, and Bureau of the Census before gaining on August 8, 1957, access to information on United States exports. Prior to World War II, the Journal of Commerce freely printed export information for 100 years.

8. Pictures of plush furnishings inside military transport planes, requested by Representative Daniel J. Flood, were stamped "secret" and then even the Congressman's letter of request was stamped "secret." Representative Flood said: "It appears to me that this classification is designed to protect bureaucrats from embarrassment and not to protect genuine military secrets from potential enemies of the country."

9. The existence of a secret order, issued by some unnamed high source in the Pentagon, for Army units in the South to train for riot duty, and get ready to speed to scenes of civil disorder, was disclosed on September 26. In the subsequent confusion and amid indignant protests from southern Senators and Representatives, Secretary of the Army Brucker hurriedly canceled the order.

But he declined to lift the secrecy surrounding the order in spite of the fact that the American people are entitled to know at the time any plans of Federal Government to dispatch armed troops for service against any segment of the American taxpayers.

10. The Wall Street Journal pointed out in its news columns that the American taxpayers never have been given the facts of some \$64 billion of their funds spent on foreign aid, including the \$3,435,810,000 voted in 1957. In a subsequent editorial entitled "Billions for Secrecy," the Wall Street Journal said the Federal Government's excuse for this secrecy is that it "keeps peace in the international family," and that this "is an insult to the American people." The editorial pointed out that because of this secrecy, "the American people have no basis for evaluating military aid in the absence of facts," and it further said "it is secrecy—and not knowledge—that may jeopardize the national interest."

11. Newspapers were denied information on the production of B-52 bombers, a top-secret classification. General LeMay, testifying before the Symington Senate investigating committee, said he could not, for security reasons, discuss in public the size of B-52 wings; yet at the same time, Secretary of Defense Wilson, under the political pressure of the Symington investigation, was announcing at a press conference that B-52 wings had been increased from 30 to 45 planes. Pentagon officials said the decision to make this disclosure was reached reluctantly after weighing the public interest against giving our enemies such vital information.

12. Intelligence estimates of the Central Intelligence Agency are of the highest order of secrecy. Yet on November 19, 1956, on the eve of testimony of CIA officials before congressional committees on the effectiveness of their activities, the CIA "leaked" to favored newspapers the fact that it had given the White House 24 hours' notice that a British-French-Israeli attack would be launched on Egypt. Had the CIA made an intelligence estimate to the opposite effect, it most certainly would have been regarded as too secret to mention.

13. The United States Information Agency spent \$100,000 of taxpayer funds to promote an anti-Communist movie, but classified the name of the movie and suppressed all facts because of reports that it was a flop. The facts were revealed in an off-the-record discussion before the House Appropriations Committee, and the Chicago Daily News later reported from an informed source that the name of the movie was 1984.

14. On March 29, 1955, Secretary of Defense Wilson issued a directive that all Department press releases, speeches, etc., must make a constructive contribution to the department. Under pressure from a congressional committee, the Department of Defense a year later promised to rewrite the directive, eliminating the constructive contribution limitation. But it was not until August 17, 1957, that the Department got around to the rewriting. It then eliminated the constructive contribution limitation, but it promptly substituted the following: "Review material originated within the Department of Defense for official public release, or similar material submitted for review by other executive agencies of the Government, for conflict with established policies or programs of the Department of Defense or of the National Government." Thus, the "established policies or program of the Department of Defense or of the National Government" constitute a far broader censorship approach to the news of Government than the constructive contribution limitation and can permit the outright censorship of any news of Government, regardless of its connection with national security. It is through such qualifying language, originating with American public servants, that the American people have been deprived of much legitimate information of their Government during the last 25 years.

15. General Weible, formerly Deputy Chief of Staff, reports the Army had difficulty in getting sites for Nike missile installations, dating back to early 1954. But Army wasn't allowed to tell the story of the new missiles. Publicity would have helped convince reluctant landowners that the land was really needed for national security and that the Army was not just seeking another land grab. But, though the whole matter still is enveloped under a blanket of secrecy, the Department of Defense apparently declined to permit the Army to take its Nike story to the people, whose security was involved and who were paying for it.

16. The confusion over the General Ridgeway retirement letter did not contribute to the well-being of the American people. The letter was not classified until after it was received by the Department of Defense, probably 2 or 3 days after receipt. A couple of weeks later, during the Quantico meeting of service secretaries in July, it was leaked to the New York Times. The Department of Defense ordered an investigation. But this failed to produce

sufficient evidence, and to this day the case is still open and the letter still bears its confidential classification despite the New York Times original story and the subsequent furor in the entire press.

17. Numerous reporters, representing wire services, daily newspapers, and magazines, have asked the Department of Defense for permission to print pictures showing the outside shape of an A-bomb. In addition, the Air Force has requested the Department of Defense for approval of the release of official pictures showing A-bomb configuration. The reporters were not asking for the release of Department of Defense pictures. They were asking for approval to publish pictures which they had taken of the bomb displayed in public places. Although the shape of the bomb is not classified because it must be used by thousands of Air Force people for training purposes, all requests to show the public pictures of what billions of tax dollars are spent on are refused. The shape of the bomb is simply stamped "for official use only." At one time, the Department of Defense displayed the shape in a glass case in the Pentagon. The weak explanations for this censorship pinpoint the absurdity which can result from security restrictions. The final reason given, for instance, is, in effect, that this information is restricted to prevent embarrassment or controversy.

18. It took Harvard University 10 years and the help of Congress to persuade eight Federal agencies and bureaus to agree to declassification of World War II records stored at the university which Harvard couldn't look at, couldn't get declassified, couldn't return to the Government, couldn't give away, and couldn't burn. It cost the university \$1,200 a year in storage.

19. Department of Navy declined permission to Capt. George W. Campbell for his story of the sinking during World War II of the cruiser *Indianapolis* to be printed in the Saturday Evening Post on the grounds that it would impede recruiting. The Navy even stamped its letter of refusal "for official use only." When the Saturday Evening Post finally gained clearance of the story from Secretary of Navy, the Navy Personnel Department, in a letter stamped "private communication," threatened censure of Captain Campbell. That is censorship of history in the raw.

20. When Robert Hotz, editor of Aviation Week, declined to reveal the source of a story about the flight of XF8U-1, a new Navy plane, uninformed Navy officers threatened that Aviation Week would not receive Navy cooperation in the future, and that the Navy would remember those who did or did not play ball. At the same time, the officers admitted that no military security was involved in the story.

21. The order establishing the Office of Strategic Information was classified "secret," and three reports of OSI to the National Security Council on its progress in the field of unclassified information were classified "confidential." When this order finally was declassified, it showed plainly that OSI did not have the authority it was freely exercising.

22. As an example of bureaucratic confusion, the Department of Labor censored statistics on the armed services' purchases of peanut butter on the grounds that clever enemy officials could deduce from them the number of men in our armed services. At the same time, the Department of Defense was issuing monthly reports on the totals of armed services personnel.

23. The Yalta papers were "leaked" to the New York Times in March 1955, after being denied to the rest of the press at Washington, even though the agreements at Yalta were roundly denounced by the Republican platform of 1952. Favoritism in the release of information of government is a growing practice in the Federal bureaucracy and resentment is smoldering deeply within the press. It is not contributing to the free flow of information of government to the people.

24. The Chicago Daily News reported on July 2, 1957, that a report on profiteering by foreign suppliers of the United States military services and the International Cooperation Administration had been classified and would not be released by the General Accounting Office. According to this newspaper, the lid was clamped on this scandal to prevent its revelation during discussion of congressional appropriations for defense and foreign aid.

25. On March 15, 1956, Secretary of the Air Force Donald A. Quarles gave a speech to the Boston Chamber of Commerce, which had been cleared by the Office of Security Review and which was freely reported on by the press. Two months later, on May 16, Quarles gave a similar speech to the National Industrial Conference Board in New York. But, in the meantime, the same language used in the March 15 speech was censored out of the May 16 speech by the Office of

Security Review. Neither the OSR nor the Departments of Defense and State ever did give a satisfactory explanation for this rather late and silly censorship.

26. In an address to the Society of Automotive Engineers in Washington April 6, 1957, Rear Adm. Rawson Bennett, Chief of Naval Research, declared that he hopes to bar the press from the launching of the first earth satellite. Stressing that it is his own decision, Admiral Bennett said that the press accounts of this great scientific event might focus the attention of the public upon it and that this would put pressure on those in charge of firing the 72-foot, 3-stage rocket that will send the satellite into its orbit.

27. The Department of Defense censored two sentences from a Saturday Evening Post article on Spain on security grounds, whereas the Department of State objects to the whole article on the grounds that it took a sneering approach. If the Government adopts the latter approach toward the dissemination of foreign information in the free American press, the ultimate end will be the printing of only Pollyannaish accounts of our world neighbors.

28. Despite the intent of President Eisenhower's Executive Order 10-501 to make available more military information to the people, the Federal Register of June 4, 1955, reported on new Air Force orders which, it stated, would make matters of official record available "except those held confidential for good cause shown." This demonstrates perfectly how official gobbledegook language is designed to protect the management of news by Government. The Air Force order went on to say: "The great mass of material that relates to the internal operation of the Air Force establishment is now a matter of official record for the purpose of these sections, and accordingly will not be released." There has been no change in these Air Force orders to this day.

29. The Federal climate of censorship is such today that free American editors, in order to protect themselves feel that they should get security clearance on even historical documents. The editor of *Armor* magazine asked for and obtained Department of Defense clearance on a review of a book written by Lt. Gen. Richard Taylor of the Confederate Army and published in 1879. When asked why he got the clearance, the editor said: "Due to the fact that the book is critical of the reconstruction period, which in turn is critical of our Government, I deemed it advisable to protect both the reviewer and myself by having it sent through security review."

30. In May 1956, Gen. Maxwell Taylor gave a public speech before the Council of Foreign Affairs, which publishes the quarterly, *Foreign Affairs*. Hamilton Fish Armstrong, editor of the quarterly, asked General Taylor to prepare an article based strictly on the speech; the general promptly accepted; and the article was scheduled for the October issue of *Foreign Affairs*. That is, it was until the Department of Defense refused security clearance.

31. Joseph and Stewart Alsop, Washington columnists for the New York Herald Tribune, report they have been investigated 5 times in 5 years by the Federal Government in an attempt to ascertain their news sources and to intimidate them. They state: "It is a serious matter indeed, and not just for reporters but for everyone, when the American Government actively seeks to stop the flow of significant information to the American public. And that is what is happening today, and on the specious pretext of 'maintaining security.'"

32. Gen. John E. Hull, a member of the Coolidge Committee which conducted a study of classification and information practices in the Defense Department and the military services, stated: "It is my personal opinion that the apparent reluctance on the part of the heads of the 3 military services to hold frequent press conferences may stem from the belief that Secretary Wilson prefers to have disagreements among the 3 military services settled within the Pentagon and not aired publicly." This illustrates the hostility of attitude within the Pentagon toward the general principle of the American taxpayers' right to know about their Government.

33. On February 8, 1955, the New York Times and the Associated Press carried detailed accounts of how United States Navy frogmen were being used to remove mines from Tachen Islands harbors. Yet the Navy, on grounds of national security, refused clearance to a bare mention of its frogmen in a story in Collier's magazine on May 27, 1955.

34. On March 11, 1957, the Coolidge Committee accused the press of "leaking" the national security secret of the list of Air Force contractors building ballistic missiles. An investigation of the charge showed that the so-called leak of national security secrets was a news story in the Wall Street Journal of August 3, 1956, which reported accurately the public speeches of a top Air

Force general to the Air Force Association convention at New Orleans, announcing the names of nearly a score of firms working on the project.

35. Similarly, the Coolidge Committee accused the press of "leaking" national security information on the speed of the flight of X-2. Investigation disclosed the accusation was based on a story in the New York Times on August 2, 1956, reporting on the public speeches of top Air Force generals who boasted of the new air-speed record. Previously, the Pentagon had declined to reveal this information on the grounds of the ebb and flow of Secretary Wilson's indigestion.

36. The Air Force declined to permit the press to photograph the new B-58 plane in its first test showing, September 1, 1956. On December 24, 1956, Aviation Week printed a picture of part of the crowd of 3,000 citizens attending the test flight, which plainly showed a number of citizens photographing the plane. On December 26, 1956, the Air Force released five pictures of the plane.

37. The Pentagon has affixed its "for military use only" classification to official United States weather data. The Soviet Ambassador can telephone the Department of Defense and ask for extension 79355. Whereupon a recording automatically gives the latest 24-hour weather forecast from nearby Bolling Air Force Base. This automatic recording concludes as follows: "This information is for military use only and dissemination to the public is not authorized."

38. The Air Force propaganda program, which lists specific campaigns "lasting through mid-1958," supports this official military theory of managing the news. The program is written largely in the language of Madison Avenue, and its very wording states that it is for the management of news that will be favorable to the Air Force rather than for the release of strictly factual data to the people. Take, for example, the following paragraph: "Flooding the public with facts is very helpful. But facts, facts, and more facts, are quite useless unless they implant logical conclusions. Facts must be convincing, demonstrated living salesmen of practical benefits. These are the only kind of facts that mold opinion and channel the vibrant tensions of public thinking."

39. In the course of the running internecine warfare among the services, the Air Force "leaked" to the New York Times a secretly-taken high-altitude photograph of the carrier *Forrestal*, apparently to show how vulnerable the *Forrestal* could be to enemy attack. The picture was printed in the New York Times on May 19, 1956. The following week Life magazine asked the Pentagon for a copy of the picture, learned that at least 100 had been taken, but could not get clearance on a single one. Yet neither the Air Force nor the Department of Defense would admit that the pictures were classified in any way.

40. The Army not only likes its secrecy, but it puts it into effect through secret orders. On October 17, 1955, Secretary of the Army Brucker issued a new personnel security order based on "commonsense" principles. But this did not come to light until in May 1956, as a result of questioning before the Senate Constitutional Rights Subcommittee. Similarly, the Washington Daily News uncovered on March 24, 1956, another Army censorship order which went far beyond President Eisenhower's Executive Order 10-501. This military order, regulation 34-14, provides that documents and communications can be shown "only to those whose official duties require such information," and it further provides that "the term 'for official use only' will be used for all unclassified correspondence."

41. It took pressure from a congressional committee to force the Attorney General to lift his classification of "secret" from the reasons for trips by Immigration and Naturalization Service officers to public rifle and pistol matches. Mr. Brownell did not offer an explanation of why the "secret" classification was necessary in the first place.

42. A five-man Army team was set up to look into the system of enlisted men's pay. The press had been checking into this subject for 2 years. The team's report was completed on April 27, 1957, and its chairman told the press it was all right to use it, but that he needed approval of his superiors. The Adjutant General's Office objected to its release because of its objection to some of the recommendations and declared the report could not be used until the "official Army position was determined." The report never has been released.

43. It was announced that an American Air Force crew would meet the Russian jet transport at Newfoundland and bring it into the United States. The Air Force said it had the names of the American crew but could not reveal them because the Department of State said "No." The press insisted, but the Department of State did not relax its censorship until after the Russian plane had landed in this country.

44. It was announced while the Japanese Minister was in Washington that American troops were to be withdrawn from Japan. The press prepared a story that the 1st Cavalry unit was to be withdrawn and the 24th Infantry was to be deactivated. The Army approved the story, but the Department of State refused to approve its release until the Japs were informed. The Department of State said it was a question of "national policy," but both the Jap and American publics already had been informed of the withdrawal and there appeared no good reason whatsoever to refuse to say what divisions would be taken out.

45. The press asked for a report on Aircraft Development Plans. The report, made by the ad hoc Committee on Aircraft Development From Concept to Inventory (David Chewning, Executive Director), was promptly censored. Later excerpts were released but not until some of the criticisms of development plans had been deleted because it would make some faces red.

46. The press attempted to obtain figures on how much each military service is currently spending for purely investigative functions. The Air Force and Army flatly refused. The Navy said it would release its figures if the Air Force and Army would. Press appealed to the Department of Defense but got a polite brushoff. An appeal was finally made to a member of the House Armed Services Committee, but he, too, got the old military brushoff. To this day, after a long series of telephone calls and letters, the press has been unable to report to the people just how much of their tax funds are being spent on military investigations.

47. Congressman James Patterson of Connecticut asked Gen. Maxwell Taylor, Army Chief of Staff, for help in presenting the Army's side of the defense story. In reply, General Taylor wrote that he was "sorry that the Army was unable to provide your office with all the data you required." This indicates the heavy arm of official censorship from the Department of Defense in military information in which national security was in no way involved.

48. The Washington Star reports: The so-called "Marilyn Monroe" design in supersonic fighter planes was revealed to the American public in 1954 when the Grumman Tiger was unveiled. Nevertheless, the plane still was classified by the Air Force for another year. Finally, Fred Hamlin, "an irate aviation magazine (Aero Digest) publisher broke the story after keeping it locked in his desk for more than a year."

49. The Pentagon decided in early 1954 to discontinue its cumulative report on the 100 largest defense contractors, which it had been accustomed to issuing each 6 months starting with 1951. In the turmoil which resulted from this clamping on of the lid of secrecy, a Senate Armed Services Subcommittee issued the following statement in 1955: "A subsequent report on major defense contractors, which was produced especially for it by the Department of Defense produced much misleading information."

50. The Vitro Corporation of America, which is involved in atomic and nerve gas developments, prepared a brochure which was submitted to the Department of Defense for clearance. This clearance was refused on the grounds "the less said about the matter the better." Yet virtually all the information contained in the brochure had previously been printed locally and Life magazine had done an even more complete picture story of Vitro's operation than was contained in the brochure.

51. A mimeographed release of Secretary of Defense Wilson's press conference of April 12, 1955, carried the following notation stamped at the top: "Not for general distribution." This illustrates the stamp-happy attitude in the Pentagon.

52. In October of 1955 the Pentagon suddenly announced that 15 of the Nation's 25 Reserve divisions would be converted into noncombat organizations and that nearly 200 other Reserve units would be deactivated. The press learned of this only when reservists themselves were notified and protested widely, although this sweeping change of the Reserve system apparently had been planned for months. The Washington Post, in commenting on the shakeup, said that the plan was "not previously announced though no longer secret or classified in any way."

53. Military censorship of legitimate information of Government goes beyond its relationship with the free American press and reaches literally down to the people, themselves. Elmer B. Gower, an American attorney in Frankfurt, Germany, has filed complete documentation of two such cases of direct Army censorship with congressional committees. In one case, the Army Adjutant General's Office declined to supply the name of a former serviceman, who owned con-

siderable money in Germany, and said: "The addresses of former service personnel cannot be divulged." In the other case, involving the accidental asphyxiation of a serviceman at Frankfurt, the Adjutant General declined to reveal results of the CID investigation of the case on the grounds that "it is considered detrimental to the best interests of the service to release information which would disclose the investigative procedures of the Army, or make public its findings, recommendations, or other official expressions of opinion by board members or other investigating officers."

54. Similarly, Norman S. Bowles, a Washington attorney, has offered to a congressional committee complete documentation of a case wherein the Army declined to reveal the exact nature of the crime charged against the son of a friend of his, when the court-martial would be held or any other details. Despite his efforts, the family of the serviceman first learned of the results from news stories which reported a guilty verdict and a sentence of life imprisonment.

55. Joseph A. Dear, of Dear Publications, has been trying for many months to obtain a list of 50 top officials at the Pentagon who are serving "on leave with pay." This term means these men are drawing down both their regular salaries from their private employers and also full salaries from the Department of Defense. Mr. Dear was refused this list and then appealed to Mr. Wilber Brucker, then General Counsel of the Department of Defense and now Secretary of the Army. Mr. Brucker said that since he was chief legal officer for the Department of Defense and since these mean "on leave with pay" were employees of the Department of Defense, he felt that releasing their names would violate the privileges of "the attorney-client relationship." All of this, of course, involved taxpayer funds.

56. The San Rafael (Calif.) Independent Journal reports that, because of "bad publicity" accorded MATS on a story involving the close escape of a GI-loaded C-124 Globemaster landing at San Francisco, it was shut off from such news by the 41st Air Rescue Squadron at Hamilton Air Force Base and forced to go to the MATS headquarters at Travis Air Force Base for all such news. This necessitated long-distance telephone calls and great delays on each such subsequent story.

57. Aviation Week reports this incident. Following the introduction of President Eisenhower's open-sky plan for mutual aerial inspection and following Bulganin's answer that such inspection would be worthless, the Air Force was ordered to release certain aerial photographs to demonstrate just how effective aerial inspection could be. Whereupon, the civilian bureaucrats in the Office of Strategic Information overruled the military and ordered the photographs withheld. Aviation Week points out that nobody in OSI could be termed an expert in photography whereas it is assumed that Air Force men are such experts.

58. The Dayton Herald-Journal was unable to get official financial figures on the annual national air show even though the Air Force, at taxpayer expense, furnished most of the airplanes and pilots.

59. Hamilton and Mather Air Force Bases withheld all information on their appropriation requests until after Congress acted upon them, apparently in the mistaken idea that this was their business and not the people's. In protesting this secrecy, California newspapers pointed out there were no basic national security problems involved and that this Air Force censorship of legitimate news was entirely unreasonable.

60. Early in 1956 the Air Force "temporarily" clamped a secrecy label on accident statistics. There was wide protest among newspapers, which prompted a congressional demand for the figures. This controversy continued on into 1957. The Air Force argued that revelation of such figures on plane accidents would benefit the Russians. But the first 7 major military plane accidents of 1957 involved 7 different types of aircraft, which pretty well invalidated the Air Force's excuse for secrecy.

61. An organization of citizens asked the Pentagon for a list of the names of 29 Korean war veterans who were still carried on the official rolls as "presumed dead." Hunt Clement, Jr., Chief of the Press Branch, Department of Defense, wrote a letter to this organization on October 17, 1955, in which he said: "It would be, as you must realize, an almost impossible research task to obtain this information, since the files are not categorized according to the type of death determination. Statistically, 29 individuals are accounted for in this category (presumed dead)." How can the Pentagon achieve this number of "presumed dead" unless it has the names and why this official brushoff on a matter in which national security is not concerned?

62. Charles Clift, of Reporter magazine protests that several arms of the Department of Defense, including the Navy and NSA, would not give him information on the extent of their lie-detector programs nor would they reveal the identities of those operating the detectors. What in the world have lie detector tests to do with national security? Numerous police departments reveal all lie-detector information to municipal taxpayers and why wouldn't Federal taxpayers have that same privilege?

63. Trevor Gardner, former Assistant Secretary of the Air Force, prepared an article on ballistic missiles based solely upon material which he gleaned from high-school textbooks, which included the classroom formulas for determining arc speed, the amount of thrust needed for desired range and the strength of the base platform needed to withstand this thrust. He sent it to the Security Review Office for clearance. Whereupon, the security reviewing people "blew their tops," charged the article contained "top secret" information and refused clearance.

XI. CASES OF NEEDLESS ADMINISTRATIVE SECRECY IN FEDERAL EXECUTIVE GOVERNMENT

1. *Attorney General*.—Attorney General Brownell denied to the press the following information: (1) Who drafted the civil-rights bill; (2) who briefed President Eisenhower on the bill; and (3) whether or not the President approved the original bill. The American people are entitled to all pertinent information on such far-reaching legislation.

2. *Office of Defense Mobilization*.—Gordon Gray, Director of the Office of Defense Mobilization, invoked the plea of "executive privilege" and denied to the United States Senate Antitrust and Monopoly Subcommittee and members of the free press, including the New York Times and Washington Post and Times Herald, pertinent information on the issuance of tax amortization certificates to the Idaho Power Co. by his office. What is this "executive privilege" and how does it appear the inherent right of the American to know about their Government and their tax funds?

3. *Post Office Department*.—Various underlings of the United States Post Office Department denied to the Providence Journal and Bulletin, for a period of nearly 6 months, the fines levied against the New Haven Railroad for slow delivery of mail, on the grounds of "public interest." On direct appeal, Postmaster General Summerfield finally released the information. This perfectly illustrates the "hostility of attitude" and the long delay in obtaining most information of our Federal bureaucracy.

4. *Post Office Department*.—Various underlings of the United States Post Office Department denied to the Martinsville (Va.) Bulletin the terms of a lease of a new post office at Fieldale, Va., on the grounds that this is a "confidential matter." After long delay and on direct protests from national editorial freedom of information committees, Postmaster General Summerfield finally released this information.

5. *Post Office Department*.—In 1956, the Post Office Department denied to the Indianapolis News information on the names of persons leasing post-office buildings in Indiana to the Government, the amount of the leases, and the length of the leases. The newspaper reported it received no cooperation whatsoever. It was first referred to the Cincinnati regional official, which said only Washington could release the data. Washington officials then declined the information on the grounds it would involve too much work and might be costly.

6. *Department of Agriculture*.—Various underlings of the United States Department of Agriculture denied to the Aberdeen (Miss.) Examiner the names of Mississippi farmers who were paid not to plant cotton. This is characteristic of all dealings between the press and the Department of Agriculture involving release of information on expenditure of about \$5 billion of the American taxpayers' funds. In the long controversy with the Tampa Tribune over release of soil subsidy payments in Florida, Secretary Benson pleaded this was a violation of "privacy" between the Government and the recipients of the subsidies.

7. *The White House*.—The President's press aid, James Hagerty, refused to confirm to the Milwaukee Journal that a certain Milwaukee educator was a guest at one of Mr. Eisenhower's stag luncheons. The American people certainly are entitled to the identities of those citizens whose advice is being sought on how to run the American Government by the White House.

8. *Department of Defense*.—Various defense officials have consistently declined to reveal to the Knight newspapers and other publications the names of members of families and "companions" who accompany Congressmen on defense junkets

around the world. These persons draw American taxpayer dollars for their spending at American embassies. In reply to a direct question on the matter at a press conference, President Eisenhower said: "As far as I am concerned, I stand on this general truth, there is no expenditure of public moneys except only involving that where public security itself is involved, that should not face the light of day any time any citizen inquires for it." But the names of the Congressmen's junketeering guests are still hidden.

9. *Department of the Army*.—Despite assurances from the top that Army procurement information would always be available to the press, it is the usual procedure on the lower levels for clerks to decline to permit newspapermen to examine public bid invitations, bids submitted and contract awards. Latest road-block of this kind was at Rome, N. Y., where the press had to go all the way to the top to gain information of this expenditure of the public's tax funds.

10. *Federal advisory committees*.—The meetings and minutes of more than 5,000 Federal advisory committees are not public, thus permitting "insiders" the privilege of special information. This happened recently in the Budget Bureau Advisory Committee. The press advised the Committee that certain commercial interests were reaping profits from "inside" information and asked that the information be made public, which was done. Secrecy in Government always breeds this privilege for the "insider," whereas open Government places everybody on the same footing.

11. *Department of the Treasury*.—For 3 years, the Department of the Treasury declined to disclose to the press the applications for tax exemptions from non-profit, nonpolitical organizations. It was not until stories by Clark Mollenhoff of the Des Moines Register and Tribune and a subsequent investigation by the House Subcommittee on Government Information that the Treasury finally agreed to sponsor legislation that would make this legitimate information of Government available to the American citizens who are not exempt from taxes.

12. *Department of the Treasury*.—After stories by Clark Mollenhoff in the Des Moines Register and Tribune, and subsequent inquiry by the House Subcommittee on Government Information, the Department of the Treasury finally agreed to make public out-of-court settlements of fines in cases involving the refilling of liquor bottles, but declined, on the grounds of technicalities of the law, to make public similar settlements in cases involving the watering of whisky and other minor offenses.

13. *Department of the Treasury*.—The Internal Revenue Service denied to the Indianapolis News a compilation of the 20 top tax delinquents in the United States, as on file in the United States Tax Court. At the same time, the Joe Louis tax delinquency of nearly \$1 million was being told in great detail. In denying the request, the Internal Revenue Service gave the excuses that its records were decentralized into 64 districts, that it would be too time-consuming and costly to assemble the data, and that such disclosures were prohibited by law. The newspaper replied that the records of the Tax Court are public information and that the people are entitled to a complete report. This went ignored and the records are still censored.

14. *Post Office Department*.—In July 1957, the Post Office Department declined to disclose to the Indianapolis News why a postmaster had been fired at Carthage, Ind., with no public notice. There were numerous reports in Carthage about the case, some involving politics, but the Department ignored the newspaper's argument that a postmaster's job is a public trust and that it might appear as if the Department was acting as investigator, judge, and jury in such cases, and with no restraint of public opinion. The Department simply said that the postmaster "already has been punished enough by losing his job."

15. *Department of State*.—In 1953 the Department of State admitted to Congressional Appropriations Committees that it was 18 years in arrears in the publication of state papers for historical use and promised to expedite at least 5 volumes. One million dollars of taxpayer funds was appropriated for this purpose. Today, 4 years later, only 1 volume has been produced—the Malta-Yalta papers—and it immediately resulted in a controversy. It was first compiled in uncensored form and then underwent censorship before publication. In the uproar, Dr. Donald M. Dozer, of the Historical Division of the Department of State, was summarily fired from Government for "inefficiency," even though his record of 14 years in Government was characterized by strong efficiency ratings year after year. In a speech to the House of Representatives on August 29, 1957, Representative John E. Henderson, of Ohio, charged that Dr. Dozer was fired simply because he objected to this censorship of historical documents and protested publicly that the Department of State's program of publica-

tion was subjected to deliberate delays, sabotage, and expurgation of records. Can this censorship of history be any worse than the dictatorial book burning which the American people down through history have criticized most severely?

16. *Department of the Treasury*.—The Internal Revenue Service denied to the Indianapolis Star the cause for disbarment of an Indiana attorney in practice before agencies of the Department of the Treasury. In the debate over this issue, the newspaper argued that the Government was denying a citizen the privilege of practicing a profession before Federal agencies yet was unwilling to inform the public as to cause. The Treasury argued that the purpose in withholding the information was to prevent injury to the disbarred attorney. The newspaper replied that the attorney already was stigmatized by disbarment and a statement why he was disbarred would throw up a cloak of protection around him, permitting the public to know and, therefore, judge the merits of the case. But this had no effect on the Treasury censorship.

17. *Customs Bureau*.—A blanket of secrecy has been draped over lists of imports arriving at Great Lakes ports, through requests of importers, even though the lists of imports arriving at east and west coast ports are made public. This blackout of legitimate information has been protested by many American trade groups.

18. *United States Coast Guard*.—The Detroit Free Press was denied photographic access to evidence in public hearing on a St. Clair River accident. Subsequent congressional investigation of this censorship case revealed widespread secrecy in Coast Guard investigations of marine casualties. Coast Guard promised early this year to rewrite its regulations to eliminate secrecy, but today, 6 months later, there has been no action.

19. *General Services Administration*.—The General Services Administration attempted to establish regulations requiring its employees to sign forms stating they will not divulge "administratively controlled" information. This collapsed under threat of investigation by Congress, but it shows clearly the general atmosphere of secrecy that prevails through our Federal bureaucracy.

20. *Department of the Navy*.—The Navy declined for 6 months to confirm to the Pensacola (Fla.) Journal and News the fact that 600 middies from Annapolis would receive their air indoctrination in the summer of 1957 at the Pensacola Naval Air Station. In a subsequent speech to Congress, Representative Robert L. Sikes, of Florida, attributed the Navy's secrecy to its secret plans to seek appropriations for a \$17 million naval air station near Annapolis, which he said would give the admirals a fancy headquarters near Washington and which was opposed by citizens living near the Annapolis area, as revealed by letters to the editor in the Baltimore Sun.

21. *Department of Agriculture*.—The Indianapolis Star was refused access to an application for a Rural Electrification Administration loan from an Indiana cooperative. The co-op requested \$42 million, biggest single loan ever made by REA, for the purpose of constructing a steam-generating plant near Petersburg, Ind. REA bureaucrats declined to give access to the facts on the grounds of Department of Agriculture regulations, which were drawn by the bureaucrats without prior restraint by the American taxpayers, whose \$42 million were involved.

22. *Department of Defense*.—Assistant Secretary of Defense Robert T. Ross, in an official ruling, stated that only those persons with a legitimate interest are entitled to know the location of military bases where liquor is sold by the bottle. His letter containing the ruling specifically mentioned wholesale-liquor dealers, but it implied that a member of the Women's Christian Temperance Union would be denied the information on the grounds of a lack of legitimate interest. On what basis does the Department of Defense draw the line in the matter of legitimate interest in the sale of liquor at military bases?

23. *Civil Service Commission*.—Chairman Philip Young, of the Civil Service Commission declined for 3 years to reveal a list of pensions paid to former Congressmen on the grounds that this was a matter of privacy, even though taxpayer funds were involved. In the middle of the 3-year debate, Senator Williams, of Delaware, revealed in a speech in the Senate that a number of former Federal public servants had obtained windfall pensions through payment of only a few dollars. The Civil Service Commission finally issued a new regulation that a pension would be made public if the recipient agreed. But whoever heard of a free people having to ask permission of their public servants to ascertain if their tax dollars are being spent honestly?

24. *The White House*.—On May 17, 1954, President Eisenhower wrote a letter to Secretary Wilson in which he stated: "Because it is essential to efficient and

effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions." The President's letter directed this action "so as to maintain the proper separation of powers between the executive and legislative branches of the Government." In the subsequent investigation of the subcommittee of the House Committee on Government Operations, key officials of 19 agencies and departments testified that they were accustomed to the withholding of legitimate information of government from the American people, and most of them gave the President's letter as the precedent for their withholding actions.

25. *Department of Defense.*—Under pressure from the press and the House Subcommittee on Government Information, the Department of Defense finally agreed to make public the terms of the new leases of private concerns renting space in the Pentagon. But the Department still maintains its secrecy over the terms of old leases for Pentagon space, which still have several years to run.

26. *General Services Administration.*—On August 20, 1956, Administrator Franklin G. Floete stated in an official letter that news photographers are not required to get prior consent from custodians to take pictures in public, non-security areas of Federal buildings. Yet on June 13, 1957, Deputy Marshal Atha A. Knight confiscated the camera of News Photographer W. C. Shoemaker, of the Jackson (Miss.) Daily News for taking a picture in the public corridor of the Jackson Federal Building. The camera was not returned until the Jackson Daily News editor, Frederick Sulens, and others, personally lodged strong protests with Federal officials.

27. *Veterans' Administration.*—The Portland Journal was denied, in July 1956, access to a Veterans' Administration report on residential lot values in the Portland metropolitan area. It was not until 6 months later, December 1956, that the VA finally yielded to pressure from the House Subcommittee on Government Information and made the report public.

28. *Department of Agriculture.*—The Department of Agriculture issued a regulation requiring TV news film producers to sign agreements permitting the Department to censor their productions. This regulation was revised in April 1957 only after a strong protest from the House Subcommittee on Government Information, but it illustrates the thinking throughout bureaucratic government in Washington.

29. *Department of Defense.*—It took the Louisville Courier-Journal several weeks to dig out the facts on a junket of Louisville big shots to the Navy maneuvers off Florida coast. The Department of Defense, at first, swore up and down that there could have been no such junket. But when the newspaper dug out facts in Louisville that definitely established the junket, the Department of Defense finally confessed all—that there was a junket under the auspices of the Coast Guard.

30. *Civil Aeronautics Board.*—On October 4, 1957, Representative Moulder, of Missouri, publicly protested that the Civil Aeronautics Board had declined to permit access to pertinent files and records to a House investigating subcommittee which he heads. He said that he feared other Federal regulatory boards, also, would block the investigation with similar censorship of the people's business, and that his subcommittee would seek contempt citations, if necessary.

XII. A RESOLUTION

In view of the foregoing report on secrecy in Federal Government, your committee recommends to the 1957 convention of Sigma Delta Chi the adoption of the following resolution:

"Whereas freedom of speech and freedom of the press, as guaranteed by the Constitution of the United States, are essential to the preservation of a free and democratic people; and

"Whereas the government of a free people derives its just powers from the consent of the governed; and

"Whereas a constant knowledge by the free people of the actions and undertakings of their government is essential that their government continues to derive its powers justly and solely from the consent of the governed; and

"Whereas there have been and continue to be increasing efforts on the part of various public officials of the American people in their Federal Government to deny to the people and the press such essential knowledge and information; and

"Whereas if the secret government, which results from this denial of such essential knowledge and information, is permitted to be expanded in Federal Government during the next 25 years as it has been permitted to be developed in the last 25 years, freedom of speech, freedom of the press, and all other American freedoms are certain to be irreparably damaged, if not destroyed; Now, therefore, be it

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity deplores and condemns the general secrecy so prevalent throughout Federal Government today and particularly the widespread abuse and misapplication of Executive Order 10-501 throughout Federal Government, and that the President of the United States be respectfully called upon to take definite steps to eliminate this abuse and misapplication, through which the American people are denied their inherent right to knowledge and information of their government; and be it further

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity endorses and supports H. R. 2767 (Representative John E. Moss), H. R. 2768 (Representative William L. Dawson), H. R. 2769 (Representative Dante Fascell), and H. R. 3497 (Representative Abraham J. Multer), and S. 921 (Senator Thomas C. Hennings, Jr.), bills introduced in the Congress to amend title 5, United States Code, section 22, the 'housekeeping statutes,' and also H. R. 7172 (Representative Dawson), H. R. 7173 (Representative Fascell), H. R. 7174 (Representative Moss), and S. 2148 (Senator Hennings), bills introduced into Congress to amend title 5, United States Code, section 1002, of the Administrative Procedure Act. These bills are designed to eliminate legal roadblocks in the United States Statutes, based on pure technicalities, to the free flow of rightful knowledge and information of Federal Government to the American people; and be it further

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity condemns and opposes legislative bill S. 2461, introduced in the United States Senate by Senators Henry M. Jackson and John L. McClellan, which would, under penalty of imprisonment, obstruct the free flow of information from meetings of the Interstate Commerce Commission, Federal Trade Commission, Securities Exchange, Federal Communications Commission, Federal Power Commission, and the Civil Aeronautics Board, and which would deny to the American people their rightful knowledge of the actions and business of these agencies of their Government; and be it further

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity instruct its officers to place copies of this report and accompanying resolution into the hands of the President of the United States and all Members of Congress of the United States."

This report and resolution respectfully submitted to the 1957 Convention of Sigma Delta Chi Fraternity, meeting November 13-16, 1957, at Houston, Tex., by its freedom of information committee, V. M. Newton, Jr., chairman, the Tampa (Fla.) Tribune; David W. Howe, publisher, the Free Press, Burlington, Vt.; Alvin E. Austin, head, department of journalism, University of North Dakota, Grand Forks, N. Dak.; James K. Toler, Commercial Appeal Bureau, Jackson, Miss.; Bert Struby, editor, News & Telegraph, Macon, Ga.; Clark Mollenhoff, Washington bureau, Des Moines Register, Washington, D. C.; Theodore F. Koop, Columbia Broadcasting System, Washington, D. C.; J. Alex Zehner, Pittsburgh (Pa.) Sun-Telegraph; James R. Brooks, Ekco Products Co., Chicago, Ill.; Mort Stern, the Denver (Colo.) Post.

PART II. STATE AND LOWER LEVELS OF AMERICAN GOVERNMENT

I. THE AXIOM OF FREE GOVERNMENT

It is essential in free government that the people, who elect their governors and pay all the bills of government through heavy taxation, have the constant restatement of public opinion upon their public servants through open government records and open government meetings. And this is particularly true if the people are to retain their freedom.

As 1957 dawned, this great axiom of free government was being booted freely over the rocks and rills across the country by the politician. The press, obligated to print all facts of government at the time and not after the fact when, too

often in history, it has been too late, found itself facing a curtain of secrecy over most of Federal Government and a growing menace of secret government in cities, counties, and States.

As an example of the latter, a survey by a legislative research council, appointed in Massachusetts at the instigation of the press, disclosed that no less than 187 town and school councils, boards, and committees were accustomed to conduct the proceedings of the people's business in secrecy, with the press and public barred. It also disclosed that 146 town and school councils, boards, and committees barred the public from inspecting their minutes, and that 48 boards and committees kept no minutes at all of the Massachusetts people's business.

In regard to State government, the Massachusetts survey reported:

"Returns * * * by 140 State boards, and information on another 4 boards obtained from other sources, show that closed meetings predominate when public meetings are not required by law; moreover, a substantial minority of the boards close their minutes to public inspection."

This official legislative survey was well supported by Sigma Delta Chi-sponsored surveys of the press and open government by the University of Maine, in Maine, and by Marquette University, in Wisconsin. Editors reported 28 current abridgments of freedom of information in Maine and 53 such incidents in Wisconsin.

Your committee compiled the results of these three State surveys in an interim report and, at the same time, drew two simple model laws stipulating (1) open government records, and (2) open government meetings, and with the help of hundreds of sincere editors, launched a nationwide drive in the State legislatures in behalf of freedom of information.

Purpose of the drive was twofold:

1. To preserve free, open government in the cities, counties, and States of free America.
2. To build up grassroots sentiment among the people in behalf of free, open government so that it could be used as a mighty weapon against the curtain of secrecy draped over Federal Government by the bureaucracy of Washington.

II. EIGHT STATES ADOPT SIGMA DELTA CHI LAWS

The Sigma Delta Chi model laws for open government records, and open government meetings were introduced in the legislatures of 15 States, and this promptly precipitated a running fight from coast to coast in which the politician's plaintive, unctious, and sanctimonious squawks bounced against the blue.

But when the last political bleat had whistled across the Mississippi, the legislatures of 8 States had adopted the law guaranteeing open government records, bringing to 29 the number of States having such legal safeguards. And the legislatures of 6 States had adopted the law stipulating open government meetings, bringing to 17 the number of States having such statutes.

The legislatures adopting the open-records law in 1957 were: Vermont, Connecticut, Pennsylvania, Tennessee, Minnesota, North Dakota, Kansas, and Illinois.

The legislatures adopting the open-meetings law in 1957 were: Vermont, Connecticut, Pennsylvania, Minnesota, North Dakota, and Illinois.

The politician always swings his hardest in defense of his precious secrecy, and, even in several legislatures where he lost, he managed to insert qualifying words and phrases in the model freedom-of-information laws. In Pennsylvania, he inserted a clause that permits executive sessions, which is the politician's uplifting term for his secret meetings; while, in Connecticut, he slipped in a clause permitting the same executive sessions if the majority vote for it.

The Tennessee law for open records was qualified by amendments barring newsmen from State hospital "security" and those records closed by previous laws. Just how "security" figures in the records of a State is quite a question, but the Connecticut politicians went ahead, also, and put this exemption in their new open-records law.

But even good, strong, unqualified laws do not keep the politician pure in the matter of secret government. Alabama has such a law, the first State in 1915, to adopt a statute barring secret government meetings. But George M. Cox, executive editor of the Mobile Press and Register, reported to your committee that it has been a running fight for 40 years, with the editors using the law as a club to preserve the Alabama people's right to know about their government.

Your committee lost its fight for both open records and open meetings laws in the legislatures of New Hampshire and Texas and for the open meetings law in the Legislatures of Florida, Massachusetts, Tennessee, Kansas, New Mexico, Michigan, and Nevada. In most cases, the politician simply employed the cute trick of burying the laws in committee, and that was that.

California, with the help of your committee, adopted a very fine freedom of information law in 1953, but during the last 4 years the editors found it too general in nature to cope with their secrecy-loving politicians. So this year, with the help of Assemblyman Ralph Brown, they pushed through their legislature unanimously 66 new laws, one for each State board, stipulating that both its records and meetings must be open to the public.

Those States now having laws guaranteeing the people open government records are:

Alabama	Louisiana	Oklahoma
Arizona	Massachusetts	Oregon
California	Michigan	Pennsylvania
Connecticut	Minnesota	South Dakota
Florida	Mississippi	Tennessee
Idaho	Montana	Utah
Illinois	Nevada	Washington
Indiana	New Mexico	Wisconsin
Kansas	North Carolina	Vermont
Kentucky	North Dakota	

Those States now having laws guaranteeing the people open meetings of government are:

Alabama	Illinois	Ohio
Arkansas	Indiana	Pennsylvania
California	Louisiana	Utah
Connecticut	Maryland	Vermont
Delaware	Minnesota	Washington
Idaho	North Dakota	

III. TOO MANY EDITORS ARE STILL APATHETIC

In almost every case where the newspaper editors have become aroused over the people's right to know about their Government, they have routed the politician; but where the editors are apathetic, the politician rules over the people in secret splendor.

This was clearly brought out in the surveys in Maine and Wisconsin where too many editors not only ignored the questionnaires but evidenced little interest in the question of the politician's secret government, itself.

When the New Hampshire Legislature buried the Sigma Delta Chi freedom of information bills in committee, the Keen Sentinel said:

"It is indeed a sad commentary on the citizens of the State and New Hampshire newspapers that there obviously was no organization whatsoever of proponents of this bill who might have argued its merits before legislators.

"It seems a bit ludicrous to watch the 'right to know' bill washed down the drain while considerable effort is devoted to making such weighty decisions as what definition should be given itinerant hairdressers."

On the other hand, after the freedom of information bills safely navigated the Pennsylvania Legislature, the Harrisburg Patriot said:

"We who write and edit your newspapers are especially heartened by the passage of these two bills by the General Assembly. They did not travel through the legislative jungle in a simple matter of course without incident. They had to be fought for and they had to be spotlighted just about every step of the way. In this battle, just about every Pennsylvania newspaper joined."

And when California's editors put through their legislature the 66 new open record and meeting bills, David N. Schutz, editor of the Redwood City Tribune and doughty chairman of his State's freedom of information committee, wrote your committee as follows:

"The success in California, I believe, is based on an enthusiasm that stems from such advocates as Ed Murray of the Los Angeles Mirror, Jack Craemer of the San Rafael Independent, George and Lee Grimes of the Oxnard Record, and editors in general who scream every time some small-town dictator tries to pull a sneak punch."

IV. NORTH DAKOTA AND VERMONT

Two smaller States, North Dakota and Vermont, led the way in the 1957 fight for freedom of information laws. Their campaigns, bringing into play virtually all of the editors of both daily and weekly newspapers, could well serve as models for editorial cooperation in similar campaigns in other States.

The North Dakota drive, sparked by John O. Hjelle, editor of the Bismarck Tribune and chairman of the State's Sigma Delta Chi freedom of information committee, and John D. Paulson, editor of the Fargo Forum and president of the State's Sigma Delta chapter, began with a Newspaper Day in the North Dakota Legislature.

Between 60 and 75 North Dakota publishers and editors, representing 45 to 50 communities, journeyed to Bismarck, spent the day with legislators, and thoroughly briefed the lawmakers on the problems of the free press and the right of the people of North Dakota to know about their Government.

The occasion was climaxed with a joint session of the legislature which was addressed by Mason Walsh, managing editor of the Dallas Times Herald and chairman of the Associated Press Managing Editors Association freedom of information committee. Walsh told the legislature: "Dishonesty of any sort, in any field of activity, breeds and thrives in hidden places; corruption wilts and withers in the bright light of public knowledge."

North Dakota's editors followed up this occasion with new stories and editorials, and on February 15 both the open records and the open meetings bills were adopted by the house without a dissenting vote.

Opposition, however, developed in the senate, which prompted the editors of North Dakota's weekly newspapers to go into action. They telephoned or telegraphed the senators of their districts, and on March 7 the open meetings bill was adopted by the senate by 29 to 18 and on March 10 the open records bill by 30 to 13.

That this was a great victory for freedom of information was plainly indicated by the following paragraph written to your chairman by Alvin E. Austin, of the University of North Dakota and a member of your committee: "It must be recorded that newsmen at first were lukewarm to the idea, seeing no great need for such legislation; and that officials and legislators generally opposed the proposal."

The Vermont campaign, led by David W. Howe, publisher of the Burlington Free Press and a member of your committee, was pitched on a different level, yet it was just as effective. Actually, the Vermont Press Association took its freedom of information story to the people and won a decisive victory.

Here is a step-by-step report on the campaign:

1. The Vermont Press Association was twice briefed on the great need for freedom of information laws.

2. The association then appointed a steering committee composed of the publishers of 2 daily and 3 weekly newspapers.

3. A brochure, containing typical laws of the 21 States already having such legislation and also the findings of the Massachusetts Legislative Research Council, was distributed to every Vermont editor and other interested parties.

4. Two large mailing cards, calling attention to the constitutional rights of the people and the need for corrective legislation, was sent to every member of the Vermont Bar Association and to every candidate for the legislature.

5. Briefings on freedom of information were given to the Vermont Bar Association, the League of Women Voters, the State Farm Bureau Federation, the State legion, the State Federation of Women's Clubs, and other civic groups.

6. Public hearings were arranged in the senate and house and such speakers as a schoolteacher, a farmer, a United States Weather Bureau man, a retired ordinary citizen and a TV station manager were obtained to present the freedom of information case.

7. Large advertisements were printed in many Vermont newspapers calling attention to the right of the Vermont people to know about their Government.

After both bills negotiated the legislature with no organized opposition, Mr. Howe sounded the keynote of the victorious campaign with the following report:

"At all times we preserved the position that we were seeking no favors for the press; that no bills would be introduced by request; that only if we found members of the legislature who wished to sponsor bills would they be introduced; that we would not register as lobbyists or buttonhole anyone in the State capital; that we would ask for public hearings and would testify on invitation and leave copies of our testimony at such hearings; and that we would help

the sponsors to prepare model laws, but that the exact wording was up to the legislature, and we were making no insistent demands of any kind."

V. FLORIDA AND MASSACHUSETTS

On the other side of the picture, freedom of information took a beating in Florida and Massachusetts, where laws for open Government meetings were smothered in forensic outbursts that paraded all the old smug arguments of the politician for his sacred secrecy. There also was much apathy on the part of editors in both States.

The law lost, 43 to 33, in the Florida House, and Representative Cliff Herrell, of Miami, led the fight against it. For one thing, he beat his breast mightily over the risk of ruining teachers' reputations in discussing their employment at open meetings of Florida school boards.

But what about the case in your committee's files wherein a school board met in secrecy and fired the principal of a high school for being a sex pervert; and the school board of the adjoining county met 2 weeks later in secrecy and employed this character as the principal of a high school. Your committee would like for Representative Herrell to tell how the interests of the parents and pupils were protected in these secret proceedings.

The matter of land condemnation for public use also figured in the Florida debate. Representative Herrell shook with horror over the very idea of the people being given up-to-date information as to their public servants' actions in buying land for public use, and he ranted mightily over the possibility that speculators might drive up the price.

However, Representative Herrell did not discuss the ancient fact that many a politician has gotten rich, himself, in secret governmental land deals, often at the expense of the taxpayer. He did not dwell either on the fact that the law of condemnation was introduced into American Government to protect the taxpayers' interest. Nor did he condescend to mention that the homeownership taxpayers are entitled to advance knowledge of the politician's intent to locate say a city garbage incinerator in a certain vicinity.

In Massachusetts, the politicians employed the age-old tactic of killing the bill with crippling amendments. The bill started out a simple legislative measure stipulating that all governmental bodies must meet in the public, but when it finally was adopted by the house, it contained the following amendments:

1. City and town councils and boards could hold executive sessions on majority vote of the members.
2. Executive sessions could be held in matters in which an individual's personal reputation was at stake, or in which financial negotiations were being discussed.
3. Certain committees would be exempt from the open meeting regulation.
4. A newspaper reporting inaccurate information must correct the error "in boldface type on the front page of its next edition."

The Massachusetts Senate also tacked similar crippling amendments onto the bill before passing it. And when house-senate conferees finally got a whack at the amended bill, they sanctimoniously spurned each other's amendments, and thus died the Massachusetts' people's right to know about their government, even in the face of the legislative survey which showed that no less than 187 Massachusetts town councils and school boards were accustomed to hold secret meetings with the press and public barred.

VI. FREEDOM OF INFORMATION LAWS ARE NEEDED

During the year, editors in some States argued that they did not need the freedom of information laws, that constitutional rights plus alert and energetic reporters were sufficient protection for the people's right to know. Your committee examined this argument in the case of Tennessee, one of the first States in 1957 to adopt the open records law, and found it wanting.

The Tennessee law was not a month old when the secretary of the State pardons and parole board declined on May 28 to disclose to newspapers the names of 14 persons who had signed a petition to reduce a man's prison sentence. The newspapers promptly blasted the board editorially for violating the new freedom of information law; whereupon, Gov. Frank G. Clements ordered the names released.

Still later, the school board of a rural county declined to release its minutes to the Nashville Tennessean in a case involving the firing of two schoolteachers.

The Tennessean lodged a complaint with the county attorney, based on the new freedom of information law, and this public servant, after some deliberation, finally released the minutes. They revealed:

1. Evidence which, when printed in the Tennessean, resulted in the reinstatement of one of the teachers to his job.

2. Evidence of unsavory contracts for school construction which the newspaper printed for the benefit of the taxpayers.

In a third Tennessee case, the Nashville Tennessean used the new law to obtain some records from the office of the State commission on finances and taxation—records which previously had been barred to the press and public.

"I was among those who once thought that our Constitutional rights were sufficient," said Coleman A. Harwell, editor of the Nashville Tennessean. "But I have changed my thinking. Tennessee's new open records law has been extremely effective and useful to the press. Our great problem now is to fight off the politician's attempts to amend it with qualifying clauses."

VII. THE 1958 CAMPAIGN IN THE STATES

The legislatures of 14 States meet in 1958, and 13 of them do not have freedom of information laws. Your committee sincerely urges, in behalf of not only the present right of freedom of information but also in behalf of the future of freedom of the press, that editors in those 13 States organize determined campaigns, pointed to the people, for open Government records and open Government meetings laws.

The editors of New York and Virginia, two key States, already have organized, endorsed the Sigma Delta Chi model laws and plan vigorous 1958 campaigns.

Those States, the legislatures of which meet in 1958, lacking open Government records laws are as follows:

Colorado	New York	Virginia
Georgia	Rhode Island	West Virginia
New Jersey	South Carolina	

Those States, the legislatures of which meet in 1958, lacking open Government meetings laws are as follows:

Arizona	Michigan	South Carolina
Colorado	Mississippi	Virginia
Georgia	New Jersey	West Virginia
Kansas	New York	
Massachusetts	Rhode Island	

VIII. THE POLICIES OF THE GOVERNORS ON OPEN GOVERNMENT

The policies of the governors of the States are extremely important in the field of the American people's right to know about government simply because the governor of a State, with his appointive and dismissal power over the State commissions and agencies, hold the key.

Because of this, your committee early in the year asked each of the governors of the 48 States for their thinking on the matter of open meeting versus the secret meeting in government. Forty-four governors replied, and your committee got out an interim report, which was widely distributed throughout the country, based on their replies.

Twenty-four governors declared outright, for the record, that their policies stood for open meetings of all State governing bodies. Nine others said they favored open government generally but did not pinpoint their exact policies on closed meetings. Three governors also said they favored open meetings but commented sharply on the press' responsibility in reporting the news, and their statements hinted strongly that their actual policies depended upon the actions of the press.

Only six governors said for the record that they favored closed executive sessions and most of those declared that such sessions should be limited to discussions of people's reputations and negotiations for public land.

The statements of the governors, who came out for open government, ranged from Florida Gov. LeRoy Collins' "Let us conduct our government in the sunshine, not in the shade" to Kansas Gov. George Docking's "I don't think anybody has any business holding anything back from the people" to California Gov.

Goodwin J. Knight's "All public agencies should be willing to conduct their business as if they were in a department store window."

On the other side of the ledger, Gov. Earl K. Long, of Louisiana simply announced to the press: "There are certain times when it will work out better in the interests of the people if there is not so much publicity in advance." But your committee suspects that Governor Long really meant that there are times when the secret proceedings will work out better for the politician and that this really is the prevailing thought of most politicians.

Gov. Robert D. Holmes of Oregon was 1 of the 3 governors who hit sharply at the press' responsibilities. He said, in his statement to your committee: "The press, too, as public officials do, sometimes forgets to use its responsibility. A free press, by irresponsible interpretation of fact, may be as guilty as the official in keeping the truth from the people."

In August, Mervin Shoemaker, political writer for the Portland Oregonian, quoted this statement back to Governor Holmes in a TV presentation and asked him if it applied to Oregon newspapers.

"The answer is," said Governor Holmes, "that I never made that statement."

In reply to an appeal from Mr. Shoemaker, your committee sent him a photocopy of Governor Holmes' letter, written on his official stationery and bearing his personal signature, which showed that he had written the exact words which he denied in front of the TV camera.

Gov. Orval E. Faubus, of Arkansas, wrote your committee: "Being editor and publisher of a country newspaper, I have long maintained that these meetings should be open to the public, especially to the press."

Yet in the summer national meeting of governors at Williamsburg, Va., Governor Faubus demanded that meetings of the committees of governors be held in closed executive sessions, and this led to a spirited exchange with Governor Collins, of Florida, who argued for open meetings.

Whereupon, on Governor Collins' return to Florida, he engaged in a public controversy in which he informed the State board of control, which directs the State's university system, that it should not reveal the deliberations and decisions of its meetings until this information had first been conveyed to the parent State board of education, of which the Governor is a member. The controversy involved the selections of a president and the name of a new State university, to be located in Tampa, which was of wide interest to the people of Florida.

IX. THE JUVENILE COURTS

Public awareness of the need for full information concerning offenders in juvenile crime cases began to swing the pendulum toward more liberal press coverage, including identifying of many delinquents, during the year 1957.

Citizens groups, seeking means of coping with increased juvenile delinquency in their communities, have begun to strip the protective cloak of secrecy from these offenders.

Although the results have been heartening to date, the pendulum must be given concerted impetus if it is to swing far enough to be of any appreciable value throughout the Nation. Indeed, there are pressures to keep it from swinging any further at all.

Eleven different States have seen activity this year in behalf of fuller coverage of juvenile courts. Three States have experienced moves in the contrary direction. Not all of the activity has been legislative; some has been quasi-official, some merely expressions of public sentiment.

Here is a rundown of the 11 favorable States:

Arizona.—Gov. Ernest W. McFarland signed a bill in March opening the records and proceedings of juvenile courts to the press and public. In signing the measure, Governor McFarland voiced some misgivings because it opened the records of dependent and neglected children who have been made wards of the court and of juveniles accused of minor offenses.

"But I am confident," said Governor McFarland, "that the newspapers also will recognize the effect of publicity on this type of juvenile and will exercise their own good judgment in individual cases and not abuse the discretion permitted."

Arkansas.—Citizens of Texarkana in a mass meeting formally voted to request newspapers and other communications mediums to identify juveniles involved in crimes in that community. With the exception of one radio station, all mediums acceded to the request.

Connecticut.—At the request of the New Haven Register, a district judge agreed to allow news coverage of juvenile court proceedings as a regular beat, but with publication of names prohibited pursuant to State law.

Georgia.—The State legislature, after lengthy public hearings, amended the Juvenile Court Act to make it mandatory that judges release the names of offenders who come under the jurisdiction of the court for the second or subsequent time. Publication of the name of such juvenile shall not be an offense. First names to be released under the new statute were published in Georgia newspapers on July 3. They were three Atlanta girls charged with abducting a schoolmate and forcing her to dance nude in a public park.

Florida.—Following a recommendation by the Governor's committee on juvenile delinquency, the State legislature reversed a previous law and threw open to the press and public any juvenile court hearing not specifically ordered closed by the judge. The earlier statute had required hearings to be closed unless specifically opened by the judge.

New Hampshire.—The legislature enacted a measure opening to the public all juvenile crime cases serious enough to go subsequently into higher courts. The previous law had kept closed such cases unless the judge, in rare instances, decided otherwise.

New York.—Protests by press groups (the New York Society of Newspaper Editors and the New York State Publishers Association) won a delay in the effective date of a new Youth Court Act which would have extended the protection of secrecy beyond the usual juvenile age up to age 21. Effective date was postponed from February 1, 1957, to April 1, 1958. Efforts will be made to amend the measure.

North Dakota.—As a prelude to model open-records and open-meeting statutes approved by the State legislature, the North Dakota attorney general ruled that youthful offenders placed in the State training school could be identified. Transferring delinquents to the school technically released them from the ban which governed their secret status in the juvenile court, he said.

Ohio.—A higher court reversed a conviction of the editor of the Gallipolis Tribune who published names of juveniles sentenced to an industrial school. The Ohio juvenile law prohibits publication of probation department records, but carries no provision for keeping secret names of juveniles sentenced and committed to State institutions.

Also, in Ohio, the Ohio State Journal of Columbus, published a 2-weeks' series asking readers to help shape the newspaper's policy on publishing names of juvenile violators. Result: The Journal declared it would broaden exceptions to its general rule of nonidentification and after September would publish more names. Offenders would be identified in cases of "violent assault, hoodlumism by gangs, serious property destruction, and other outbreaking and unusual instances. * * *"

Pennsylvania.—The Philadelphia juvenile court, which had been closed to the press and public since it was established in 1913, was opened by action of the board of judges of the municipal court. The order directed that all hearings shall be public unless otherwise provided by law. Only exception to the judges' order was adoption cases which are closed by State law. Pennsylvania law generally calls for open hearings in most cases, including municipal courts.

Wyoming.—The Lusk Herald and Free Lance, a weekly newspaper, conducted a survey among high-school students, inquiring what they thought about identifying young offenders. The score: In favor of publishing names, 113; opposed, 13.

Three States which saw moves in the other direction were these:

Kansas.—The legislature enacted a new statute which excludes all persons from juvenile court trials except counsel for the involved parties.

Missouri.—Adopted a new juvenile code based on the theory that no criminal stigma should be attached to neglected or delinquent children under 17. The code provided that both hearings and court records on such cases shall be closed.

West Virginia.—The Wheeling juvenile court judge issued an order forbidding publication of juvenile crime news until after a trial is held and the court has acted. Judge David A. McKee, while admitting that a State law banning use of names is not conducive of correction or a deterrent of wrongdoing of others, nevertheless said publication should be of facts established and not of mere accusations.

X. THE PRESS AND THE BAR

In January, the New York State Bar Association adopted a new canon 20 of its code of ethics, which, under penalty of disbarment, stipulates:

"It is unprofessional for a lawyer to make, or to sanction the issuance, or use by another, of any press release, statement, or other disclosure of information, whether of alleged facts or of opinion, for release to the public by newspaper, radio, television, or other means of public information, relating to any pending or anticipated civil action or proceeding or criminal prosecution, the purpose or effect of which may be to prejudice or interfere with a fair trial in the courts or with the administration of justice."

Because such a canon, if rigidly enforced within the bar, would apply legal censorship to all information concerning all court suits and trials until after the judge's final verdict, your chairman lodged an official protest with leaders of the New York State Bar Association based on the following reasons:

1. It is a direct abridgment of the great American principle of open justice, set forth in our Constitution.

2. It is an abridgment of the constitutional principle of freedom of the press in that it, by necessity, creates censorship either through the bar association or through the courts.

3. It is an outright abridgment of the constitutional principle of free speech.

Your chairman's protest resulted in an exchange of correspondence through February, March, and April, in which the leaders of the New York State Bar Association debated the matters of star chamber justice and abridgment of freedom of the press but studiously avoided even mentioning abridgment of the constitutional principle of free speech.

They based most of their debate upon the necessity of disciplining lawyers who sought to try their cases in newspapers and upon the matter of pretrial confessions of defendants in criminal proceedings.

Your chairman based his debate upon the simple ground that American courts of justice belong to the American people, that all lawyers are servants of the court and thereby are servants of the people, and that all of their actions and the actions of the court should be open to the restraint of public opinion at the time.

Midway in the correspondence, the president of the New York Association of Prosecuting Attorneys joined in and offered five reasons why the new canon would abridge the rights and privileges of prosecuting attorneys. Your chairman replied that the new canon also would abridge the rights and privileges of those citizens facing prosecution.

In June, your committee issued this exchange of correspondence in an interim report as a matter of record, and subsequently, on appeal from California editors, copies were sent to the California State Bar Association and members of the California Supreme Court.

Your committee takes a most dim view of this new canon 20 of legal ethics and forthwith warns that if it is spread throughout the courts of justice of our land, it will constitute a serious new threat to freedom of information and the American people's right to know about their government.

XI. THE RIGHT TO SEE

Based upon the premise that the public has the right to see as well as know, freedom of information as concerns photo-journalism, and those men who report the events of the day through the lens of a camera, has advanced during the last year on all fronts.

Canon 35, the legal profession's ban of the news camera in the courtroom, still remained the focal point of abridgment of the public's right to see, but there were many indications that the lawyer is beginning to soften in the face of great scientific advances in photography.

The continuing reeducation program in behalf of news photography scored a notable victory in the courtroom of Criminal Court Judge Charles Gilbert, of Nashville, Tenn. After 2 years of permitting photographers the unofficial right to photograph proceedings in his court, he prepared a 26-page research paper relating to the coverage. Shortly thereafter, Judge Gilbert made the rights of news cameramen in his courtroom official provided they used small news cameras.

Approaching the problem of canon 35 from a different angle, a group of still and motion-picture photographers executed what is now known as Operation Noise.

Sparked by Dave Falconer, of the Portland Oregonian, the competing newspapers and TV channels contributed time, brains, and equipment for the experiment. It came about during the trial of a convicted district attorney, William M. Langley. One of his defense attorneys, K. C. Tanner, voiced objection to photographs, both during court and during recesses. He said the whirring of television cameras bothered him particularly.

This argument upon the part of the various bar associations, that cameras were too noisy, was flattened by Operation Noise.

The experiment was made in the courtroom of Presiding Judge Charles Redding, where trial conditions were duplicated except for the presence of the spectator crowd. Sound measurements were recorded on a decibel meter by men from the telephone company. The test was made in an empty courtroom, because camera sounds with the crowd present would be unmeasurable.

The decibel meter was located midway between the court rail and the judge's bench, where the lawyer's table is usually located. One by one, the photographers operated their equipment for the electronic ear.

Next, the meter picked up the sound of a witness being questioned, then three cameramen clicked their shutters simultaneously. The meter failed to register the whisper of the three shutters above what one of the telephone engineers termed the "normal level of conversation."

Test results, as noted by the observers, showed the Auricon Cine-Voice sound camera made no reading on the decibel scale, while the Speed Graphic, seldom used in courts, hit a score of 50, which is equal to the sound of a paper match being struck. Normal conversation registered at 60, a cough at 62, and an unsilenced door hit 64, the same score recorded for an attorney examining a witness.

Other cameras registered as follows in the tests: Bolex 16 millimeter, average 44; Bell & Howell 70DR 16 millimeter, maximum 48; Leica M3, maximum 44; Nikon S-2, maximum 48; Contaflex II, maximum 53, and Rolleiflex 2.8G, maximum 48. Rewind and cocking sounds varied little from the maximums.

The comparison of decibel ratings between photographic equipment and normal courtroom noise is certainly conclusive proof that any sounds from photo equipment would not disturb a court while in session.

As a result of speeches, motion pictures, articles, and demonstrations by various photographers and others interested in the promotion of courtroom photography throughout the country, more and more courts permitted photo-journalists to cover trials of public interest during 1957. While the actual number of courts that have permitted photo coverage is small in comparison to the number of courts in existence, each one represents a gain.

Few incidents of clashes between law enforcement agents and news cameramen also were reported during 1957.

Because a Philadelphia policeman forcibly prevented a photographer from the Philadelphia Bulletin from taking pictures at a political rally, a new ruling was handed down by City Solicitor David Berger declaring the rights of newsmen to depict police action for the public.

Since then a press seminar is held for each class of graduating Philadelphia police rookies. At the seminar a local managing editor discusses the concept of freedom of the press, a city editor describes the process of covering the news, a district reporter and photographer describe their jobs, and a veteran policeman recounts his experiences with newsmen.

Private censors, those people who try to cover up mistakes, irregularities, and what they consider bad publicity, have always been a thorn in the side of news cameramen.

When Bob Bartlett, of the Martinsville (Va.) Bulletin, had his camera torn from around his neck by an official of the National Association for Stock Car Auto Racing at the scene of an accident, he pressed charges through the courts. The National Press Photographers' Association made a strong presentation in Bartlett's behalf, but his paper would not back him up when he pressed his charges, claiming that he was acting as one individual against another individual. This, of course, ended the investigation.

A motion-picture actor, Tony Franciosa, took it upon himself to censor a photographer, Bill Walker, Los Angeles Herald-Express, in Los Angeles Superior Court. He had accompanied Shelley Winters as she went to bid on a house for sale.

Walker was slugged, kicked, and had his camera and watch smashed. He immediately filed charges against Franciosa. Found guilty of assault and sentenced to 10 days in jail, the sobbing actor listened while Judge Mark Brandler admonished him.

"Since this unprovoked and cowardly assault," stated Judge Brandler, "with the use of your foot resulted primarily from your persistent but futile efforts to, in effect, muzzle the press and prevent the dissemination of news and information to the public, this court feels compelled to review the facts and then comment on the legal principles involved. * * *"

Regarding Franciosa's "right of privacy," the jurist said: "It is the right to be let alone. This protection is given to persons who live ordinary private lives and covers only the private aspects of their lives. If Miss Winters had any right of privacy, she waived any such right to be let alone and remain anonymous when she appeared in court and submitted a bid to purchase a home."

When Secretary of State John Foster Dulles cracked the door slightly to permit 24 of the Nation's news media to send one man each to Red China, he also kept the door tightly locked to news photographers. NPPA immediately issued a joint statement with the American Society of Magazine Photographers protesting such discrimination. A strong letter was sent directly to Mr. Dulles by the NPPA, pointing out that "words with pictures present to the American public a more complete, truthful, and accurate report than would otherwise be possible."

By discriminating against the professional photo journalist, "the Government is depriving the American people their right to see and judge for themselves those occurrences described in the word report."

In reply the State Department stated, "* * * permission to a limited number of news gatherers to go to Communist China would be in accord with our foreign policy whereas to let an unlimited number go could produce adverse effect in the Far East area."

Although the field of photo journalism is relatively new as compared to word reporting, each year finds that more and more people in all walks of life are looking to pictures in the news. The National Press Photographers Association proudly points out that the day is not far off when the man with the camera will be regarded in the same light as the man with the pencil * * * as a person who reports the news. And your committee supports this statement.

XII. RADIO AND TELEVISION

American broadcasters succeeded this year in opening several legislative and judicial doors which had been barred to microphones and cameras. Others, however, remained closed to electronic newsmen.

One of the most important achievements was the opening of the Florida House of Representatives to television cameras on May 1, after the Rules Committee had made a unanimous recommendation to permit televising of the proceedings.

In New York, on the other hand, the city council refused to permit radio and television coverage of its sessions, despite a detailed hearing on the subject. One of the arguments against granting permission was that the councilmen might make grammatical errors.

In Washington, House Speaker Sam Rayburn remained adamant in refusing to open House committee hearings to broadcasters. Representative Madden (Democrat, of Indiana) proposed a resolution to require the Secretary of State to approve any questions asked to Communist leaders by radio or television newsmen. The resolution was not acted upon.

The House Subcommittee on Government Information, continuing its efforts to pry out news from Federal agencies, persuaded the Department of Agriculture to modify regulations on cooperation with film producers. The Department agreed to omit news film stories from rules requiring approval of script and pictures.

The American Bar Association took no action looking toward modification of Canon 35, which opposes courtroom photography and broadcasts. The ABA House of Delegates will debate proposed changes in February 1958. Broadcasting organizations in several communities met with judges and lawyers to demonstrate that cameras can be unobtrusive, and in some instances received favorable action. A University of Oklahoma survey indicated that 83 percent of trial judges in Oklahoma are favorably inclined toward television news film coverage of court proceedings.

In Texarkana, Tex., Circuit Judge Lyle Brown opened a murder trial to cameras and sound recording equipment. He prohibited broadcast of the actual testimony until a verdict was reached. A television camera was permitted in a corridor outside the courtroom. In Cleveland a judge approved broadcasting of actual court traffic cases via tape recordings.

Not all court matters, however, turned out so successfully for broadcasters. In Tallahassee, Fla., City Judge John Rudd held a television cameraman in contempt of court because he failed to destroy film taken of witnesses in a corridor outside the courtroom.

Arthur Selikoff, a newsman for station KVOX at Moorhead, Minn., was fined \$10 for contempt of court after a dispute with Police Magistrate Roscoe Brown. Selikoff asked for permission to record a hearing, and Brown's refusal led to an argument.

Unhappily, working relations between newspaper reporters and radio and television newsmen did not always reflect harmony. In Los Angeles newspapermen refused to let television cameras or tape recorders be set up at news conferences or during pool interviews. A similar situation prevailed at Idlewild Airport in New York, where newspapermen succeeded in getting separate interviews with traveling celebrities.

Your committee urges that every effort be made locally to iron out such difficulties, in order that freedom of access may prevail for the entire news profession.

This report respectfully submitted to the 1957 Convention of Sigma Delta Chi Fraternity, meeting November 13-16, 1957, at Houston, Tex., by its Freedom of Information Committee. V. M. Newton, Jr., chairman, the Tampa (Fla.) Tribune; David W. Howe, publisher, the Free Press, Burlington, Vt.; Alvin E. Austin, head, department of journalism, University of North Dakota; James K. Toler, Commercial Appeal Bureau, Jackson, Miss.; Bert Struby, editor, News & Telegraph, Macon, Ga.; Clark Mollenhoff, Washington Bureau, Des Moines Register, Washington, D. C.; Theodore F. Koop, Columbia Broadcasting System, Washington, D. C.; J. Alex Zehner, Pittsburgh (Pa.) Sun-Telegraph; James R. Brooks, Ekco Products Co., Chicago, Ill.; Mort Stern, the Denver (Colorado) Post.

Among other matters, this report documents 93 cases of direct abridgement of the American people's right to know about their Federal Government, and I particularly submit these cases in support of Senate bill S. 921, which would remove one of the roadblocks to the free flow of information of Federal Government to the American people.

But these 93 cases do not tell the whole story. They tell only the incidents wherein the newspaper reporter has run headlong into the blanket of secrecy draped over most of the executive government in Washington. They do not tell of the mass of legitimate information which the Federal bureaucracy, through one subterfuge or another, like the present misuse of section 161 of the Revised Statutes, has withheld from the people, who pay all the bills with their taxes.

Few records of the seventy-odd billions of tax dollars, which the Federal bureaucrats spend each year, are available for the inspection of the taxpayer. No audited reports of this spending are submitted to the taxpayer for approval. Most of the information of the spending of the American citizen's tax dollars reaches him in the form of propaganda handouts written by governmental press agents, whose number has been estimated up to 50,000 and whose sole apparent aim is the prolonging of the political life of his bureaucratic boss.

Let me give you one little example. In recent days, our Federal bureaucrats have put on one of America's greatest propaganda shows in the effort to sell the American people on the beauties of bigger tax funds for foreign aid. Now, it is my sincere belief that the average American citizen does not object to a percentage of his tax dollar going to foreign aid. For one thing, it is the greatest Christian act on the part of a people toward their lesser endowed neighbors in the history of the world.

But the American people would like, and are entitled, to know whether or not their foreign aid funds are being wasted, stolen, or

spent wisely. Yet, since the close of World War II, our Federal bureaucrats have spent approximately 58 billions of tax funds in foreign aid and have never accounted for 1 penny of this to the American people.

The only glimmer of the true facts of the Federal bureaucrats' spending of the American people's tax funds has come to the citizen from the revelations of the investigating committees of the Congress. And now the bureaucrats, led by Attorney General William P. Rogers, have come up with the unctious and sanctified doctrine of executive privilege as the somewhat doubtful legal technicality for the withholding of legitimate facts of Federal Government not only from the American people but from Congress.

I have in my files 15 documented cases of this growing trend wherein the bureaucrats use the queer but questionable doctrine of executive privilege to withhold legitimate facts of Government from the Congress. But if the Congressmen think they have headaches in extracting facts of Government from the bureaucrats, they should try the frustrations of a newspaper editor in seeking such legitimate information as soil subsidy payments, employees' salaries, and terms of Government leases from such public servants as Secretary of Agriculture Ezra Taft Benson, Postmaster General Arthur E. Summerfield, and numerous others.

We do not have this widespread secret government in the lower levels of American Government. In most cases, all the records of the bureaucrats' expenditure of the citizen's tax funds in the city, county, and State governments of our land are open to the inspection of the taxpayer. Furthermore, in most cases, our city, county, and State bureaucrats submit audited reports of their public spending for the approval of the taxpayer.

Whenever and wherever the bureaucrat in our city, county, and State governments has balked at coming clean with the people's business, the American people, through their representatives in their State legislatures, have demanded and gotten clear-cut laws guaranteeing open government. Today 29 States have these laws on their books guaranteeing their citizens the constant right of inspecting records of their governments. And 17 States have laws guaranteeing open meetings of their public servants in conducting the people's business.

A list of these States is contained in the Sigma Delta Chi freedom of information report, which I have filed with this committee. I shall not repeat their names in this statement but I would like to point out that last year the American people of eight States—Vermont, Connecticut, Pennsylvania, Tennessee, Minnesota, North Dakota, Kansas, and Illinois—demanded and got these laws for freedom of information. And I would like to point out further that these freedom of information laws are before the legislatures of South Carolina, Kentucky, and Michigan today, and that groups of citizens are now organizing to support similar laws for submission next year to the legislatures of Maine, Maryland, West Virginia, New York, Mississippi, Texas, Arizona, and other States.

The Orville Hodge case in Illinois, wherein this character serving as State auditor, stole \$2.5 million of the people's tax funds, gave impetus to the American people's drive for open government on the State level last year. Hodge was able to steal the people's tax funds only through slapping a lid of secrecy on the records of his office, and

his thievery points up clearly the fact that all the world's great corruptions of government, including the corruptions of freedom, always have taken place behind the locked doors of secret government and not out in the open where the restraint of an informed public opinion is exercised.

Thus, we have the strange paradox of the American people demanding and getting open government in their cities, counties, and States; whereas, our Federal public servants, who spend seventy-odd billions of the people's tax funds each year, are tightening up their vises of secrecy upon the people's business, and they are doing this mainly through legal quibbling and legal technicalities.

We take little stock in the legal quibbling of the bureaucrats over their secret government down in the city, county, and State levels of American government, and we just plain don't understand Attorney General Rogers when he talks about his "doctrine of executive privilege." You see, down in the States, we have the "doctrine of the people's privilege."

Let me tell you what happened in California. The legislature of that great State adopted a blanket ban on secrecy in State government 4 years ago. Whereupon, the California State bureaucrats began the same legal quibbling which is so prevalent in our Federal Government today. So last year, the legislature, under pressure from the California people who want to know about their government, unanimously adopted 64 new laws, 1 for each of the 64 State bureaus, stipulating by name that it must conduct the California people's business in the open.

In my correspondence with the Attorney General and his assistant over Senate bill S. 921 and over Mr. Rogers' testimony on his "doctrine of executive privilege" before this committee, I pointed out that he is using the smoke screen of legal technicalities to confuse the real issue, which is whether or not the American people are going to receive the information of their Government at the time and not after the fact, when too often in history it has been too late.

In his testimony before this committee, Mr. Rogers said, and I quote:

We do believe that S. 921 would not clarify section 161 of Revised Statutes. In the absence of legislative history or more specific language we cannot determine with any degree of certainty the effect of S. 921.

There is no such mystification over the clarification of the English language in the lower levels of American Government, and I believe we have just as good lawyers in our cities, counties and States as we do in our Federal Government. In law after law in the States pertaining to public records, virtually the same language is used as is used in section 161 of the Revised Statutes. The Florida law on inspection of records reads:

All State, county, and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen.

The second part of the law, which can be found in chapter 119 of the Florida Statutes, provides a penalty of impeachment, fine, or jail sentence for those public servants who violate the law. And the third part of the law says, in part, that any person having the right of inspection—

shall hereafter have the right of access to said records, documents, or instruments for the purpose of making photographs of the same while in possession, custody, and control of the lawful custodian of the said records, or his authorized deputy.

You will find the same general legal language, without any misunderstanding on the part of anyone, in numerous other State statutes. The South Dakota law uses such language as the "keeping of a record, or the preserving of a document"; the Wisconsin law uses the word "custodian" in referring to those in charge of records; and the Alabama law uses the words "custody" and "charge." Furthermore, in the daily application of the laws, the usual legal terms have provoked no confusing spray of legal technicalities, no question of the meaning of the words of the English language, and no reference whatsoever to the "doctrine of executive privilege."

There is an even better comparison. Some twenty-odd-years ago, when Congress yielded to the plea of the Federal Department of Welfare and voted censorship upon the names of all Federal welfare recipients, the Federal Department of Welfare, through its Federal attorneys, drew a sample law and insisted that State legislatures adopt it before receiving Federal welfare funds.

But before I give you this law, permit me to quote section 161 of the Revised Statutes, so that we can get a better firsthand comparison. This Federal statute, which apparently has confused Attorney General Rogers, reads, and I quote:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the Government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it.

Now let us look at the old Federal welfare law, which was adopted on insistence of Federal authorities, by the various State legislatures. The first sentence of section 25-127 of the Wyoming Compiled Statutes, 1945, reads as follows:

The rulemaking powers of the State department of public welfare shall include the power to establish and enforce rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the State and county departments.

Note the almost exact language. Yet the Federal attorneys of 1945 did not think that regulation sufficient to withhold information of Government from the people, as they do today. Because, let me quote to you the second sentence of this federally inspired Wyoming statute:

Wherever, under provisions of law, names and addresses of recipients of public assistance are furnished to or held by any other agency or department of Government shall be required to adopt regulations necessary to prevent the publication of lists thereof or their use for purposes not directly connected with the administration of public assistance.

The second paragraph of this old Wyoming law then goes on to stipulate that it shall be unlawful to disclose the names of anyone receiving Federal welfare.

Senate bill S. 921 would simply amend section 161 of the Revised Statutes by adding a last sentence, as follows:

This action does not authorize withholding information from the public or limiting the availability of records to the public.

Now Attorney General Rogers has stated to this committee his belief that Senate bill S. 921 would not clarify section 161 of the Revised Statutes.

I would like to present two observations from this comparison of laws to this committee.

First, after some 15 years of Federal bureaucratic-inspired censorship of the welfare records on the State level, the American people, through pressure of public opinion, insisted that Congress repeal this edict of secrecy.

Second, it was perfectly all right 20 years ago for the bureaucrats to tack sentences onto housekeeping statutes that would insure secrecy of Government; whereas, today it is a very great sin in the bureaucratic eyes for Congress to tack similar sentences onto the same housekeeping statutes that would remove all excuse for secret government.

In concluding his testimony before this committee, Attorney General Rogers dwelt lovingly upon the great bureaucratic regard for our national security. His words carried the usual insinuation that we in the free American press were adept in the practice of carelessly tossing our security secrets to the enemy. The Wright Commission on Government Security put this insinuation in plainer words last year when it proposed jail sentences for publishers and editors who printed security secrets and made the direct charge that American newsmen had violated our Nation's security.

I publicly challenged the Wright Commission to produce a single case wherein an American newsmen had violated security, and today I extend the same challenge to Attorney General Rogers and our entire Federal bureaucracy. And I say to you gentlemen that American newsmen, from the highest publisher to the lowliest cub reporter, are just as great patriots as our bureaucrats. And I say also that no patriotic editor would want to print one iota of information that would aid the enemy. Yet we in the free American press have sat by in good faith and watched Government so badly abuse this responsibility that virtually all Department of Defense news is censored, regardless of whether or not it affects national security and regardless also of the fact that more than 60 percent of the American tax dollar is spent on defense. And we have sat by in good faith also while spies and traitors, apparently operating at ease behind the cloak of governmental secrecy, slipped key American data to the enemy.

In conclusion, I would warn you Senators, representatives of the American people, of the very great dangers, as outlined time and again in the pages of history of an autocratic bureaucracy. We perhaps have not attained one as yet, but we are well on the way. We have today approximately 2,000 major Federal bureaus, agencies, and departments manned by public servants who are not responsible through election to the American people. We have also approximately 5,000 Federal committees, all of which wield tremendous power in the lives of the average American citizen.

And it seems a very great tragedy in American free government that Representative Dante Fascell of Florida last year had to introduce and get passed in the House of Representatives a bill that would force these 5,000 Federal advisory committees to reveal the identity

of their membership to Congress and to keep minutes of their secret meetings for the benefit of both Congress and the people.

And so, as a representative of the free American press, I urge you Senators to push the adoption of Senate bill S. 921 as the first step in opening up the avenues of the American people's right to know about their Government.

Gentlemen, on March 6, 1958, Attorney General Rogers appeared before your committee. I have read your testimony and I submit, although I am not a lawyer, the Attorney General himself gave you all the reason you need for passing S. 921. In my opinion Mr. Rogers, after admitting that R. S. 161 was a mere bookkeeping statute and should not be used as a legal basis for withholding information, then turned around and completely distorted his own statement. He has sought to confuse the record of your committee without legal support. He has given you his "Doctrine of Executive Privilege," which is nothing more than a legal smoke screen. In reply, I give you the "Doctrine of the People's Privilege," which is plain, simple language, as set forth in your amendment.

And I urge further that you, the elected representatives of the free American people, do all in your power in behalf of freedom of information, for it is only through the restraint of an informed public opinion that the growing autocracy of a bulging bureaucracy can be controlled.

Thank you.

Senator HENNINGS. Mr. Newton, thank you very much, sir, and with your indulgence there may be some questions by the other members of this committee.

Senator ERVIN?

Senator ERVIN. Mr. Chairman, I would like to ask Mr. Newton if he agrees that this is an accurate interpretation of the Attorney General's statement in reference to this matter that any official of the executive department of the Government has a right to withhold from the American people any information or any record, the disclosure of which he, in his uncontrolled discretion, thinks or says would not be in the public interest.

Mr. NEWTON. I must confess that my reading of Attorney General Rogers' statements left me very greatly confused. In January I led a subcommittee of the Sigma Delta Chi Freedom of Information Committee in to see Mr. Walsh, Mr. Rogers' Deputy, and for 1 hour and a half we discussed this matter, but the best I could gather from this was that it is the opinion of the Attorney General's Office that this whole question is an administrative problem and not a legislative problem.

My committee, of course, disagreed very strongly on that point. We feel that the people's business belongs in the hands of the people's representatives always.

Senator ERVIN. This is the conclusion that I came to as to the meaning, the ultimate meaning of his statements: namely, that any official of the executive branch of the Government can withhold any information or any records upon the excuse that its disclosure would not serve the public interest, and that there is no power on earth capable of reviewing the ruling of such official of the executive branch except the President of the United States.

Mr. NEWTON. That is perhaps what Attorney General Rogers is pointing to, and that has been evidenced by a number of indications recently in the Federal Government.

Senator ERVIN. If that be a true interpretation of the constitutional principle of the so-called Executive privilege, then the American people and their representatives in Congress can receive no information from the executive branch of the Government except that which comes to them as a matter of grace. Is that not true?

Mr. NEWTON. That is correct.

Senator ERVIN. Is that not, in your judgment, an astounding situation to exist in a country where the information is collected at the expense of the taxpayers, that the taxpayers and their representatives cannot receive access to the information which is gathered at the expense of the taxpayers?

Mr. NEWTON. As a citizen, I say that that is a great tragedy, and that free government cannot possibly exist under such a situation.

Senator ERVIN. That is all.

Senator HENNINGS. Thank you, Senator.

Senator Hruska, do you have any questions?

Senator HRUSKA. Yes.

I listened with great interest to your reference to the laws pertaining to the keeping of the public assistance rolls secret. It happened I was in the State government when we had a big hassle out our way on that very subject. It created quite a sensation.

I am wondering, however, Mr. Newton, supposing that statute were still on the books saying that it would be illegal for the disclosure of those names to be made, would the addition of the sentence contained in S. 921 to title 5 in the United States Code have made any difference?

Mr. NEWTON. If it would be substituted for the additional sentence that was placed on the housekeeping bill that insured secrecy of those names.

You see, if I go back to that comparison, you will note that the original welfare bill was almost word for word the words of the present section 161, which we are discussing, and that the Federal authorities insisted that they tack onto that a sentence or more than a sentence, guaranteeing secrecy of those names.

Senator HRUSKA. And making it expressly illegal to disclose them.

Mr. NEWTON. Yes, sir.

Senator HRUSKA. If that statute were still on the books, the one which makes it expressly illegal to disclose, the addition of the language contained in S. 921 would not make any difference; would it?

Mr. NEWTON. You would have a confusing thing. You would have 1 sentence calling for secrecy and 1 sentence calling for open government.

Senator HRUSKA. But we have a law which protects, for example, FBI files.

Mr. NEWTON. Yes; but we are not adding S. 921 onto the law protecting FBI files. We are simply trying to get this law through to eliminate the misuse of the old housekeeping statute.

Senator HRUSKA. I understand. But here is a law which preserves the sanctity of FBI files. Here is another law to which you referred and which for a time preserved the sanctity of public assistance rolls. Are you going to say S. 921 pertains to one but not to the other? And how would we know?

Mr. NEWTON. There are laws on our Federal books already guaranteeing the protection of the FBI records, and this bill S. 921 would not affect them.

Senator HENNINGS. If the Senator would yield, I quite agree with Mr. Newton's analysis of this. I think it is excellent. This is not in derogation of any other statute relating to protection of FBI files. I think the learned Senator from Nebraska will appreciate that.

Senator HRUSKA. I understand that. That is why, Mr. Chairman, I am making inquiry as to whether or not it would be in derogation of the law which provides for secrecy of public-assistance rolls. I cannot quite see the difference.

There may be others. Maybe there are other laws which would be affected. Maybe the files of the Tariff Commission, say, will be held sacrosanct. If such a law were on the books, would S. 921 make that information available?

Mr. NEWTON. No, sir.

Senator HRUSKA. It would not?

Mr. NEWTON. It would not supersede any other law. It would simply eliminate the misuse of the housekeeping statute for withholding information which should be revealed to the public.

Senator HRUSKA. In cases where there is no express law to the contrary.

Mr. NEWTON. That is correct.

Senator HRUSKA. Very well, that answers my question.

Senator HENNINGS. The learned Senator from Nebraska will recall when the Attorney General first appeared before the committee, he said that this related only to the—he used the words interchangeably—bookkeeping or housekeeping statute.

Senator HRUSKA. I was very pleased with the presentation of your statement, and also the enthusiasm with which you delivered, it Mr. Newton.

Mr. NEWTON. Thank you. I appreciate your saying that, very much.

Senator HENNINGS. Mr. Newton, it might be of interest to you to know that the Attorney General wrote me again when I asked him to appear after he had asked to have his testimony supplemented, and in many respects changed. I read it the direct opposite. At that time, the Attorney General said his reasoning had been set forth in his letter, and he had nothing else to add.

Do you agree, sir, that the Attorney General has clarified this matter for us, or has he left us in the dark as far as his own determination of the law and the effect of the so-called housekeeping statute, section 161? Has he further compounded the dilemma and the problem?

Mr. NEWTON. In my last exchange of letters, I pointed out to him that he was putting the people out in the States in such a position that they might eventually have to consider an amendment to the Constitution, in answer to this type of argument, and that that seemed like an awful waste of time and trouble for the American people to have to resort to in order to gain information of their free American Government.

Senator HENNINGS. But still, with all due respect to the Attorney General, I say that he testified one way one day and another way by letter and additional memorandum another day.

Mr. NEWTON. That is correct.

Senator HENNINGS. They were directly opposite and contradictory, and one repudiated the other, so to speak. His last memorandum or letter repudiated his original testimony, as you know. There is no other interpretation that could be placed upon it.

Mr. NEWTON. As I pointed out, it was not only confusing but it was a smokescreen.

Senator HENNINGS. Mr. Newton, we are very grateful indeed to you for being here this morning and being such a help to us. You have come with a carefully prepared and thoughtful statement.

Mr. NEWTON. Thank you.

Senator HENNINGS. Thank you very much, sir. We are all gratefully in your debt.

Mr. NEWTON. Thank you, sir.

Senator HENNINGS. Just a moment. Our counsel, Mr. Slayman, may have some further question or observation to make.

Mr. SLAYMAN. Since our hearing of the Attorney General on March 6, we have had this exchange of correspondence, and since there has not been an official note made in the record so far, I would suggest that this exchange be included in the record.

Senator HENNINGS. Yes. Without objection, gentlemen of the committee, I would like to include the Attorney General's letter to me of March 13, 1958, and my letter of March 25 to the Attorney General, where we undertake to say that his testimony has been contradictory, and to invite him to return at a date mutually convenient more fully to explain—and I quote—

your views on the housekeeping statute and its exact relationship, if any, to the so-called executive privilege and our continuing study of secrecy in Government and the unwarranted withholding of information to which the American people are entitled.

Therefore, without objection, I should like to have included in the record the Attorney General's reply to me under date of April 4, in which he says that he believes that he has made a clear statement and that—as he said—

my reasons are set forth in full in my statement and supplementary letter, and I have nothing else to add. My position is perfectly clear—

says the Attorney General.

Well, some of us, at least, do not think his position is at all clear. We think it is more than opaque. We want him to come up and tell us whether he meant what he said the first time he appeared, or whether he wanted us to rely upon his testimony by supplementary letter and memorandum thereafter. We cannot rely upon both, because they are like the Antipodes. They are poles apart. They both could not be right.

Without objection, I will offer the correspondence for the record. (The correspondence referred to above is as follows:)

DEPARTMENT OF JUSTICE,
Washington, D. C., March 13, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights,

United States Senate, Washington, D. C.

DEAR SENATOR: You will recall that in my testimony on March 6 before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee I emphasized that Executive privilege, in regard to documents and the decision-

making process, like similar judicial and legislative privileges, stems from the constitutional principle of separation of powers. In response to questions by you I stated that section 161 of the Revised Statutes (5 U. S. C. 22) was not itself the fundamental basis for executive privilege. I desire to make clear the relationship which in my opinion section 161 bears to the fundamental basis of executive privilege, the constitutional separation of powers. I would be pleased if you would append this letter together with footnotes as an extension of my testimony before your committee.

Section 161 is a legislative expression and recognition of the Executive privilege. Thus reliance on this statute by an Executive Department is in effect reliance on the constitutional Executive privilege as recognized by Congress since 1789.

Section 161 of the Revised Statutes is essentially a codification of section 2 of the 1789 act creating a Department of Foreign Affairs and its counterparts for the other early Executive departments (1 Stat. 28, 49, 65, 68, 553).¹ The historical refusals of the Executive Branch to acquiesce in Congressional demands for Executive documents have been based, not on any statute alone, but on the Constitution itself, for R. S. 161, itself reflects the independence of Congress and the Executive Branch of each other. The historical antecedents of R. S. 161, going back to the First Congress and the legislative decision of 1789, show that it was intended to be a grant of independent authority, in accordance with and as part of the fabric of the Constitutional plan of separation of powers. The statute carries out the constitutional plan by authorizing the head of each department to prescribe appropriate regulations for the custody of documents.

To show that this custody of documents is a matter placed within the Executive Branch, and intended to be subject only to regulation by the executive branch, one need only refer to the important distinction between the first statute setting up the Department of Foreign Affairs (the historical antecedent of R. S. 161), and its complete dissimilarity with the statute establishing the Department of Foreign Affairs under the Continental Congress, as discussed on pages 7 and 8 of my prepared statement. In the majority opinion in the *Myers case*,² Chief Justice Taft set forth in some detail the controversy in the House of Representatives in the First Congress, respecting the provisions of the bill to establish the Department of Foreign Affairs, which I discussed (pp. 8-9 of my prepared statement). Even in the condensed form in which that debate can be viewed in reading the annals of Congress, that bill raised the basic question respecting the separation of powers under the Constitution.

This basic question was crystallized in two provisions of the bill. The first would have provided that at the head of the Department there should be a Secretary, to be appointed by the President, by and with the advice and consent of the Senate, and "to be removable from office by the President * * *." In regard to the reference in the bill to the power of removal by the President, there was objection on the ground that any such reference might suggest that the President's power to remove stemmed from a legislative grant and was thus subject to revocation.³

The second provision of the bill would have provided that there should be a chief clerk to be appointed by the Secretary who in case of vacancy in the Office of the Secretary, should have the charge and custody of all records, books, and papers appertaining to the department. Congressman Benson, of New York, proposed to amend that second provision in order to provide that the chief clerk, "whenever the said principal officer (the Secretary) shall be removed from office by the President of the United States or in any other case of vacancy," should during such vacancy have the charge and custody of the departmental books and records. Congressman Benson maintained that his amendment thus avoided the point as to whether the words "to be removable by the President" in the first provision might be construed to be a legislative grant. He further stated that if his amendment were adopted, he would then move to strike the words "to be removable by the President" in the first provision, and that there would thus be established a legislative construction of the Constitution that the President had the power of removal.⁴

Both proposals were adopted. The words "to be removable by the President" in the first provision were stricken from the bill, and Congressman Benson's

¹ See, Historical Note to 5 U. S. C. sec. 22; *Touhy v. Ragen*, 340 U. S. 462, 468.

² *Myers v. United States*, 272 U. S. 52, 111-137.

³ *Id.*, 112.

⁴ *Id.*, 113; 1 Annals of Congress 578 (1789).

amendment inserting the words in regard to the removal of the Secretary by the President was also adopted in the second provision. Mr. Madison, who had been a member of the Constitutional Convention and one of the authors of the Federalist, was then a Congressman in the First Congress and took a leading role in effecting this constitutional construction. Chief Justice Taft's opinion in the *Myers* case declares that Mr. Madison's "arguments in support of the President's constitutional power of removal independently of Congressional provision, and without the consent of the Senate, were masterly, and he carried the House."⁵

This is the legislative decision of 1789. It established the principle that the reasonable construction of the Constitution must be that the three branches of the Federal Government should be kept separate in all cases in which they were not expressly blended, and that no legislation should be enacted by the Congress which would tend to obscure the dividing lines between the three great branches or cast doubt upon the prerogatives properly belonging by the Constitution to any one.

Therefore, I consider S. 921 and H. R. 2767 as proposals which, if they have any meaning or vitality at all, can serve only to do what was emphatically rejected by Mr. Madison and others in the First Congress under the new Constitution; i. e., confuse the Constitutional lines of demarcation and responsibility among the three separate branches. The proposed statute can no more restrict Executive privileges and responsibilities, which stem from the Constitution, than could the legislation proposed in 1789. Moreover, it could have a very mischievous effect by confusing and clouding those Executive privileges and responsibilities. This was in part the basis of the objection which was successfully sustained in 1789.

Legislative proposals similar to S. 921 and H. R. 2767 have arisen from time to time. Joint Resolution 342, of the 80th Congress, was perhaps a more ambitious attempt in the same general field. When the measure was considered by the House on May 12 and 13, 1948, Mr. Rayburn, then a Member of Congress though not Speaker, had these pertinent remarks to make:

"I do not know what you think the powers of Congress are. Are they limitless? Is there no limit under the Constitution to which any Congress, much less a very partisan one, would go? Back in the formative period of this Government there was a great jurist. * * * In 1803 he gave forth this language in a very familiar case (and at this point Mr. Rayburn quoted the language of Chief Justice Marshall in *Marbury v. Madison*, dealing with the principle of the separation of powers, which I cited on page 25 of my prepared statement).

"Pass this resolution. The President says to his cabinet officer, 'No, you are my agent, you are my alter ego; do not give that information to the Congress.'

"What are you going to do about it? You might have an unseemly session, an unseemly row upon the floor of the House of Representatives. What are you going to do about it? Are you going to impeach the President of the United States because he says the giving up of certain information is not in the public interest? * * *⁶

"Who is better prepared? Who knows more about our foreign affairs? He knows better than any other man in the Government—not you; not me. Who knows better what is necessary to bring an army and navy and an air force together to defend the country than the President of the United States? And in his wise discretion he makes recommendations to Congress."⁷

And in the same debate Mr. McCormack of Massachusetts, now majority leader in the House of Representatives, argued:

"I must recognize that there must be an independence of the other branches which must be preserved the same as the independence of the legislative branch must be preserved, and I say that under our form of government, consisting of the three coordinate branches, the President of the United States is the one to judge, and not the Congress. And, in turn, the judge of the President of the United States is the people."⁸

Congressman McCormack then took up the argument that since Congress may appropriate money for the agencies and may destroy all of them, it is entitled to the papers in the possession of the agencies against the decision of the President.

⁵ Id., 115.

⁶ Congressional Record, May 12, 1948, p. 5740.

⁷ Id.

⁸ Congressional Record, May 12, 1948, p. 5712.

"We could not administer the executive branches of Government, because under the Constitution we cannot. Never mind the practical difficulties, we simply cannot. So with the argument that we have the power to appropriate, then it becomes a higher political question of us with the people, just the same as in the case of the President who says that 'these papers are papers that in the exercise of my duty as President of the United States and under the Constitution I should not transmit,' then he has to answer to the people * * *"⁹

These arguments of Congressmen Rayburn and McCormack in 1948 are expressions completely consistent with the Constitutional and practical arguments which I have advanced to your committee.

Similar independence as against the judiciary was also asserted by the Congress when attempts were made to compel it to disclose certain information to the Court. It was resolved that "no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission."¹⁰

Here too, where records of the Executive branch are involved, reasons of public policy in the interest of efficient and effective government, require that access to certain documents and other information shall not be permitted, if the President in his sound discretion determines that it would be contrary to the public's best interests to make them available.

For the reasons stated, I am opposed to the enactment of S. 921 and S. 2148.

Sincerely,

WILLIAM P. ROGERS, Attorney General.

UNITED STATES SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D. C., March 25, 1958.

Hon. WILLIAM P. ROGERS,

Attorney General of the United States,

Department of Justice, Washington, D. C.

DEAR MR. ATTORNEY GENERAL: In accordance with your request, I have directed that your letter to me dated March 13, 1958, dealing with section 161 of the Revised Statutes (5 U. S. C. 22) and its relationship to what you call the "Executive privilege," be appended as an extension of your testimony before the Subcommittee on Constitutional Rights on March 6. When the record of your original testimony is printed, your letter of March 13 will be included.

At the time you concluded your oral testimony before the subcommittee on March 6, it was my understanding that you agreed with me that section 161 was merely a "housekeeping" statute which had been cited incorrectly by various Executive Department officials as authority to withhold information. In fact, you yourself used the terms "housekeeping" and "bookkeeping" to describe the statute (see the transcript of your testimony, p. 52), and you stated (transcript, p. 54) "I think when they have cited the statute, it has been incorrectly cited because I don't believe the statute is the basis for not giving information."

It was my understanding also that you agreed with me that this "housekeeping" statute had no relation whatsoever to any constitutional executive privilege to withhold information. You not only stated that "the executive privilege is not related to any statute" (transcript, p. 51), but you added, "Now I don't recall any instances when Washington, Jefferson, or Truman or anyone else ever relied upon this statute as a basis of executive privilege. It is something entirely different. This is a bookkeeping statute, which says they keep the records, they hold them physically. It doesn't relate at all to executive privilege" (transcript, p. 52).

In view of your specific testimony on March 6, your letter of March 13 is not only surprising but shocking.

You state in your letter that "Section 161 is a legislative expression and recognition of the Executive privilege. Thus reliance on this statute by an Executive Department is in effect reliance on the constitutional Executive privilege as recognized by Congress since 1789." Clearly this language directly repudiates your original testimony before the subcommittee, especially where you said that

⁹ Id.

¹⁰ H. Res. 427, 81st Cong., 2d sess., see 96 Congressional Record 565-66; 96 Congressional Record 1400; H. Res. 465, 96 Congressional Record 1695; H. Res. 469, 96 Congressional Record 1765.

the statute "doesn't relate at all to executive privilege." Not only do you seem to have completely reversed your previous position, but you now seem to be arguing that since 1789 Congress has recognized a relationship between section 161 and the so-called executive privilege which just two weeks ago you said did not even exist.

Another of the many points that is surprising about both your testimony on March 6 and your letter of March 13, is your comments on S. 921, the freedom of information bill now pending before the Constitutional Rights Subcommittee. In your original testimony you said that this bill, which I introduced in the Senate for the specific purpose of preventing executive department officials from further incorrectly citing section 161, is "meaningless" and that—I am still quoting you—"the people that are sponsoring it are kidding themselves that it means anything" (transcript, p. 52). You stated that if it were made clear that the bill in no way impaired the executive privilege, "all it would do is prevent people from citing the statute incorrectly" (transcript, p. 54).

Frankly, Mr. Attorney General, it is shocking to hear such a view expressed by the chief legal officer of the Government. So that there can be no misunderstanding, let me make my own position as sponsor of this bill abundantly clear. Precisely what I want to do is "prevent people from citing the statute incorrectly." While perhaps to some persons it is "meaningless" to attempt to prevent self-appointed, would-be censors in the executive departments from citing this statute incorrectly, to me it is vitally important that this be done. I assure you I intend to continue to do everything in my power to see that neither this nor any other statute on the books is misused in such fashion.

In my opinion, your letter of March 13, when compared to your original testimony, raises many more questions than it answers. Some of these I have indicated to you in this letter.

I would appreciate it, and I feel certain it would be of great help to all of the members of the subcommittee, if you would agree to return on a mutually convenient date and more fully explain your views on the "housekeeping" statute and its exact relationship, if any, to the so-called "Executive privilege" in our continuing study of secrecy in Government and the unwarranted withholding of information to which the American people are entitled.

Sincerely yours,

THOMAS C. HENNINGS, Jr., *Chairman*.

UNITED STATES SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D. C. April 8, 1958.

Hon. WILLIAM P. ROGERS,

*Attorney General of the United States,
Department of Justice, Washington, D. C.*

DEAR MR. ATTORNEY GENERAL: On March 25, 1958, I wrote you concerning your testimony before the Senate Constitutional Rights Subcommittee on March 6 and your subsequent letter dated March 13, regarding the subject of freedom of information and a pending bill, S. 921 to amend section 161 of the Revised Statutes (5 U. S. C. 22). I invited you to appear at some mutually convenient time and more fully explain your views which I think are contradictory, considering your testimony in person and the contents of your letter.

I have received no reply to date from you in response to my invitation.

Therefore, this is to invite you to appear at a specific time and date: At 10 a. m. Wednesday morning, April 16, 1958, in room 357 of the Senate Office Building, Washington, D. C.

You might like to know that the subcommittee met in executive session today; considerable interest was expressed by members of the subcommittee in your position on freedom of information; it is clear that we want you to return and clarify your position.

Trusting that the date and time selected will be convenient for you, I am,
Sincerely yours,

THOMAS C. HENNINGS, Jr., *Chairman*.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., April 4, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR: I have received your two letters and noted your three press releases.

The material discussed in my supplementary letter was originally prepared for inclusion in my original statement, but was eliminated in the interest of brevity. After my testimony I thought this material and its detailed discussion of historical precedents should be placed at the Committee's disposal. It illuminates the matters covered only briefly in my testimony, and along with my original statement presents as a whole a consistent historical analysis of the Executive, Legislative, and Judicial privileges.

My position is perfectly clear. In response to your questions I stated, and reiterate, that I have no objection to the passage of S. 921 if it is amended so as to recognize explicitly the constitutional Executive privilege. I adhere to the interpretation of the Constitution which was placed upon it in the first session of the First Congress by James Madison and the other drafters of the Constitution. It has been followed by George Washington and his Attorney General and by every President and every Attorney General since.

My reasons are set forth in full in my statement and supplementary letter. I have nothing else to add.

Sincerely,

WILLIAM P. ROGERS, Attorney General.

Mr. SLAYMAN. Mr. Chairman, I invite Senator Hruska's attention to the fact that we have located around 80 separate statutes providing for limiting information to be disseminated in many different categories, and none of those are affected by this particular amendment and this particular statute. So if there is specific authority in a statute, to an agency, executive department, or service or board or commission, it will not be affected by this amendment or this statute.

Senator HRUSKA. I am glad to know that. It emphasizes even more the point I tried to raise in questioning Mr. Newton. After all, that is a matter of policy. When a specific exception is made, that is a matter of congressional policy. I think the press should be commended in the instance of the example in regard to public assistance; that enough pressure was brought to bear legislatively to get that particular suppression repealed so that that information could legitimately and legally be disclosed.

Mr. Chairman, I should like to make these further observations along this line, as I do have the floor, with your permission.

Senator HENNINGS. Certainly.

Senator HRUSKA. And I make these remarks with the greatest of deference and respect to the chairman here. Certain conclusions have been expressed by the chairman with reference to the testimony of the Attorney General. I do not think I should sit here without making this statement. I believe I would be derelict if I were to sit here without saying that to some people, the result was opaqueness, after considering all the information he disclosed to the committee. On the other hand, to other members of the committee, of whom I am one, his information was enlightening, and I thought that it was bottomed on some very fine, sound reasoning. I thought it disclosed a consideration of constitutional aspects which are inescapable.

We might refer to this S. 921 and the amendment of the section 161, and I do not know but what I am in sympathy with it. I cer-

tainly am in sympathy with the objectives of those who advocate them, but I cannot quite share in your conclusion, if I may respectfully say so, Mr. Chairman, which was expressed here.

Senator HENNINGS. That is perfectly all right. Lawyers very often disagree and are able to express their respectful opinions on widely divergent subjects and legal conclusions. I thank you, Senator, for your contribution.

Senator ERVIN. Mr. Chairman, let me make an observation at this point.

The fact that Congress has enacted about 80 specific statutes authorizing various agencies and departments of the executive branch of the Government to withhold information would indicate very strongly to my mind that Congress has never accepted the theory that the executive branch has a right to withhold from Congress, the press, or the American people, any information which some executive official might think ought not to be disclosed.

Senator HENNINGS. I would consider that a very excellent point in support of our point of view.

We thank you very much, Mr. Newton, and appreciate, again may I say on behalf of the committee and the Senate, your having been here.

Mr. NEWTON. Thank you.

(The text of Mr. Newton's prepared statement follows:)

STATEMENT OF V. M. NEWTON, JR., MANAGING EDITOR, TAMPA (FLA.) TRIBUNE AND
CHAIRMAN, SIGMA DELTA CHI FREEDOM OF INFORMATION COMMITTEE

I submit herewith for the records of the Senate Subcommittee on Constitutional Rights the 1957 report of the national freedom of information committee of Sigma Delta Chi, the professional journalistic fraternity which has 20,000 publishers, editors, and newsmen as members, of which I am chairman.

Among other matters, this report documents 93 cases of direct abridgment of the American people's right to know about their Federal Government, and I particularly submit these cases in support of Senate bill S. 921, which would remove one of the roadblocks to the free flow of information of Federal Government to the American people.

But these 93 cases do not tell the whole story. They tell only the incidents wherein the newspaper reporter has run headlong into the blanket of secrecy draped over most of the executive government in Washington. They do not tell of the mass of legitimate information which the Federal bureaucracy, through one subterfuge or another, like the present misuse of section 161 of the Revised Statutes, has withheld from the people, who pay all the bills with their taxes.

Few records of the seventy-odd billions of tax dollars, which the Federal bureaucrats spend each year, are available for the inspection of the taxpayer. No audited reports of this spending are submitted to the taxpayer for approval. Most of the information of the spending of the American citizen's tax dollars reaches him in the form of propaganda handouts written by governmental press agents, whose number has been estimated up to 50,000 and whose sole apparent aim is the prolonging of the political life of his bureaucratic boss.

Let me give you one little example. In recent days, our Federal bureaucrats have put on one of America's greatest propaganda shows in the effort to sell the American people on the beauties of bigger tax funds for foreign aid. Now it is my sincere belief that the average American citizen does not object to a percentage of his tax dollar going to foreign aid. For one thing, it is the greatest Christian act on the part of a people toward their lesser endowed neighbors in the history of the world.

But the American people would like—and are entitled—to know whether or not their foreign aid funds are being wasted, stolen or spent wisely. Yet, since the close of World War II, our Federal bureaucrats have spent approximately 58 billions of tax funds in foreign aid and have never accounted for 1 penny of this to the American people.

The only glimmer of the true facts of the Federal bureaucrats' spending of the American people's tax funds has come to the citizen from the revelations of the investigating committees of the Congress. And now the bureaucrats, led by Attorney General William P. Rogers, have come up with the unctuous and sanctified "doctrine of executive privilege" as the somewhat doubtful legal technicality for the withholding of legitimate facts of Federal Government not only from the American people but from Congress.

I have in my files 15 documented cases of this growing trend wherein the bureaucrats use the queer but questionable "doctrine of executive privilege" to withhold legitimate facts of Government from the Congress. But if the Congressmen think they have headaches in extracting facts of government from the bureaucrats, they should try the frustrations of a newspaper editor in seeking such legitimate information as soil subsidy payments, employees' salaries, and terms of Government leases from such public servants as Secretary of Agriculture Ezra Taft Benson, Postmaster General Arthur E. Summerfield, and numerous others.

We do not have this widespread secret government in the lower levels of American government. In most cases, all the records of the bureaucrats' expenditure of the citizen's tax funds in the city, county, and State governments of our land are open to the inspection of the taxpayer. Furthermore, in most cases, our city, county, and State, bureaucrats submit audited reports of their public spending for the approval of the taxpayer.

Whenever and wherever the bureaucrat in our city, county, and State governments has balked at coming clean with the people's business, the American people, through their representatives in their State legislatures, have demanded and gotten clear-cut laws guaranteeing open government. Today 29 States have these laws on their books guaranteeing their citizens the constant right of inspecting records of their governments. And 17 States have laws guaranteeing open meetings of their public servants in conducting the people's business.

A list of these States is contained in the Sigma Delta Chi Freedom of Information Report, which I have filed with this committee. I shall not repeat their names in this statement but I would like to point out that last year the American people of eight States—Vermont, Connecticut, Pennsylvania, Tennessee, Minnesota, North Dakota, Kansas, and Illinois—demanded and got these laws for freedom of information. And I would like to point out further that these freedom of information laws are before the Legislatures of South Carolina, Kentucky, and Michigan today, and that groups of citizens are now organizing to support similar laws for submission next year to the Legislatures of Maine, Maryland, West Virginia, New York, Mississippi, Texas, and Arizona.

The Orville Hodge case in Illinois, wherein this character serving as State auditor stole \$2,500,000 of the people's tax funds, gave impetus to the American people's drive for open government on the State level last year. Hodge was able to steal the people's tax funds only through slapping a lid of secrecy on the records of his office, and his thievery points up clearly the fact that all the world's great corruptions of government always have taken place behind the locked doors of secret government and not out in the open where the restraint of an informed public opinion is exercised.

Thus, we have the strange paradox of the American people demanding and getting open government in their cities, counties, and States; whereas, our Federal public servants, who spend seventy-odd billions of the people's tax funds each year, are tightening up their vises of secrecy upon the people's business, and they are doing this mainly through legal quibbling and legal technicalities.

We take little stock in the legal quibbling of the bureaucrats over their secret government down in the city, county, and State levels of American government, and we just plain don't understand Attorney General Rogers when he talks about his "Doctrine of executive privilege." You see, down in the States, we have the "Doctrine of the people's privilege."

Let me tell you what happened in California. The legislature of that great State adopted a blanket ban on secrecy in State government 4 years ago. Whereupon, the California State bureaucrats began the same legal quibbling which is so prevalent in our Federal Government today. So last year, the legislature, under pressure from the California people who wanted to know about their government, unanimously adopted 64 new laws, one for each of the 64 State bureaus, stipulating by name that it must conduct the California people's business in the open.

In my correspondence with the Attorney General and his assistant over Senate bill S. 921 and over Mr. Rogers' testimony on his "doctrine of executive privi-

lege" before this committee, I pointed out that he is using the smokescreen of legal technicalities to confuse the real issue, which is whether or not the American people are going to receive the information of their Government at the time and not after the fact when too often in history it has been too late.

In his testimony before this committee, Mr. Rogers said, and I quote:

"We do believe that S. 921 would not clarify section 161 of Revised Statutes. In the absence of legislative history or more specific language we cannot determine with any degree of certainty the effect of S. 921."

There is no such mystification over the clarification of the English language in the lower levels of American Government, and I believe we have just as good lawyers in our cities, counties, and States as we do in our Federal Government. In law after law in the States pertaining to public records, virtually the same language is used as is used in section 161 of Revised Statutes. The Florida law on inspection of records reads:

"All State, county, and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen."

The second part of the law, which can be found in chapter 119 of the Florida statutes, provides a penalty of impeachment, fine, or jail sentence for those public servants who violate the law. And the third part of the law says, in part, that any person having the right of inspection "shall hereafter have the right of access to said records, documents, or instruments for the purpose of making photographs of the same while in possession, custody, and control of the lawful custodian of the said records, or his authorized deputy."

You will find the same general legal language, without any misunderstanding on the part of anyone, in numerous other State statutes. The South Dakota law uses such language as the "keeping of a record, or the preserving of a document;" the Wisconsin law uses the word "custodian" in referring to those in charge of records; and the Alabama law uses the words "custody" and "charge." Furthermore, in the daily application of the laws, these usual legal terms have provoked no confusing spray of legal technicalities, no question of the meaning of the words of the English language, and no reference whatsoever to the doctrine of executive privilege.

There is an even better comparison. Some twenty-odd years ago, when Congress yielded to the plea of the Federal Department of Welfare and voted censorship upon the names of all Federal welfare recipients, the Federal Department of Welfare, through its Federal attorneys, drew a sample law and insisted that State legislatures adopt it before receiving Federal welfare funds.

But before I give you this law, permit me to quote section 161 of the Revised Statutes, so that we can get a better firsthand comparison. This Federal statute, which apparently has confused Attorney General Rogers, reads, and I quote:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Now let us look at that old Federal welfare law, which was adopted on insistence of Federal authorities, by the various State legislatures. The first sentence of section 25-127 of the Wyoming Compiled Statutes, 1945, reads as follows:

"The rulemaking powers of the State department of public welfare shall include the power to establish and enforce rules and regulations governing the custody, use, and preservation of the records, papers, files, and communications of the State and county departments."

Note the almost exact language. Yet the Federal attorneys of 1945 did not think that regulation sufficient to withhold information of Government from the people, as they do today. Because, let me quote to you the second sentence of this federally inspired Wyoming statute:

"Wherever, under provisions of law, names, and addresses of recipients of public assistance are furnished to or held by any other agency or department of government, such agency or department of government shall be required to adopt regulations necessary to prevent the publication of lists thereof or their use for purposes not directly connected with the administration of public assistance."

The second paragraph of this old Wyoming law then goes on to stipulate that it shall be unlawful to disclose the names of anyone receiving Federal welfare.

Senate bill S. 921 would simply amend section 161 of the Revised Statutes by adding a last sentence, as follows:

"This action does not authorize withholding information from the public or limiting the availability of records to the public."

Now Attorney General Rogers has stated to this committee his belief that Senate bill S. 921 would not clarify section 161 of the Revised Statutes.

I would like to present two observations from this comparison of laws to this committee.

First, after some 15 years of Federal bureaucratic-inspired censorship of the welfare records on the State level, the American people, through pressure of public opinion, insisted that Congress repeal this edict of secrecy.

Second, it was perfectly all right 20 years ago for the bureaucrats to tack sentences onto housekeeping statutes that would insure secrecy of government; whereas, today it is a very great sin in the bureaucratic eyes for Congress to tack similar sentences onto the same housekeeping statutes that would remove all excuse for secret government.

In concluding his testimony before this committee, Attorney General Rogers dwelt lovingly upon the great bureaucratic regard for our national security. His words carried the usual insinuation that we in the free American press were adept in the practice of carelessly tossing our security secrets to the enemy. The Wright Commission on Government Security put this insinuation in plainer words last year when it proposed jail sentences for publishers and editors who printed security secrets and made the direct charge that American newsmen had violated our national security.

I publicly challenged the Wright Commission to produce a single case wherein an American newsmen had violated security and today I extend that same challenge to Attorney General Rogers and our entire Federal bureaucracy. And I say to you that American newsmen, from the highest publisher to the lowliest cub reporter, are just as great patriots as our bureaucrats. And I say also that no patriotic editor would want to print one iota of information that would aid the enemy. Yet we in the free American press have sat by in good faith and watched Government so badly abuse this responsibility that virtually all Department of Defense news is censored, regardless of whether or not it affects national security and regardless also of the fact that more than 60 percent of the American tax dollar is spent on defense. And we have sat by in good faith also while spies and traitors, apparently operating at ease behind the cloak of governmental secrecy, slipped key American data to the enemy.

In conclusion, I would warn you Senators, representatives of the American people, of the very great dangers, as outlined time and again in the pages of history, of an autocratic bureaucracy. We perhaps have not attained one as yet, but we are well on the way. We have today approximately 2,000 major Federal bureaus, agencies, and departments manned by public servants who are not responsible through election to the American people. We have also approximately 5,000 advisory Federal committees, all of which wield tremendous power in the lives of the average American citizen.

And it seems a very great tragedy in American free government that Representative Dante Fascell, of Florida, last year had to introduce and get passed in the House of Representatives a bill that would force these 5,000 Federal advisory committees to reveal the identity of their membership to Congress and to keep minutes of their secret meetings for the benefit of both Congress and the people.

And so, as a representative of the free American press, I urge you Senators to push the adoption of Senate bill S. 921 as the first step in opening up the avenues of the American people's right to know about their Government.

Gentlemen, on March 6, 1958, Attorney General Rogers appeared before your committee. I have read his testimony and I submit, although I am not a lawyer, the Attorney General himself, gave you all the reason you need for passing S. 921. In my opinion Mr. Rogers after admitting that Revised Statute 161 was a mere "bookkeeping" statute and should not be used as a legal basis for withholding information, then turned around and completely distorted his own statement. He has sought to confuse the record of your committee without legal support. He has given you his "Doctrine of Executive Privilege," which is nothing more than a legal smokescreen. In reply, I give you the "Doctrine of the People's Privilege," which is plain, simple language, as set forth in your amendment.

And I urge further that you, the elected representatives of the free American people, do all in your power in behalf of freedom of information, for it is only

through the restraint of an informed public opinion that the growing autocracy of a bulging bureaucracy can be controlled.

Thank you.

Senator HENNING. Our next witness on the list, taking the witnesses in order, is the distinguished president of the Radio-Television Correspondents' Association, who happens also to be a commentator for the American Broadcasting Co., Mr. Edward P. Morgan.

We welcome you here today, Mr. Morgan. We are very glad indeed to have you and be the beneficiaries of any observations you may care to make in any fashion that you desire to make them.

Mr. MORGAN. Thank you, Mr. Chairman.

At the outset, I wish to make no secret of the fact of my feeling of the privilege of appearing before the committee. I thank you for the opportunity. I do not have a prepared, written statement. I do have some views and some notes that I will consult from time to time.

Senator HENNINGS. We are very glad to have you proceed in any way that you desire to testify.

Mr. MORGAN. Thank you.

STATEMENT OF EDWARD P. MORGAN, PRESIDENT, RADIO-TELEVISION CORRESPONDENTS' ASSOCIATION, AND COMMENTATOR, AMERICAN BROADCASTING CO.

Mr. MORGAN. I wish to state that in principle, as a reporter, and perhaps more emphatically and more importantly as a private citizen, I am against secrecy in public affairs, with certain minimal and obvious exceptions. I say this off my own bat. However, I can say unofficially, not as an officer of American Broadcasting, but I am authorized to say unofficially that American Broadcasting, both through its television and its radio networks, welcomes such an investigation as you are conducting, and feels that secrecy in Government, unreasonable secrecy in Government, is against the public interest, and is trying, along with other networks to broaden the exposure of governmental affairs for the public, through radio and television direct coverage.

Senator HENNINGS. Pardon me. May I interrupt you just a minute, please, sir?

The distinguished Senator from Wyoming, Senator O'Mahoney, is here.

Senator O'MAHONEY. I am sorry to have been delayed so long, Senator.

Senator HENNINGS. We are delighted to see that you could come. Mr. Edward P. Morgan is now testifying, and I believe counsel will give you a list of the witnesses.

Excuse me, Mr. Morgan.

Mr. MORGAN. Certainly.

Senator HENNINGS. Proceed, sir.

Mr. MORGAN. We regard with respect the privileges we already have on the Senate side in terms of coverage of Senate procedures and Senate committee procedures, and we hope that in due course the equivalent facilities will be given on the House side. We recognize the objections to it, but we think that the coverage of a hearing, testimony and other matters, can be done with dignity and propriety and

still give the public the information that it is entitled to have, in terms of the Government.

I happen also to be president at the present time of the Radio-Television Correspondents' Association. Again I must speak unofficially, because there has not been time since I was invited to appear before the committee to poll the entire membership. But I know that I can say that the membership is in full sympathy with the objectives of this committee and I believe, if polled—this is a supposition but I think I am correct—would support perhaps unanimously S. 921, your legislation now under hearing.

I certainly do personally support it. It seems to me a simple, logical, and minimal thing to do.

Mr. Chairman, it seems to me that one of the things that we have to examine here, in addition to and apart from individual instances of secrecy that betray or deny the public trust, is what we might call the philosophy of secrecy. I have said that in principle I oppose secrecy in public affairs not simply because as a journalist to get information, but as a private citizen, because I think that our system cannot function unless you have a really and fully informed public.

Why, indeed, should we have any secrecy? And I ask that not facetiously, sir, but very seriously. Of course, in wartime it is necessary. The surprise of the enemy is a basic thing. I am inclined to suspect, however, Senator Hennings, that in peacetime a lot of us, with all due respect, perhaps politicians, particularly, and other people in Government, feel that secrecy is necessary in order to keep the opposition from surprising you. There is a certain bureaucratic reflection to this, it seems to me, that becomes justified by practice rather than by logic. You have certain secrecy, and it is established, nobody questions you, nobody challenges you, and you go ahead and are apt to broaden that secrecy.

Senator HENNINGS. Are you referring, Mr. Morgan, to the committee?

Mr. MORGAN. I am referring to government in general, Mr. Chairman. But I will be specific and concentrate it on the subject of your hearing, which is the executive branch. But I do not want to rule out from a reporter's point of view my contention that in principle, secrecy is wrong in the congressional branch of the Government as well.

In the executive branch, particularly, in the established bureaucracy, a state of mind seems to build up, something to the effect that "When in doubt, clam up," withhold rather than give out.

Senator O'MAHONEY. Can you give any instances of this?

Mr. MORGAN. Senator O'Mahoney, I am sure you are much more conversant with the situation than I am. I do not have specific anecdotes or proofs of this.

Senator O'MAHONEY. I am not in search of anecdotes, Mr. Morgan. I am in search of facts.

Mr. MORGAN. I did not mean anecdotes in a humorous way, Senator O'Mahoney. I mean in an illustrative way, from a journalist's point of view. But the most ready target—and I would suppose probably justifiably so—has been the Department of Defense. One little thing comes to mind which seems to me patently absurd. It perhaps does

not precisely answer your question, sir, but it illustrates to me the absurd lengths to which this can be taken.

A year or so ago, the Army-Navy-Air Force Journal wanted to get an obituary of a marine officer. The obituary was held up for clearance. This is just a fragmentary thing. It may or may not have any validity. But it illustrates in anecdotal form, it seems to me, Senator O'Mahoney, some of the extremes to which the main stream of information or, rather, the lack of it, is subjected.

What would happen if, say, John Q. Anonymous, a taxpayer, went up to the Department of the Navy and said, "My name is Anonymous. I am an American citizen and a taxpayer, and I would like to know how my Navy's doing. I would like to have an accounting of the budget." You can imagine what would happen. He would be told, undoubtedly, politely, with naval graciousness, that this was not in his province as a citizen to demand these things, that it would come through perhaps writing his Congressman or getting his editor or somebody else to do it. It is not the custom to do it this way.

I have been informed, somewhat to my astonishment—and I am not singling the Navy out here for any purpose except for illustration. You could take the Department of Agriculture or the Civil Service Commission or any governmental agency—that there is no law on the books which would compel a Federal agency to disclose its activities. And I am not talking about the top-secret classifications. It is day-to-day fiscal activities. Let us just limit it to that. There is no law which compels them to do so.

I do not understand quite why this is so. After all, it is this man's Navy in a very real sense. I think we all agree that the executive branch as I indicated a minute ago, is not the only one guilty in this regard. With all due respect, the American Society of Newspaper Editors reported some little time ago that about one-third of the committee session hearings of Congress have been held in secret. Reporters still find it impossible, or did, until very recently, to get accountings of the expenditure of counterpart funds on congressional committee trips abroad.

There may be perfectly justifiable reasons for holding this back, and I certainly would not argue, Mr. Chairman, that a Congressional committee cannot sit in secret. I am simply pointing out these situations as symptoms of the atmosphere.

Trying to be responsibly critical, I would like also to say that I personally feel that the public and the media with which I am associated as a journalist are also to blame. I believe this very sincerely. It seems to me that in a system such as ours, if we have checks and balances, if we have responsibilities in public office, we have also responsibilities in terms of the voter and in terms of the people who are trying to inform the voter. I do not think there are enough John Q. Anonymouses who take enough interest in their Government to go up to a Government department and say, "How are you doing? I would like to know." I think if there were more, it would be easier for the work of this committee. I think because that is not the fact, the work of a committee, such as this, Mr. Chairman, is doubly valuable. It is one of the functions of acquitting your responsibility to your constituents and to the public at large.

I believe—this has to be supposition, a belief on my part; I cannot prove this—but I believe that if the publishers of the United States

and the leaders of the broadcasting industry were to act in concert, insisting on more Government revelation of facts than they have done, rather than just individually, some reporter trying to get something from an agency, the atmosphere would be more healthful.

Secrecy breeds secrecy. As I said, it is a sort of a bureaucratic reflex. I do not mean to suggest that this is a calculated conspiracy on the part of one political party or another. It seems to me that there are ample examples of excesses in this field, no matter which administration, which party is in power, either in Congress or in the administration. But I do think that these are the facts, and I think that publishers and broadcasters have been somewhat remiss themselves in their duty in not insisting more than they have that this situation be corrected and in perhaps even giving more attention to the procedures of the committees such as your own, Senator, and also those of Congressman Moss on the House side.

Of course, we must be realistic. I do not pretend to suppose that the world at large is sophisticated enough or trusting and fair-minded enough for us to abandon all secrecy. But I do think that we must every now and then take these things into consideration and ask ourselves the question, not simply for the purpose of changing it, but examining the situation and seeing if it is valid and seeing if it is getting us anywhere or if it is not.

I realize this is very dangerous ground, and I do not pretend to state it as an incontrovertible fact, but I dare to raise it because I think it is terribly important. I realize that basically, in terms of this particular legislation, you are dealing with the housekeeping statute, and the so-called executive privilege, and these are in the forefront, whereas so-called military secrecy is in a slightly different category.

However, I think it is important for the public and the Congress to examine how much damage is done by secrecy or by desperate concern over letting secrets get out. It seems to me that we have an exaggerated feeling about this situation.

Senator HENNINGS. What is the secret?

Mr. MORGAN. I was about to attempt to give an example, Mr. Chairman. I realize that this is a contentious topic, but I think it should be aired.

I have heard it said by one of the renowned scientists of this country that in his educated, professional opinion, the theft by espionage and sabotage of the so-called atomic secrets for the Communists was not contributory to their progress relative to us one iota. This comes from a professional scientist who knows whereof he speaks in terms of the laboratory progress of these things. I do not mean to sit here and say that I advocate the virtue of encouraging espionage. I simply raise it as a point, and I think it is something that we do not ask ourselves about enough.

Look at the vast unchallenged domain of the Atomic Energy Commission. Here again it seems to me that there has not been a situation where anybody has deliberately set out to be secretive. There are areas here which have to be secret. But at the same time, it has grown up like a vast unchallenged empire. It has gotten into the situation now where the industrial potential of nuclear energy is at stake. And so far, almost nothing is revealed to the public in these matters as

to what industry or what group of industries will do something here with the Atomic Energy Commission's permission.

I simply raise that, Senator Hennings, as another point which illuminates an over-all problem.

About 2 years ago, a year and a half ago, the American Civil Liberties Union made an investigation of secrecy in Government, and a respected colleague of mine, Allen Raymond, a former correspondent for the New York Herald Tribune, wrote that report.

Senator HENNINGS. Mr. Raymond was associated with my office at the time of his untimely death.

Mr. MORGAN. Yes, I remember that, Senator.

Toward the conclusion of that report, he made a statement which I am not quoting verbatim, but which I have here in accurate essence, which struck me strongly. Mr. Raymond said in that ACLU report of November 1955 that national defense is not an end in itself. The end is democratic self-government, which can only function when people know what is going on. It seems to me this is important for us if I may dare to say so, to consider. Unless we do stop and consider things like this, unless committees such as your own do stop and ask questions and challenge the other branches of Government, it just goes on sort of automatically.

I believe this testimony was given not very long ago, last November, before the Moss House subcommittee, by Vice Adm. John M. Hoskin, who is the officer in charge of declassification of documents at the Pentagon. He testified, I believe—and this struck me, too—that in examining the procedures in our Military Establishment since the beginning of the American Government some 180-odd years ago, he had never found one instance of a man being court-martialed for over-classifying a paper.

It seems to me that this illustrates the state of mind quite well.

Senator HENNINGS. There is a sort of a parallel in another field, like the famous statement that all power tends to corrupt, and absolute power corrupts absolutely. It snowballs.

Mr. MORGAN. Precisely, Senator.

Senator HENNINGS. We all know that in the services, it is an old story. It may be apocryphal. During the period of time I was in the Navy, an admiral or high-ranking officer who wanted to go out and visit a relative, perhaps his daughter and son-in-law on the west coast, filled a briefcase with papers. A naval officer was telling this. He stamped a lot of mimeographed handouts as secret, which meant he could ride out in a drawing room to the coast and come back in a drawing room because he was carrying secret documents; and all it took was the ensign on the night watch or a yeoman to stamp those papers secret.

So we get back to the business of who is to determine what is secret in many of these areas, don't we?

What we are really talking about is this so-called housekeeping statute—at least some of us take the point of view that it is a housekeeping statute.

Mr. MORGAN. Yes, sir.

Senator HENNINGS. And as Senator Ervin has emphasized today, the fact that there are other statutes which protect—for example, the FBI files, which protect the Bureau of Internal Revenue, which pro-

tect certain bureaus and departments from disclosure of their records—would certainly seem to indicate by the same token that this amendment and the statute are not in derogation of any of these other protective statutes.

Mr. MORGAN. I am not a lawyer, Mr. Chairman. I am only a journalist. But it seems most logical to me—I listened to the discussion between Mr. Newton and the committee, and his trenchant statement. It seems most logical to me, although I cannot speak with any more authority than as a journeyman journalist, that it is not in derogation to the other agencies of Government in the required and justified secrecy that they maintain. But I do not think it is overemphasizing to suggest that we must examine this justification of secrecy periodically.

Only yesterday, as you notice, Dr. Oppenheimer, speaking here in Washington, made the statement in his challenging statement on disarmament that there has to be an open world in which secrets are illegal before you are really going to get anywhere, that disarmament is not enough.

I did not mean to go so far beyond the housekeeping statute, but it seems to me that these are quite connected, Mr. Chairman.

Just one final point that I have indicated, but want to emphasize now.

It seems to me that our whole orientation or our whole emphasis in this field is backward. It is just exactly the opposite of what it should be. It should be, in my humble opinion, the freedom to know, the freedom to find out, the freedom to be informed, with only the narrowest exceptions for security.

But Mr. Chairman, instead of that we have freedom to suppress and only grudging exceptions for the freedom to know.

It is ironical, because it is supposed to be communism and not our system that thrives on keeping people in the dark.

I thank you for the opportunity. I support the legislation.

Senator HENNINGS. Thank you very much, Mr. Morgan. I wish to express gratitude on behalf of our subcommittee to you for being here and for your making your carefully thought out and most sincere statement upon this very vexing and complex problem.

Senator O'Mahoney, do you have any question to ask Mr. Morgan?

Senator O'MAHONEY. No.

Senator HENNINGS. Senator Ervin?

Senator ERVIN. No.

Senator HRUSKA. No.

Senator HENNINGS. Mr. Slayman?

Mr. SLAYMAN. No, sir.

Senator HENNINGS. Mr. Patton?

Mr. PATTON. No, sir.

Senator HENNINGS. Mr. Morgan, thank you again.

Mr. MORGAN. Thank you again sir, and I wish to assure you that by the fact that there are no questions, I do not go away with a misconception that I have answered everything.

Senator HENNINGS. I assure you that the chairman of the committee does not think he has all the answers to everything, either.

Thank you very much.

We have the privilege also today of hearing from Mr. Clark R. Mollenhoff, the Washington correspondent of the Des Moines, Iowa,

Register and Tribune, a very distinguished member of the press corps here in Washington. I am told that Mr. Mollenhoff is also a lawyer. He has been very active and most interested in this field, as in many others, and we appreciate his coming here today to give us the benefit of his views.

You may proceed, sir, in any way that you wish.

Mr. MOLLENHOFF. Thank you, Mr. Chairman.

I would say that flattery will get you no place; as far as I am concerned, the Congress and these committees are at fault, basically, along with us, in this basic problem that we have here in the housekeeping statute and with regard to executive privilege. It is a matter of executive branches, and this administration and prior administrations have been pushing you around up here, and nobody has been willing to fight back.

I do not know what kind of deals go on between the legislative branch, the leaderships at some times, and the executive branch, so that you do not get the kind of a push that you need from here to stand up for your rights. I know some of the deals but not all of them.

I think it would be a good idea if I inserted this statement in the record. I do not want to go into some repetition on some matters which are mainly background and which Mr. Newton took care of in pretty good fashion.

Senator HENNINGS. If you would like to do it this way——

Mr. MOLLENHOFF. But I want to read some parts of it, because those will be the controversial parts.

Senator HENNINGS. The whole statement will go in the record, anyway, so you may proceed as you desire with what you have.

Mr. MOLLENHOFF. Fine.

STATEMENT OF CLARK R. MOLLENHOFF, REPRESENTING SIGMA DELTA CHI, NATIONAL PROFESSIONAL JOURNALISTIC FRATERNITY

Mr. MOLLENHOFF. My name is Clark R. Mollenhoff. I am a member of the American Bar Association. I am a member of the National Sigma Delta Chi Committee on Freedom of Information. I am here to supplement Mr. Newton's views for the Sigma Delta Chi as a member of their committee on freedom of information and, without any hedging at all, to be in full support of S. 921, on the theory that this is something that has been needed for a long time, that agencies have abused and misused this as a means for covering up facts for years. The Moss committee did the first job of actually asking the agencies what they were relying upon, and at that time they came back, dozens of these agencies, with misusing it.

The Sigma Delta Chi in its convention at Houston, Tex., last November 13 through November 16, endorsed the amendment of title 5, United States Code, section 22, as provided by legislation introduced in the House by Representative John Moss, Representative William L. Dawson, Representative Dante B. Fascell, and Representative Abraham Multer, and in the Senate by Senator Thomas C. Hennings, Jr.

The amendment provides that this statue for the "custody, use, and preservation" of records shall carry the following passage:

This section does not authorize withholding information from the public or limiting the availability of records to the public.

The Sigma Delta Chi feels the record is adequately clear that the statute has been confused and misused by Government agencies. We feel that administrative action would be a totally inadequate and ineffective method of curing the misuse of this housekeeping statute, and that the only means of putting this law in perspective is for the Congress to speak clearly and firmly as provided in this amendment.

We are well aware that there are some records which executive agencies may have some good cause to hold confidential. It is our feeling that these problems are either covered by specific statute, or could be covered by such special laws as the laws which make income tax matters secret.

The executive agencies are actively opposing legislation which would prevent use of these laws as authority for arbitrary secrecy. It is understandable why many of them would oppose this amendment. It will remove a shield which they have found to be convenient cover when the revelation of Government records might prove embarrassing. It has been a catchall authority for secrecy as they have interpreted it.

We feel that if there is good cause for holding certain records confidential, the case should be made before the Congress and specific authority granted, as it is in the income tax law. You have a specific law, section 55 of the Internal Revenue Code which takes this up. This won't affect the Internal Revenue Code in the slightest. We feel that there is good cause for holding certain records confidential, but the case should be made here.

The Justice Department has declined to support Sigma Delta Chi in its efforts to obtain action on title 5 United States Code, section 22 and other matters where we feel that excessive secrecy is present.

V. M. Newton, Ted Koop, and I went to the Justice Department on January 13, 1958, and met with Deputy Attorney General Lawrence E. Walsh on this problem.

Under questioning from Chairman Newton, Judge Walsh conceded there is misuse of the so-called housekeeping statute in withholding information from the public. However, Judge Walsh declared he hoped this problem could be corrected by administrative action rather than a change in the law.

Chairman Newton and Ted Koop both interposed a vigorous objection to this course on two basic grounds:

1. It has been almost impossible to get effective administrative changes in the past even when one agency is concerned, and the changes sought here would involve every Federal agency.

2. Even if effective administrative changes were made, it would be possible for a new agency head to change them again.

I cited the great difficulty in getting administrative action in the Treasury Department to bring the handling of tax-exempt institutions out in the open. It has been 5 years since top officials agreed with this reporter that there is no justification for the secrecy on applications for tax-exempt status and on the tax returns of such organizations. This administration agreed with the past administration,

but nothing happened. For years, no one would take the responsibility for going ahead and doing something. Even after the Treasury approved removing secrecy in this area, the Justice Department stalled and suggested on this matter that the law be changed. It has taken the prodding of the Moss subcommittee for 2 years to get the executive branch to officially approve the opening of applications for tax-exempt institutions.

It would take 50 years to persuade, coax, prod, and herd the various agencies into a position where they would voluntarily restrict themselves from using the housekeeping statutes as authority to hide records.

Sigma Delta Chi feels that the purpose of title 5 United States Code, section 22 must be stated by Congress to prohibit further distortion of this law by Federal agencies.

Sigma Delta Chi takes the position that the housekeeping statute (5 U. S. C. 22) was written by the Congress to make executive agency heads responsible for keeping and preserving Government records for the use of the public and Congress. The statute did not intend that public records were the private property of those temporarily holding office, or that this law was meant to authorize them to hide public records in vaults or locked file cabinets.

The Congress wanted to make executive agencies responsible for the "custody, use, and preservation" of records.

Only a few weeks ago, a three-member Sigma Delta Chi committee was told by a Justice Department lawyer that perhaps the Congress inserted the word "use" with the broad intention the agency heads have authority to "allow use" or "prohibit use" of Government records. No law was cited to support his view; only the opinion on a possible theory.

This theory is totally incompatible with the legal research done by Harold Cross, the counsel for the American Society of Newspaper Editors. It is also inconsistent with the operation of a democracy.

The keywords of the statute are defined in Webster's Dictionary as follows:

Custody: (1) A keeping or guarding; also, the state of being guarded or watched. (2) Judicial or penal safekeeping; specifically, as to persons, imprisonment.

Use: (1) To make use of, especially habitually or customarily; as, to use diligence in business. (2) To convert to one's service; to avail oneself of; to employ; as, to use a plow, a chair, a book. Synonym: Use, employ, utilize means to make serviceable. Use suggests availing oneself of a thing as a means or instrument to one's end; employ, the use of a person or thing that is idle, inactive, disengaged, or the like; utilize, the discovery of a profitable use as of employment for a practical purpose.

Preserve (preservation): (1) To keep from injury or destruction; defend from evil; protect; save. (2) To keep intact; specifically: (a) To keep from decaying; (b) to can, pickle, or the like, for future use; (3) to maintain; retain; as to preserve silence.

We talked to the Deputy Attorney General on this, and he said that conceivably the word "use" could be construed as a right not to use the records. If the word "use" can be construed as authority to withhold some Government records, then it is authority to withhold any or all public records in the absence of a special law requiring publication of a specific type of record.

If the executive agencies have the unqualified right to restrict the use of public records under the housekeeping statute, then there is no

inherent right to examine the records of Federal agencies. We are totally at the mercy of those who are elected or appointed in this all-powerful executive branch.

If this is so, then there is no obligation on the part of the officeholder to keep the people informed, unless Congress writes a specific law ordering the disclosure of the type of information sought.

Such a theory of government is inconsistent with democracy. It is inconsistent with the idea of a free press. It is a theory that no political figure could preach at election time, and it is one that should not be practiced or condoned between elections. Appointed officers, certainly, should not be allowed to act with such disregard for the intent of the statute and the principles of democracy.

If Congress does not act to amend title 5, United States Code, section 22, to prohibit the withholding of information, then Congress is reducing itself to a third-rate division of Government. A few committees of Congress, including this one, still fight to retain the congressional function as a check against an all-powerful executive branch. However, it would seem that many in Congress are unconcerned about the erosion of congressional power.

Congress allows the executive branch of the Government to whittle its investigative power by a doctrine of executive secrecy which states Congress is entitled to final decisions of the executive branch, but has no real power to go behind those decisions to determine the facts. Congress is entitled to only what the executive branch feels the Congress should have.

Congress has allowed the so-called housekeeping statute to be warped and twisted into an almost unqualified right of the Executive to withhold Government records from the public.

The Congress beats its chest and calls itself the great guardian of the people's rights, the check against the dictatorial tendencies inherent in any all-powerful Executive. Periodically, congressional committees have probed into our executive branch and have performed in a manner which merited the title of "Guardian of the People's Rights." But, for the most part, congressional leadership has not lived up to its responsibility. It is time that the Congress stops being a third-rate division of Government, and insists on the right to write the laws and have them properly administered. A good place to start is on title 5, United States Code, section 22, by immediate passage of S. 921.

The testimony of Attorney General William P. Rogers on March 6, and his opposition to the amendment of title 5, United States Code, section 22, makes it even more apparent why the amendment is needed—and I say this advisedly. I have looked over his statements 3 or 4 times; I have talked with him on the subject; I have talked with Mr. Walsh; and it is impossible to make sense about their position.

At the time of his appearance, the Attorney General stated that title 5, United States Code, section 22, is merely a housekeeping statute and involves no right to withhold information.

This is a bookkeeping statute, which says they keep the records, they hold them physically. It doesn't relate at all to executive privilege—

the Attorney General said.

In following out his logic, the Attorney General stated that the amendment to title 5, United States Code, section 22, would serve no purpose, would be "meaningless," for title 5, United States Code,

section 22, does not include any right to withhold any information, as it now stands. This was the Attorney General. He was testifying himself. No one came up and made this statement for him. He had all the freedom in the world, because he was asked several questions where he could have clarified this. He did not do it.

Senator HENNINGS. You are now referring, Mr. Mollenhoff, to his testimony before this committee?

Mr. MOLLENHOFF. Yes, Mr. Chairman, on March 6, when he had adequate opportunity to explore that very problem, and he did not explain it at that time. In fact, every statement seemed to take him further from the position he now stands in.

While stating that this statute includes no right to withhold information, the Attorney General admitted that it had been erroneously used by officials who had meant to use the executive privilege to keep Government records secret.

The Attorney General, the chief legal officer in the executive branch of Government, has done nothing to stop these misuses of title 5, United States Code, section 22, and gives no indication that he intends to do anything. We took this up with Mr. Walsh. Mr. Walsh said, "We feel we would be going outside of the sphere of our authority," that they would be presumptive to go to the other agencies.

Because we asked them this question:

If there are things that should be secret, you tell us what they are. We would like a list of these things and the reasons for it. On some of these, we might conceivably agree with you. But each should stand on its own individual merits, and there should be no blanket rule.

In answer to this question, he said:

Oh, we won't ask the agencies for this, because we would be invading their province.

Well, he either has a responsibility, or he does not. And if he cannot straighten it out, then nothing is going to be done about it.

Senator HRUSKA. Mr. Chairman, may I ask a question at this point?

Senator HENNINGS. Yes, Senator Hruska.

Senator HRUSKA. I do not know, but that on that one point—after all, an Attorney General does not run other departments. But when you say you asked for instances, and he gave no instances whatsoever of any attempt to dissolve the veils of secrecy, that is not quite true, because he gave the example in the opening paragraphs of his testimony on March 6, for example, on the records and the disclosures with reference to pardons and commutation of sentences, and he explored that and explained it very clearly. I should like to take issue with the statement just made by the witness, that he gave no example and refused to give any, and that no examples have occurred. I do not think that is right.

Mr. MOLLENHOFF. The question of pardons and commutations—this whole matter was taken up, and I am very familiar with this. I have taken it up with the Justice Department over a period of, at least, the last 5 or 6 years. They make much of this material available today. There is other material that is not made available today.

With regard to the Justice Department, itself, they make the claim under executive privilege, and they always have. They were not making this claim under title 5, United States Code, section 22. If they want to come through with this, then they should come up here and ask for specific legislation if they do not think they have it. All

we wanted was the Justice Department or somebody in this administration to tell us, "Here are 15 areas, 20 areas, 40 areas." We said, "We do not care how many you list, but tell us what you want to hide, and why."

Senator HRUSKA. That gets away from the question and the point I raised, the last statement of the witness that there had been no examples where secrecy had been dispelled.

That is not the fact, because in his statement the Attorney General Rogers did point that one out, and this was only one, and he said:

We have in the last few years taken certain steps to make available more information of our daily operations than was available before.

I gave that one example, and I am sure there are many others.

Without wanting to get into any laborious argumentation with the witness, I should just like the record to show that that flat statement made a little bit ago does not quite rhyme and reason with the record made here by the Attorney General.

Mr. MOLLENHOFF. The flat statement was made relative to a conversation that Mr. Koop, Mr. Newton, and myself had with the Deputy Attorney General. That was in February, and our request at that time was for a list of those areas in which the administration and the Department of Justice wished to have legislation or felt that they would be barred from keeping secret certain things if the law was changed.

Senator HRUSKA. Well, the record will show what the witness said.

Mr. MOLLENHOFF. And there was one example which you have cited since then. We wanted the whole record, we did not want 1 or 2. We were willing to go along with whatever they thought was necessary if reasons were given on these various issues.

I do not think it is necessary to labor this point. We wanted the whole record, and we got one. We did not get anything from the other departments. The Justice Department denied its responsibility in other areas. That is all right. The record shows that they did.

The Attorney General said:

I have attempted to suggest in my statement, the Executive privilege is not related to any statute; the Executive privilege is an inherent part of our Government, based on the separation of powers * * *.

Since his personal testimony of this issue, the Attorney General has submitted what is purported to be a clarifying statement in which it would appear he reverses himself completely. Now, the Attorney General takes the position that the housekeeping statute is a "legislative expression of the Executive privilege" which the Attorney General claims is the inherent right of the President to withhold information from the public, the press, and the Congress as "confidential Executive business."

We read him in the paragraph a little earlier to say there is no connection between the Executive privilege and title 5, United States Code, section 22.

Now, some people may be able to rationalize these two statements. I cannot.

We of Sigma Delta Chi do not believe there is any inherent right for the officials in the executive branch to hide the facts from the people, the Congress, and the press under a vast blanket of secrecy entitled "Confidential Executive Business."

However, the Attorney General stated there is an inherent right which flows from the Constitution. If this is so, then there is no need for his concern over an amendment to title 5, United States Code, section 22, for this proposed amendment does not change the Constitution. I do not think there is any disagreement on that particular point, either here or in the Department of Justice.

We cannot emphasize too often that if heads of executive agencies have specific areas which they feel must be confidential, they should go before the Congress and ask for special laws to cover those areas. Let each plea stand on the individual merit it possesses.

The Sigma Delta Chi is opposed to blanket legislation that gives any person in Government a broad and unlimited authority to hide mistakes, abuses of power, or crimes from the public. We have seen the proof year after year that the unlimited grant of the right to hide the record will lead to abuse of power, corruption, and mismanagement.

Of course, the Attorney General tells us he does not believe that secrecy is being used to hide errors or crimes in the executive branch of Government.

Mr. Rogers felt different about this 10 years ago. Then he was chief counsel for a Senate committee, and Mr. Rogers was busy digging out and exposing the crimes, favoritism, and errors which he felt were being covered up by the secrecy in the executive agencies. We might say that Mr. Rogers was highly successful. A report prepared under the direction of Mr. Rogers lashed out at the secrecy in the executive branch. That report proclaimed that if the Congress in its investigations was limited to what the executive branch wanted to produce it would create the ludicrous situation where the Congress was a blind man at the mercy of his seeing-eye dog—the executive branch.

Mr. Rogers may feel things are different today. However, we can never trust the judgment of those in power who might be inclined to make self-serving declarations on their own virtues. This has happened often in the past. We know now that at least 8 or 10 congressional committees have made it clear they are not as sure as Mr. Rogers that secrecy is not being used to hide crimes, favoritism, and blunders today.

It is not necessary to arrive at any conclusion on the virtues of this administration or any administration, to conclude that secret government is not in keeping with democracy.

Even if we accept an administration's declarations on the many virtues it possesses, we must be guided by this principle: "Never trust a good man to make secret decisions for you, if it would frighten you to lodge the same power in an evil man or a man who is on the other side of the political fence."

I think that that is something that a lot of people should think about. The record is clear as to what the situation was 10 years ago, and some of the most effective work in this whole area was done by Senator Ferguson, representative of Michigan; and Congressman Clare Hoffman, who was very aggressive on that. Gerry Morgan, now at the White House, wrote a very fine article for a law review publication, I forget exactly which one it was, but it was a great article as far as I am concerned, because it stated that the Congress had a full right

to go into the executive branch.¹ This seems to be contradictory to the position that Mr. Morgan has taken today. He is a lawyer and is working for a different client now. But as far as I am concerned he was right 10 years ago.

There were others, and I say that is why I think we will always be on the side of the "outs."

Senator HENNINGS. You will remember even Daniel Webster changed sides in the famous Dartmouth College case, when he got a little larger retainer from the other side.

Mr. MOLLENHOFF. Well, I don't try to draw any comparison. I am only saying that we will always be on the side of the "outs," I am inclined to think, because whoever is in the executive branch of the Government, it is not necessary that they be evil in their intent. They rationalize this whole thing, that they are doing what is best for the people. We have heard it said thousands of times and some of you gentlemen may have said it: "What I am doing might not be quite what I would like to do, but it is important that I be re-elected. That is best for the people." And administrations, regardless of what administration it is, have a little tendency to follow this philosophy. They minimize their own errors. They are sure that the congressional committees that are after them are doing it purely for political purposes.

From our standpoint, all we want is the facts, just open records, open files, so that we can go down and paw around in them and find out what is there.

I think this is something we should keep in mind when we examine the Rogers' theory on "Executive privilege" as he stated it before this subcommittee. He laid out this theory:

Anyone in the executive branch of Government can refuse to testify before a congressional committee or produce Government documents if those in the executive branch consider the action to be confidential executive communications.

He went further to say that Congress has no right to go behind the judicial decisions of the independent regulatory agencies, such as the decisions on television channels by the Federal Communications Commission, and decisions on air routes by the Civil Aeronautics Board. Neither can Congress delve into the conversations and written communications within the agencies if those agencies consider them confidential, Mr. Rogers tells us.

There is no law to support this extreme doctrine that the executive branch and the so-called independent agencies can hide everything but their final decisions.

There are no court decisions to support this extreme doctrine that the right of Congress to information from these agencies is totally contingent upon what the agencies want to produce.

This is a policy justified under an outlandish stretching of the doctrine of separation of powers. The Rogers' doctrine is justified on grounds it is necessary to avoid tyranny by the legislative branch of our Government.

In fact, it is a doctrine that sets the stage for executive tyranny—executive domination of the basic facts as to how the laws are being administered and what legislation is needed.

¹ The article is reprinted at p. 880, exhibit No. 9 in the appendix.

Senator O'MAHONEY. Mr. Chairman, may I interrupt?

Senator HENNINGS. Senator O'Mahoney.

Senator O'MAHONEY. I think it might be helpful to bring out a point here. Of course, I have not been attending all the meetings of this subcommittee, so perhaps this is repetitious of something that has already been said.

Senator HENNINGS. I know you have not been able to attend some of them, Senator.

Senator O'MAHONEY. But the remarks of the witness make me feel that it is important to call attention to the fact that the statute with which we are concerned was adopted in 1789. So it is almost coexistent with the Constitution itself.

The first sentence of this statute—I am reading from the chairman's opening statement—is now section 22 of title 5 of the United States Code. It reads as follows:

The head of each department is authorized to prescribe regulations not inconsistent with law for the government of his department, conduct of its officers and clerks, the distribution and performance of its business and the custody, use, and preservation of the records, papers, and property appertaining to it.

It is clear from the language that when the Congress in 1789 enacted that sentence, it was of the opinion that without the law, the heads of the departments would not have the authority to make the regulations.

So any confusion between the doctrine of executive privilege and the power of the heads of departments, commissions, boards, and other agencies of Government to withhold public information leads to a misunderstanding among the public. I think the press which reports these hearings might well emphasize this distinction. Executive privilege proceeds from the assertions that were made originally by George Washington with respect to foreign affairs. His position has been endorsed by successors in the office of the presidency.

But what we are dealing with here is not the judgment of the Chief Executive of the Government. We are dealing with the acts of subordinate officials in departments that Congress creates, in boards and commissions and agencies which would not exist unless called into being by Congress. There is no constitutional question involved here as in the case of the Chief Executive's power to exercise executive privilege and withhold information that might reveal the secrets that ought to be kept secret because they concern intergovernment negotiations.

If Congress has the right to authorize the departments to make regulations, certainly Congress has the right to know what the regulations are. If there are any boards and agencies of Government which were not granted that authority—and of course, the Government is full of them—then those boards and agencies have no right to issue regulations that hold public information secret.

The Attorney General's statement, it seems to me, is controverted by this statute that we are considering: namely, the law of 1789 which granted this power of making regulations only to the departments.

Mr. MOLLENHOFF. I agree with the Senator's statement on that. I think the original statute was intended also to impose the responsibility on the agency heads to take and preserve the records so that if there was a law which said you cannot destroy these records, which might happen, well, all public officials are not honest, as we all know, and there might be a tendency on their part to destroy them when they were

unfavorable, if it were not for a statute which sets out the responsibility.

Senator O'MAHONEY. I think I ought to add, Mr. Chairman, that this bill before us, like every bill which Congress considers, must be printed and must go to a committee, where hearings can be held. Because it is printed, the public knows exactly what Congress is proposing to provide by law. But Executive orders and regulations are not governed in any way at all. The issuance of Executive orders has become a function of Government almost greater than the function of lawmaking itself.

The Constitution plainly declared that—

all legislative authority herein granted is vested in the Congress of the United States.

But we have permitted the issuance of Executive orders and the drawing of regulations by the delegation of legislative power which Congress has been prone to do over a long period of years.

Senator HENNINGS. If the Senator will yield at this point, the learned Senator may recall that during the debate on the Bricker amendment, to which I happened to be in opposition, I recall getting information that in 1 year there were 10,000 or so Executive orders that had been signed.

Senator O'MAHONEY. The result of this delegation of congressional power has been the dropping of the curtain of secrecy over public affairs when discharged by the executive branch of the independent agencies of Government, carrying out legislative powers or authority created by Congress. It is a thing that should not be permitted to continue, if we desire as a nation to stand before the world as the exponent of a principle of government that the people are the authors of all political and economic rule to which they must submit.

Senator HRUSKA. Mr. Chairman, would the Senator yield?

Senator O'MAHONEY. Surely.

Senator HRUSKA. I listened with great interest to the very enlightening discussion by the Senator from Wyoming, and there have been repeated references to independent agencies and bureaus and boards, and the like.

I submit, Mr. Chairman, that section 161 does not refer to boards and bureaus and commission and so on.

Senator O'MAHONEY. I agree with you.

Senator HRUSKA. The opening words of that section say, "The head of each department."

Senator O'MAHONEY. I emphasized that.

Senator HRUSKA. And yet there was some repeated reference to bureaus and boards and delegated authority, and that sort of thing, to independent agencies, which is something that is not expressly referred to in section 161.

Senator O'MAHONEY. Oh, but, Senator, that was expressly referred to by me.

Senator HRUSKA. Senator, please bear with me a minute until I make my point.

Senator O'MAHONEY. But you will make the point better if you will let me take the floor back.

The reason I mentioned these boards and agencies and commissions was because the witness quoted the Attorney General of the United

States to the effect that the boards and agencies and commissions had the same right as is claimed for the departments by regulation to keep things secret.

Senator Hruska. If that is the case, then I misunderstood the reference made by the Senator. That is true.

However, then we get back to the idea that the adoption of section 161 back in 1789 was, very likely, on the basis that without that statute, the head of each department would not be able to do the things which are set forth in that section.

The fact is and the history of that section was again covered very thoroughly, and I thought very accurately, in the Attorney General's statement of March 6, because he showed that it displaced and replaced and was substituted for a resolution which up until that time applied—that is, up until the time the Constitution was adopted—under the Continental Congress and the Articles of Confederation, and that was the exact antithesis. Everything had to be by express provision disclosed to the Members of Congress, and so on. There was only one minor limitation to it, and that is that documents of a secret nature could not be copied.

But apart from that, everything could be disclosed.

This section 161 displaced that resolution and that rule of law, and it seems to me that before indulging in conclusions as to what this did, we should consider the historical background against which this section 161 was adopted.

To the principal point under discussion here, I think it would be well, and I should like to ask unanimous consent on the very point that is raised here, that we put in the record at this point the answer of the present Speaker of the House of Representatives when this same question was raised as to who shall make the ultimate decision of what is and what is not against public policy as against this constitutional background, not on section 161 but on the constitutional background.

I should like to ask unanimous consent, Mr. Chairman, at this time, to put into the record the excerpt from the testimony of Congressman Rayburn as it appears in the hearings, in the Report No. 1461.

Senator O'MAHONEY. Reserving the right to object, I want to say for the record that the Government established by the Constitution of the United States and the Congress thereby established were altogether different from the Continental Congress, which originally operated for the Thirteen Colonies. The colonies were not at that time ready to give legislative authority, the power which the Constitution gave the Congress of the United States.

So I am inclined to believe that an examination would reveal that the Attorney General's allusion to the rule which was displaced is only revealing the fact that the Congress in 1789 created by the Constitution of the United States with all legislative power was doing away with the concept which had arisen under the Continental Congress.

I have no objection to the insertion into the record.

Senotor HENNINGS. At what point would the Senator like to have this insertion appear? Following Mr. Mollenhoff's testimony?

Senator Hruska. I think it would be very illuminative right at this point, because it deals with the very points which are being

stressed here. It is in Report No. 1461 of this 85th Congress at pages 19 and 20, and it is an excerpt from the debates in the House covering the discussion by Mr. Rayburn.

Senator HENNINGS. Have you some observation about that?

Mr. MOLLENHOFF. On that particular point, yes.

Senator HRUSKA. May the insertion be made at this point?

Senator HENNINGS. Without objection, the excerpt referred to will be made a part of the record at this point.

(The excerpt follows:)

Mr. RAYBURN. Mr. Chairman, I have sat here all day and I have listened to a very interesting debate. The more debate I have listened to the more things come to my mind, as just expressed by the very able young gentleman from Missouri, Mr. Bakewell. I have heard gentlemen express themselves on this floor today upon so many fundamental questions that I have agreed with in the years gone by. When I saw my old and very dear friend and my able friend, the gentleman from New York, Mr. Wadsworth, take the floor today, I felt certain he was going to resist the enactment of legislation of this kind and character.

I do not know what you gentlemen think the powers of Congress are. Are they limitless? Is there no limit under the Constitution to which any Congress, much less a very partisan one, would go? Back in the formative period of this Government there was a great jurist. He is quoted by all of us. Especially was he quoted by the Federalists in the early days of this Republic. In 1803 he gave forth this language in a very familiar case, which we lawyers all have heard something about. Sometimes when discussions like these come up I get just a little sorry that I ever studied law, because I would not have been so bothered about my vote on some of the issues raised. But Mr. Justice John Marshall used this language a long time ago:

"By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to the country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority, and in conformity with his orders. In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political: They respect the Nation, not individual rights, and being entrusted to the Executive, the decision of the Executive is conclusive."

Pass this resolution. The President says to his Cabinet officer, "No, you are my agent, you are my alter ego; do not give that information to the Congress."

What are you going to do about it? You might have an unseemly session, an unseemly row upon the floor of the House of Representatives. What are you going to do about it? Are you going to impeach the President of the United States because he says the giving up of certain information is not in the public interest? Who is better qualified in matters of national defense—lay aside the State Department that the gentleman from New York says is not covered at all in this legislation—who is better qualified in matters of national defense and the safety of the country?

* * * * *

Who is better prepared? Who knows more about our foreign affairs? He knows better than any other man in Government—not you; not me. Who knows better what is necessary to bring an army and navy and an air force together to defend the country than the President of the United States? And in his wise discretion he makes recommendations to Congress.

My friend from New York said that for nearly 30 years he had been around here. I happen to have been around here 35 years, and I have said from his high place many times that the House of Representatives, next to family and friends, is my life and it is my love; and I do and I shall deeply regret seeing the House of Representatives embark upon a sea as uncertain and in my opinion as dangerous as this one.

Senator HENNINGS. Proceed, Mr. Mollenhoff.

Mr. MOLLENHOFF. I think that the quotation you have put into the record makes a point that I tried to make earlier, better than I could

make it: That is, that there has been a tendency by people of the administration in power up here on the Hill to look favorably upon secrecy when their administration is doing it. I think this was the situation that you have reference to here, if I am not mistaken, on the quotation. It is one that has been used quite widely. It is a situation where the Truman administration was in power and the congressional committees wanted material. Speaker Rayburn spoke up in defense of the Truman administration.

I would not expect anything much different if there were a political issue involved. This is one of the facts of life. This is the reason why the Congress is bargaining away its rights. Its leadership on both sides of the aisle has been unable to stand up for what is right. They have done what is expedient.

Senator HRUSKA. But I would differ very respectfully with the witness, because whether it is right or not is pretty much set out in the Constitution in the fashion in which it is written. Unless one wants to disregard the doctrine of separation of powers, I do not know how you can get away from vesting in the executive department the ultimate decision as to whether or not a given document be disclosed is good public policy.

I would be the last one to defend the many abuses and the many ill-considered snowballings of this exercise of this privilege which results in such very, very odd and incongruous situations. I would be that last one. But after all, as pointed out by Mr. Rayburn in his remarks—and they are classic, and they could apply a hundred years ago and a hundred years hence—by golly, somebody has to make that ultimate decision. It cannot be taken away from the executive department under our present Constitution.

Mr. MOLLENHOFF. I deal with this a little later. Basically, it is very simple, though. The President of the United States is the individual who has any inherent power that exists. That is not inherent power that goes to everyone in the executive branch.

Senator ERVIN. That is a point that concerns me. The President's office was initially created by the Constitution. All of these departments are created by Congress. Here is a creature of Congress which exercises the constitutional power of the President. And we had it carried to such an extent here, in the Senate Committee on Government Operations, when we undertook to investigate the negotiation of contracts for the erection of grain elevators in Pakistan by the FOA, that the FOA acting through its head, Governor Stassen, sent its counsel down here to advise our committee that notwithstanding the fact that we were authorized by the Reorganization Act to investigate the economy and efficiency of operation of government at all levels, nobody except Mr. Stassen was privileged to divulge to us any information concerning the matters we were investigating.

Fortunately, the FOA did not adhere to that position very long, but that was the initial information we got.

Mr. MOLLENHOFF. Well, under this point, impeachment is one way you can reach the President of the United States. In our history we have had practical situations. At one stage Thomas Jefferson took letters into his custody. This does not mean that the President of the United States has to go over and bundle up files if he considers them to be important enough and take them over in his own private office. But it would seem to me that the least that could be done would be to

issue a specific order. But the President can be reached through impeachment.

Senator HRUSKA. Or through the forces of public opinion.

Mr. MOLLENHOFF. Or through the forces of public opinion. Or he should be either politically responsible or responsible on impeachment. However, we can never take the position that the President—and I do not think any President would take the position that "I will do anything short of impeachment." I mean this is what you get down to.

Actually, they have a way under circumstances where it is vital that they keep something secret. The President of the United States can issue an order and say, "You do not show that to the Congress. I am telling you. I will take the responsibility in the election 2 or 3 years from now. I will take my responsibility under impeachment, because that is what my rights are."

Senator HRUSKA. And President Eisenhower did just that on May 17, 1954, in the McCarthy-Army hearings.

Mr. MOLLENHOFF. That is right.

Senator HRUSKA. He directed that the Secretary of the Army instruct his employees not to disclose information, and the large segment of the American press at that time hailed that decision as being something very fine and very wise and very just.

Mr. MOLLENHOFF. On that particular thing, Senator, the press hailed this as a specific incident on which the President issued an order. I do not think that it could be argued politically, at least, that in issuing the order on May, the letter on May 17, 1954, the President on that date authorized everyone from clerks to heads of departments in the executive agency to hide anything that they in their judgment, not in his judgment, felt should be hidden from the public.

Most of these matters—and we have had a lot of examples. If you want to go into them, I can go into them at length. But we have a lot of examples where it has been people on a lower level where it has been a total surprise to the White House that a headline comes up and it states, "Ike holds something secret." They had not heard about it at the White House. Someone is down here saying, "I am exerting my executive privilege," and this is a privilege for the President of the United States if it is a privilege at all.

Senator HRUSKA. Of course, that is why I suggest, Mr. Chairman, that this excerpt from Mr. Rayburn's testimony and debate be put in here, because it bears again on that ultimate point, and he asked who is the best qualified.

Mr. MOLLENHOFF. I think it is very much to the point.

Senator HENNINGS. I think the Senator would like to have it inserted where it was previously mentioned.

Senator HRUSKA. That is right.

Mr. MOLLENHOFF. I will hurry up and finish. I am sure you gentlemen want to get to lunch.

Senator HENNINGS. No, I think, Mr. Mollenhoff, you have been in the forefront, spearheading this cause for a long, long time, and we are being educated.

Mr. MOLLENHOFF. You have got me on the spear, and you want to keep me there. All right.

Senator HRUSKA. I would like to say, Mr. Chairman, that much of the delay and the lateness of the hour is not due to his testimony but

the interruptions of the committee, including myself. I thank him for his tolerance and patience under this circumstance.

Mr. MOLLENHOFF. Under the Rogers doctrine, the Congress would still have the power to force testimony from private persons, and to force the production of records from private persons and private businesses. But Congress would be in the ludicrous position of having no real power to investigate how the laws are being administered by the executive branch of the Government and by the various regulatory agencies.

I got this committee print on the powers of the President to withhold memorandums from the Attorney General. I think you will find that we have interpreted *McGrain v. Daugherty* to be an expression by the Supreme Court that the Legislature has the right to subpoena private persons and private papers, but there is no right of compulsion with regard to the executive branch of the Government.

I personally do not feel this is the law. I do not think it has ever been expressed that way until the last few weeks. I have never seen anything going to that extent.

Kilbourn v. Thompson I do not think is a case in point, either, but this is my own personal expression of opinion, and I think that the *McGrain v. Daugherty* speaks for itself.

Senator HRUSKA. Mr. Chairman, I should like to ask the witness, what is it that you say has been enunciated just these last few weeks? Certainly not the concept that under the doctrine of separation of powers it is for the executive to be free and clear of any resolution or any legislative act by Congress that he disclose documents.

Mr. MOLLENHOFF. No. This has been expressed periodically in one way or another. This is the first time that I have seen *McGrain v. Daugherty*, because that case has been considered as the case on the other side. In the *Kilbourn* case, that has been considered to be the case that gives some little color of support to the Attorney General's position. But on that point I would advise you to read Gerald Morgan's Law Review article. I do not have it, but I would be delighted to get you the citation. It was marvelous, written at the time when he was up here with congressional committees and was dealing with this subject. He has gone into it, and he cuts the ground out from under *Kilbourn v. Thompson*, and I think that if we get down to *McGrain v. Daugherty*, here is what it says:

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to change, and when the legislative body does not itself possess the requisite information, which not infrequently is true, recourse must be had to others who do possess it. Experience has taught us that mere requests for such information which is volunteered is not always accurate or complete, so some means of compulsion are essential to obtain what is needed.

As far as I am concerned, the Congress must have power of compulsion against private persons or against the branches of the Government. I would think that it would be ludicrous to say that everyone can be subpoenaed unless he is a Government official.

Senator HRUSKA. Unfortunately, for 187 years now, since 1792, the doctrine of separation of powers as prescribed by our Constitution has been saying that the powers and the rights of the Executive in administering laws come not from Congress, from congressional acts, but from the Constitution. And unless you are going to abrogate that

doctrine of separation of powers, there must be respect for the decision of the Executive as to what papers he shall consider as being violative of public policy if they are disclosed.

You have the case of Thomas Jefferson taking papers into his own possession, and exercising what he said was his right and saying to the other branches of the Government, "I won't give them to you. Take what action you think is necessary."

And that was repeated by Theodore Roosevelt not more than 50 years ago in the case of the United States Steel Corp., when he said, "Now gentlemen, if you want to do anything about it, go ahead."

Mr. MOLLENHOFF. Does might make right?

Senator HRUSKA. No; but the Constitution is still the law of the land in this situation, I hope.

Mr. MOLLENHOFF. There is a case that was cited at the time of the May 17 letter, involving Andrew Jackson, who had several land scandals. Andrew Jackson asserted this right, his so-called right, and he told the Congress that they could not have a thing. He covered up the land scandals.

Senator HRUSKA. One of the reasons he did it was that the information requested was composed of raw files, or statements gathered by either the lieutenant or the captain of the Army sent down there to make that investigation, statements that were given in full confidence that they would not be disclosed; and further, they were unsworn statements; many of them would have done irretrievable harm to the persons against whom they were directed, because they had no chance of cross-examination. They would have no chance of answering, and it was a case all over again of that type of evidence.

He was justified, in my judgment, and I think in the judgment of historians, in putting the clamp of censorship on those reports, for that very reason.

Mr. MOLLENHOFF. In other words, you feel that Jackson was justified in hiding scandals if he could justify this on the grounds that some of the material was confidential.

Senator HRUSKA. He did not hide scandals, nor did he try to hide scandals. He refused to deliver certain types of reports compiled for certain purposes, and which would have done irretrievable harm to those persons mentioned in those reports, had they been released prematurely and without the right of cross-examination and preparation to answer the charges.

We have had instances of that kind again and again with the FBI. The reason for the Congress passing those laws with reference to the FBI is that very thing.

Mr. MOLLENHOFF. And you have a specific situation with regard to the FBI. You had a situation where we felt it was necessary to pass legislation on it, because of this raw file proposition, and you had a situation where Mr. Truman in 1949 felt it was necessary to issue an order, a specific order on a specific area relative to personnel files in the Remington case.

Mr. Rogers felt it was wrong. I am not taking the position that either one was right or wrong. I personally think—I will take a position. I think Mr. Rogers was right then. If Mr. Remington had such a record and was being bounced around from one department to another, I think that somebody should have been able to inquire as

to who was responsible for this. The President took the position that personnel files as such, as a category, should not be released.

Senator O'MAHONEY. Mr. Chairman, may I interrupt to ask an off-the-record question?

Senator HENNINGS. Certainly, Senator.

(Discussion off the record.)

Mr. MOLLENHOFF. Under the Rogers doctrine, the Congress is reduced to a third-rate division of Government. Its investigations can be limited to what officials in the executive branch of the Government feel it is wise to produce.

The United States Supreme Court spoke on this subject in the case of *McGrain v. Daugherty* (273 U. S. 135), which arose out of the Teapot Dome scandals of the 1920's and an investigation of the administration of the antitrust laws by the Department of Justice. The Court said:

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught us that mere requests for such information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed.

There is no statement on this case that Congress must have the right to force testimony and production of records from private persons, but cannot exercise this power over officials of the executive branch.

My concern over the right of Congress is based on this fact. I know that the right of the press and the public to obtain a clear picture of what is going on in the executive branch is contingent upon the right of Congress to force a disclosure of executive branch activity. Press officials and other officials in executive agencies will not willingly produce information that will embarrass their superiors, and their superiors will not authorize them to release such information unless they fear it will be brought out later. Executive agencies give up information willingly only when it suits their purpose. When it is not consistent with the propaganda move on at that time, the reporter will meet with barrier after barrier. Our ultimate success is based on the fear that we will go to Congress with our complaint, and that the facts might as well be produced willingly for they will be forced out later. Remove this compulsion, and the press will be nothing but an army of handout collectors.

A free press means more than just the right to print without governmental controls. It means more than the right to criticize our officials.

A free press must also embody a free access to the operations of governmental agencies and the activities of Government officials. There can be no real right to criticize unless there is a freedom to access to facts upon which to base an informed and intelligent criticism.

Half freedom is no real freedom. If the Government has full discretion as to which facts will be made available to the public, the press, or the Congress, then there is no more than half freedom.

I do not want to be limited in my reporting to the self-serving declarations from men like Richard A. Mack as to what a fine job is being done in the Federal Communications Commission.

I do not want to be limited to the comments of T. Lamar Caudle, Assistant Attorney General under the Truman administration, as to

what a fine job is being done in the prosecution of tax-law violators.

I do not want to be limited to the comments of Harold Talbott, former Air Force Secretary, as to how he is handling Air Force procurement.

I do not want to be limited to the statements of former Secretary of Interior Fall that the handling of the Teapot Dome oil reserves was really in the public interest.

There are enough limitations on our access to information without the blanket shield for the executive that is present in the Rogers' doctrine.

There is the complexity of Government that makes its activities such a maze that we need help from special congressional committees.

There are special laws and regulations which put security matters out of bounds.

There are diplomatic matters that must be outside of our reach.

There are such things as raw FBI files, and personnel files which have been declared to be properly secret.

We must oppose every new encroachment, unless there is a firm case made in a limited area.

The Constitution does not give the President "the inherent right" to arbitrarily withhold information from the Congress and the public any more than it gives him the right to steal, misuse public funds, or liquidate the political opposition. The Constitution merely limits the remedy against the President to impeachment.

It would not be argued, I do not believe, that the Constitution gives the President the "inherent right" to steal public funds, conspire to misuse public property, or murder political opponents. Neither can it be argued that he has "an inherent right" to withhold information from the Congress, the judicial system, or the public.

The fact that the President can get away with refusing information to the Congress, the courts, or the public does not mean he is within his rights. It merely means that the crime, impropriety, or abuse of power was not punished by impeachment, the only remedy against the President under our Constitution.

Actions against the President for crime, impropriety, or abuse of power is limited to impeachment for these very practical reasons:

1. It is necessary that there be a provision for action against the President that is independent of the President, and lodging the impeachment power in the legislative branch gives this independence. This is essential because there could be no effective check on the President if action were limited to the Attorney General, an officer appointed by the President, and accountable to the President, who would be unlikely to prosecute regardless of the crimes or abuse of power involved.

2. It is important that the President be free to act without being personally subject to constant harassment for minor errors or mistakes of judgment for decisions in controversial areas. Under the Constitution the President is free to operate without fear unless his actions involve such serious blunders or crimes that impeachment becomes the proper remedy.

The doctrine of separation of powers provides measures for both the legislative branch and the judicial branch to serve as a check on abuse of power by the executive branch. It is possible for the President to thwart the checks of the judicial branch in many cases by

stating "let them enforce their order." This does not make it right for the President to do it.

It is possible for the President to disregard the Congress by taking the laws, administering them with total disregard for legislative intent, and refusing to produce executive department files on how the laws are being administered. This does not make it right for the President to do it.

It is time for more people in the executive branch to give some time to thinking about what is right for the Nation over a period of the next few hundred years, and less to convenient ways of hiding the record from the public.

Senator HENNINGS. Mr. Mollenhoff, are there any other points you feel you have not been able to make in your statement?

Mr. MOLLENHOFF. No, I think that essentially, in our little discussion before, we touched on all of them, and I think that is about it.

Senator HENNINGS. I would like to say on behalf of all of us on this committee, the Committee on the Judiciary, and the Senate, that we are most grateful to you not only for your testimony here this morning but for your past and continuing interest in this field that so many of us think is exceedingly important.

Mr. MOLLENHOFF. Thank you, Mr. Chairman.

(The complete text of Mr. Mollenhoff's prepared statement follows:)

STATEMENT OF CLARK R. MOLLENHOFF, REPRESENTING SIGMA DELTA CHI, NATIONAL PROFESSIONAL JOURNALISTIC FRATERNITY, ON S. 921, TO AMEND THE HOUSEKEEPING STATUTE

My name is Clark R. Mollenhoff. I am a member of the American Bar Association. I am a member of the National Sigma Delta Chi committee on freedom of information. The Sigma Delta Chi in its convention at Houston, Tex., last November 13 through November 16, endorsed the amendment of title 5, United States Code, section 22, as provided by legislation introduced in the House by Representative John Moss, Representative William L. Dawson, Representative Dante B. Fascell, and Representative Abraham Multer, and in the Senate by Senator Thomas C. Hennings, Jr.

The amendment provides that this statute for the "custody, use and preservation" of records shall carry the following passage:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

The Sigma Delta Chi feels the record is adequately clear that the statute has been confused and misused by Government agencies. We feel that administrative action would be a totally inadequate and ineffective method of curbing the misuse of this housekeeping statute, and that the only means of putting this law in perspective is for the Congress to speak clearly and firmly as provided in this amendment.

We are well aware that there are some records which executive agencies may have some good cause to hold confidential. It is our feeling that these problems are either covered by specific statute, or could be covered by such special laws as the laws which make income-tax matters secret.

The executive agencies are actively opposing legislation which would prevent use of these laws as authority for arbitrary secrecy. It is understandable why many of them would oppose this amendment. It will remove a shield which they have found to be convenient cover when the revelation of Government records might prove embarrassing. It has been a catch-all authority for secrecy as they have interpreted it.

We feel that if there is good cause for holding certain records confidential, the case should be made before the Congress and specific authority granted.

The Justice Department has declined to support Sigma Delta Chi in its efforts to obtain action on title 5, United States Code, section 22, and other matters where we feel that excessive secrecy is present.

V. M. Newton, Ted Koop, and I went to the Justice Department on January 13, 1958, and met with Deputy Attorney General Lawrence E. Walsh on this problem.

Under questioning from Chairman Newton, Judge Walsh conceded there is misuse of the so-called housekeeping statute in withholding information from the public. However, Judge Walsh declared he hoped this problem could be corrected "by administrative action" rather than a change in the law.

Chairman Newton and Ted Koop both interposed a vigorous objection to this course on two basic grounds:

1. It has been almost impossible to get effective administrative changes in the past even when one agency is concerned, and the changes sought here would involve every Federal agency.

2. Even if effective administrative changes were made, it would be possible for a new agency head to change them again.

I cited the great difficulty in getting administrative action in the Treasury Department to bring the handling of tax-exempt institutions out in the open. It has been 5 years since top officials agreed with this reporter that there is no justification for the secrecy on applications for tax-exempt status and on the tax returns of such organizations. This administration agreed with the past administration, but nothing happened. For years, no one would take the responsibility for going ahead and doing something. Even after Treasury approved removing secrecy in this area, the Justice Department stalled and suggested on that matter that the law be changed. It has taken the prodding of the Moss subcommittee for 2 years to get the executive branch to officially approve the opening of applications for tax-exempt institutions.

It would take 50 years to persuade, coax, prod, and herd the various agencies into a position where they would voluntarily restrict themselves from using the housekeeping statutes as authority to hide records.

Sigma Delta Chi feels that the purpose of title 5, United States Code, section 22, must be stated by Congress to prohibit further distortion of this law by Federal agencies.

Sigma Delta Chi takes the position that the housekeeping statute (5 U. S. C. 22) was written by the Congress to make executive agency heads responsible for keeping and preserving Government records for the use of the public and Congress. The statute did not intend that public records were the private property of those temporarily holding office, or that this law was meant to authorize them to hide public records in vaults or locked file cabinets.

The Congress wanted to make executive agencies responsible for the "custody, use, and preservation" of records.

Only a few weeks ago, a three-member Sigma Delta Chi committee was told by a Justice Department lawyer that perhaps the Congress inserted the word "use" with the broad intention the agency heads have authority to "allow use" or "prohibit use" of Government records. No law was cited to support this view—only the opinion on a possible theory.

This theory is totally incompatible with the legal research done by Harold Cross, the counsel for the American Society of Newspaper Editors. It is also inconsistent with the operation of a democracy.

The key words of the statute are defined in Webster's dictionary as follows:

"Custody: (1) A keeping or guarding; also, the state of being guarded or watched. (2) Judicial or penal safekeeping; specifically, as to persons, imprisonment."

"Use: (1) To make use of, especially habitually or customarily; as, to use diligence in business. (2) To convert to one's service; to avail oneself of; to employ; as, to use a plow, a chair, a book. *Syn.* Use, employ, utilize means to make serviceable. Use suggests availing oneself of a thing as a means of instrument to one's end; employ, the use of a person or thing that is idle, inactive, disengaged, or the like; utilize, the discovery of a profitable use as of employment for a practical purpose."

"Preserve (preservation): (1) To keep from injury or destruction; defend from evil; protect; save. (2) To keep intact; specif.: (a) To keep from decaying, (b) To can, pickle, or the like, for future use. (3) To maintain; retain; as to preserve silence."

If the word "use" can be construed as authority to withhold some Government records, then it is authority to withhold any or all public records in the absence of a special law requiring for publication of a specific type of record.

If the executive agencies have the unqualified right to restrict the use of public records under the housekeeping statute, then there is no inherent right to

examine the records of Federal agencies. We are totally at the mercy of those who are elected or appointed in this all-powerful executive branch.

If this is so, then there is no obligation on the part of the officeholder to keep the people informed, unless Congress writes a specific law ordering the disclosure of the type of information sought.

Such a theory of government is inconsistent with democracy. It is inconsistent with the idea of a free press. It is a theory that no political figure could preach at election time, and it is one that should not be practiced or condoned between elections. Appointed officers certainly shouldn't be allowed to act with such disregard for the intent of the statute, and the principles of democracy.

If Congress does not act to amend title 5, United States Code, section 22, to prohibit the withholding of information, then Congress is reducing itself to a third-rate division of Government. A few committees of Congress, including this one, still fight to retain the congressional function as a check against an all-powerful executive branch. However, it would seem that many in Congress are unconcerned about the erosion of congressional power.

Congress allows the executive branch of the Government to whittle its investigative power by a doctrine of Executive secrecy which states Congress is entitled to final decisions of the executive branch, but has no real power to go behind those decisions to determine the facts. Congress is entitled to only what the executive branch feels the Congress should have.

Congress has allowed the so-called housekeeping statute to be warped and twisted into an almost unqualified right of the Executive to withhold Government records from the public.

The Congress beats its chest and calls itself the great guardian of the people's rights—the check against the dictatorial tendencies inherent in any all-powerful executive. Periodically, congressional committees have probed into our executive branch and have performed in a manner which merited the title of "Guardian of the People's Rights." But for the most part, congressional leadership has not lived up to its responsibility. It is time that the Congress stops being a third-rate division of Government, and insists on the right to write the laws and have them properly administered. A good place to start is on title 5, United States Code, section 22, by immediate passage of S. 921.

The testimony of Attorney General William P. Rogers on March 6, and his opposition to the amendment of title 5, United States Code, section 22, has not changed the position of Sigma Delta Chi.

The inconsistent and totally confusing position taken by the Attorney General on the amendment to title 5, United States Code, section 22, makes it even more apparent why the amendment is needed.

At the time of his appearance, the Attorney General stated that title 5, United States Code, section 22, is merely a housekeeping statute and involves no right to withhold information.

"This is a bookkeeping statute, which says they keep the records, they hold them physically. It doesn't relate at all to executive privilege," the Attorney General said.

In following out his logic, the Attorney General stated that the amendment to title 5, United States Code, section 22, would serve no purpose, would be "meaningless" for title 5, United States Code, section 22, does not include any right to withhold information as it now stands.

While stating that this statute includes no right to withhold information, the Attorney General admitted that it had been erroneously used by officials who had meant to use the "executive privilege" to keep Government records secret.

The Attorney General, the chief legal officer in the executive branch of Government, has done nothing to stop these misuses of title 5, United States Code, section 22, and gives no indication that he intends to do anything.

The Attorney General said: "I have attempted to suggest in my statement, the executive privilege is not related to any statute; the executive privilege is an inherent part of our Government, based upon the separation of powers * * *

Since his personal testimony on this issue, the Attorney General has submitted what is purported to be a clarifying statement in which it would appear he reverses himself completely. Now, the Attorney General takes the position that the housekeeping statute is a "legislative expression of the executive privilege" which the Attorney General claims is the inherent right of the President to withhold information from the public, the press, and the Congress as "confidential executive business."

We of Sigma Delta Chi do not believe there is any inherent right for the officials in the executive branch to hide the facts from the people, the Congress

and the press under a vast blanket of secrecy entitled "Confidential Executive Business."

However, the Attorney General stated there is an inherent right which flows from the Constitution. If this is so, then there is no need for his concern over an amendment to title 5, United States Code, section 22, for this proposed amendment does not change the Constitution.

We cannot emphasize too often that if heads of executive agencies have specific areas which they feel must be confidential, they should go before the Congress and ask for special laws to cover those areas. Let each plea stand on the individual merit it possesses.

The Sigma Delta Chi is opposed to blanket legislation that gives any person in Government a broad and unlimited authority to hide mistakes, abuses of power, or crimes from the public. We have seen the proof year after year that the unlimited grant of the right to hide the record will lead to abuse of power, corruption, and mismanagement.

Of course, the Attorney General tells us he does not believe that secrecy is being used to hide errors or crimes in the executive branch of Government.

Mr. Rogers felt different about this 10 years ago. Then he was chief counsel for a Senate committee, and Mr. Rogers was busy digging out and exposing the crimes, favoritism, and errors which he felt were being covered up by the secrecy in the executive agencies. We might say that Mr. Rogers was highly successful. A report prepared under the direction of Mr. Rogers lashed out at the secrecy in the executive branch. That report proclaimed that if the Congress in its investigation was limited to what the executive branch wanted to produce it would create the ludicrous situation where the Congress was a blind man at the mercy of his "seeing-eye dog"—the executive branch.

Mr. Rogers may feel things are different today. However, we can never trust the judgment of those in power who might be inclined to make self-serving declarations on their own virtues. This has happened often in the past. We know now that at least 8 or 10 congressional committees have made it clear they are not as sure as Mr. Rogers that secrecy isn't being used to hide crimes, favoritism, and blunders.

It is not necessary to arrive at any conclusion on the virtues of this administration or any administration, to conclude that secret government is not in keeping with democracy.

Even if we accept an administration's declarations on the many virtues it possesses, we must be guided by this principle: "Never trust a good man to make secret decisions for you, if it would frighten you to lodge the same power in an evil man or a man who is on the other side of the political fence."

I think this is something we should keep in mind when we examine the Rogers' theory on "executive privilege" as he stated it before this subcommittee. He laid out this theory:

Anyone in the executive branch of Government can refuse to testify before a congressional committee or produce Government documents if those in the executive branch consider the actions to be confidential Executive communications.

He went further to say that Congress has no right to go behind the judicial decisions of the independent regulatory agencies—such as the decisions on television channels by the Federal Communications Commission, and decisions on air routes by the Civil Aeronautics Board. Neither can Congress delve into the conversations and written communications within the agencies if those agencies consider them confidential, Mr. Rogers tells us.

There is no law to support this extreme doctrine that the executive branch and the so-called independent regulatory agencies can hide everything but their final decisions.

There are no court decisions to support this extreme doctrine that the right of Congress to information from these agencies is totally contingent upon what the agencies want to produce.

This is a policy justified under an outlandish stretching of the doctrine of separation of powers. The Rogers doctrine is justified on grounds it is necessary to avoid tyranny by the legislative branch of our Government.

In fact, it is a doctrine that sets the stage for executive tyranny—executive domination of the basic facts as to how the laws are being administered and what legislation is needed.

Under the Rogers doctrine, the Congress would still have the power to force testimony from private persons, and to force the production of records from private persons, and private businesses. But, Congress would be in the ludicrous position of having no real power to investigate how the laws are being adminis-

tered by the executive branch of the Government and by the various regulatory agencies.

Under the Rogers doctrine, the Congress is reduced to a third-rate division of Government. Its investigations can be limited to what officials in the executive branch of the Government feel it is wise to produce.

The United States Supreme Court spoke on this subject in the case of *McGrain v. Daugherty* (273 U. S. 135) which arose out of the Teapot Dome scandals of the 1920's and an investigation of the administration of the antitrust laws by the Department of Justice. The Court said:

"A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught us that mere requests for such information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed."

There is no statement on this case that Congress must have the right to force testimony and production of records from private persons, but cannot exercise this power over officials of the executive branch.

My concern over the right of Congress is based on this fact. I know that the right of the press and the public to obtain a clear picture of what is going on in the executive branch is contingent upon the right of Congress to force a disclosure of executive branch activity. Press officials and other officials in executive agencies will not willingly produce information that will embarrass their superiors, and their superiors will not authorize them to release such information unless they fear it will be brought out later. Executive agencies give up information willingly only when it suits their purpose. When it is not consistent with the propaganda move on at that time, the reporter will meet with barrier after barrier. Our ultimate success is based on the fear that we will go to Congress with our complaint, and that the facts might as well be produced willingly for they will be forced out later. Remove this compulsion, and the press will be nothing but an army of handout collectors.

A free press means more than just the right to print without governmental controls. It means more than the right to criticize our officials.

A free press must also embody a free access to the operations of governmental agencies and the activities of Government officials. There can be no real right to criticize unless there is a freedom to access to facts upon which to base an informed and intelligent criticism.

Half freedom is no real freedom. If the Government has full discretion as to which facts will be made available to the public, the press, or the Congress, then there is no more than half freedom.

I do not want to be limited in my reporting to the self-serving declarations from men like Richard A. Mack as to what a fine job is being done in the Federal Communications Commission.

I do not want to be limited to the comments of T. Lamar Caudle, Assistant Attorney General under the Truman administration, as to what a fine job is being done in the prosecution of tax law violators.

I do not want to be limited to the comments of Harold Talbott, former Air Force Secretary, as to how he is handling Air Force procurement.

I do not want to be limited to the statements of former Secretary of Interior Fall that the handling of the Teapot Dome oil reserves was really in the public interest.

There are enough limitations on our access to information without the blanket shield for the executive that is present in the Rogers' doctrine.

There is the complexity of government that makes its activities such a maze that we need help from special congressional committees.

There are special laws and regulations which put security matters out of bounds.

There are diplomatic matters that must be outside of our reach.

There are such things as raw FBI files, and personnel files which have been declared to be properly secret.

We must oppose every new encroachment, unless there is a firm case made in a limited area.

The Constitution does not give the President the inherent right to arbitrarily withhold information from the Congress and the public any more than it gives him the right to steal, misuse public funds, or liquidate the political opposition. The Constitution merely limits the remedy against the President to impeachment.

It would not be argued—I don't believe—that the Constitution gives the President the inherent right to steal public funds, conspire to misuse public property, or murder political opponents. Neither can it be argued that he has an inherent right to withhold information from the Congress, the judicial system, or the public.

The fact that the President can get away with refusing information to the Congress, the courts, or the public does not mean he is within his rights. It merely means that the crime, impropriety, or abuse of power was not punished by impeachment—the only remedy against the President under our Constitution.

Actions against the President for crime, impropriety, or abuse of power is limited to impeachment for these very practical reasons:

1. It is necessary that there be a provision for action against the President that is independent of the President, and lodging the impeachment power in the legislative branch gives this independence. This is essential because there could be no effective check on the President if action were limited to the Attorney General—an officer appointed by the President, and accountable to the President, who would be unlikely to prosecute regardless of the crimes or abuse of power involved.

2. It is important that the President be free to act without being personally subject to constant harassment for minor errors or mistakes of judgment for decisions in controversial areas. Under the Constitution the President is free to operate without fear unless his actions involve such serious blunders or crimes that impeachment becomes the proper remedy.

The doctrine of separation of powers provides measures for both the legislative branch and the judicial branch to serve as a check on abuse of power by the executive branch. It is possible for the President to thwart the checks of the judicial branch in many cases by stating "let them enforce their order." This does not make it right for the President to do it.

It is possible for the President to disregard the Congress by taking the laws, administering them with total disregard for legislative intent, and refusing to produce executive department files on how the laws are being administered. This does not make it right for the President to do it.

It is time for more people in the executive branch to give some time to thinking about what is right for the Nation over a period of the next few hundred years, and less to convenient ways of hiding the record from the public.

Senator HENNINGS. This committee will now rise and return at 2:30, if that is agreeable to all.

(Whereupon, at 12:45 p. m., the subcommittee recessed for lunch, to reconvene at 2:30 p. m.)

AFTERNOON SESSION

The subcommittee met at 2:30 p. m. in room 357, Senate Office Building, Senator Thomas C. Hennings, Jr., chairman of the subcommittee, presiding.

Present: Senators Hennings and Hruska.

Senator HENNINGS. The committee will please come to order. I know that Senator Ervin has a conflicting committee meeting of the Committee on Labor and Public Welfare. I don't know what time he can be here.

I regret very much the possibility that we may be interrupted at any moment during the course of these hearings, inasmuch as the Senate is considering the community-facilities bill on the floor now. We voted on two amendments yesterday. There are a good many more coming in this afternoon.

Mr. Agronsky, if you will be good enough to come forward.

I am delighted to welcome you here this afternoon.

I think everyone knows Mr. Agronsky is a very distinguished commentator of the National Broadcasting Co. He has been active in many fields of reporting and gathering information. He is a recognized authority on this general subject of freedom of information.

We are very glad to have you proceed in your own way, Martin. You may read from your statement or intersperse it with your own comments.

Mr. AGRONSKY. Thank you, Senator. I had prepared a statement. I thought I might start it. And anything I bring up that you might like to ask me any questions about, I would be delighted to break off and expand on it.

STATEMENT OF MARTIN AGRONSKY, WASHINGTON CORRESPONDENT, NATIONAL BROADCASTING CO.

Mr. AGRONSKY. Mr. Chairman and gentlemen of the subcommittee, my name is Martin Agronsky. I am a Washington correspondent for the National Broadcasting Co. I wish to state, however, that in my testimony before your committee I speak for myself alone. As the traditional formula goes, everything this reporter says reflects his own views and not necessarily those of his employer, the National Broadcasting Co.

I could throw in sponsors on that too, I suppose.

I would like first to say that I endorse the subcommittee amendment to title 5, United States Code, section 22. The statute now reads:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performances of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

The proposed amendment would add this language:

This section does not authorize withholding information from the public or limiting the availability of information to the public.

The reason I support this amendment is that I feel the record makes clear that Government agencies by their interpretation of the original statute have followed a course of action which has often resulted in the misuse and abuse of the authority to withhold from the public and the Congress information concerning administrative actions.

I would not confine this criticism solely to this administration. Whatever label of the party that controls the Executive, its tendency is to seek any legal means that enable it to withhold from public scrutiny any errors in judgment or implementation of Executive policies.

That is not just a political trait, as you know, Senator.

It is human nature to concentrate on successes rather than failures, and this human trait naturally applies to any administration as much as it does to any individual in that administration.

It has been suggested that the misuse of this so-called housekeeping statute can and will be corrected by administrative action.

I believe a number of spokesmen for this administration have in fact said that, including the Attorney General, Mr. Rogers.

Granting the administration the best will in the world in this regard, it is unreasonable to expect that any administration would be consistently and impartially zealous in punishing those of its own members who abuse this housekeeping statute. I think it is the function of the Congress to guard against the abuse of this statute. The proposed amendment is one way in which Congress can perform this function, which is another reason for it.

It must be accepted that there are many Executive records which executive agencies have good reason to hold confidential. Obviously, where there is legitimate reason to hold that dissemination of Executive records would be harmful to the national security, then they should be withheld. However, when such is the case, the executive department has an easily available remedy. It can make its case for secrecy on specific matters to the Congress, and I am sure, wherever the facts justify, Congress would grant the specific withholding authority.

The basic approach to freedom of information I would support is that our Government belongs to the people. Any administration, whether its officials are elected or appointed, is a temporary custodian of this Government. All of the business of the Government is fundamentally the public business. When we speak of the people's right to know, the controlling word is "right." It is a "right," and not just a privilege to be granted or withheld at the discretion of any administration.

Where the people's right to know is accepted as being dependent upon official discretion, a fundamental tenet of democratic philosophy is corroded. Nations that accept the right of the Executive to dole out or withhold information according to Executive whim have a system of government that goes by a name different from ours.

I am inclined to feel the founders of this Nation strove as well as they could to protect the people from the concept that any branch of the Government had either the right or the necessary wisdom to tell the other branches, or the people, what they should or should not know. Certainly the whole idea of checks and balances so firmly incorporated in the Constitution derives directly from the Founding Fathers' deep mistrust of a concentration of power in the hands of any one branch of the Government or in those of any one group of men in the Government.

I submit that the most dangerous power in our country today would be that which would permit a department of the Government to say arbitrarily what the people, or for that matter, the Congress, are entitled to know or not to know.

I do not intend to try to deal word by word with the housekeeping statute, whose amendment I support. I have read the previous testimony before this subcommittee, and the semantical interpretations already set forth by the group of extremely able witnesses that have preceded me do that particular job adequately.

I would like to address myself specifically to the problem that is presented when various issues of great national importance must be decided, and some of the most vital information required for the public and the Congress to arrive at an informed opinion about the right solution is withheld on the grounds that the national security might be harmed through public disclosure.

I feel in this area I am reasonably competent to make observations.

Then there is the related problem that arises from half-information, half-truths, the kind of thing that the New York Times' Washington correspondent, James Reston, has aptly described as "managed news."

The way this works is that the executive agencies may apply the process of "selective security" to the information they hand out. Let me cite one specific example—that is reported in the current Saturday

Review of Literature—of how this works. When Mr. Charles E. Wilson was Secretary of Defense, he faced some severe congressional criticism of his policy of cutting back on production of our B-52 long-distance bomber. When the criticism was at its height—both in the Congress and in the press—Mr. Wilson drew on his access to our Government's top secret intelligence to announce our intelligence sources had reported the Soviets had sharply cut back their production of their Bison long-range bomber. Mr. Wilson contended then that the Soviet cutback justified—which was the information told to him by our intelligence sources—justified the wisdom of his own cutback policy.

Accepting the rightness of Mr. Wilson's intelligence information, it seems reasonable still to ask why he didn't choose to make public simultaneously another piece of information our intelligence had reported at that time about the Russians. This was the tremendous progress the Soviets had at that time made in long-range missiles. Months later, the public learned about this Soviet missile progress. And I think the Congress did too, at about the same time.

Actually, it was this progress which provided the real reason the Russians had cut down their long-range bomber production.

When, in a situation like this, a spokesman for the Executive makes public only a portion of the information he has from our top secret intelligence sources and withholds the rest, the Congress and the public are not just being half-informed, but are, in a sense, being misinformed. And certainly they are being misled.

There is a point to keep in mind here. It is that if the responsible head of an executive agency is always to have it in his power to decide what information of a highly secret nature he shall disclose, and what he shall withhold, then he always will have the power to release that information which will support his policies and to hold back what is contrary.

Senator HENNINGS. Now, Mr. Agronsky, at that point, may I ask this question.

Do you think the withholding of the Gaither report relates to this in any way? And do you think the Administration used this power to suppress the Gaither report and thus hold back something contrary to its policies?

Mr. AGRONSKY. I think that is a completely pertinent analogy, sir. And only the fact that certain interested members of the Gaither Committee chose to inform members of the press about the existence of this report and the recommendations that it set forth enabled the public and the Congress, I may say, to learn about the existence of this information and about these ideas.

And I think the analogy is a perfect one.

This one goes beyond half-truth; this one goes directly to the heart of the matter which is complete withholding of information, which I feel is the public's business, and certainly the business of the Congress of the United States.

Senator HENNINGS. And in the public interest.

Mr. AGRONSKY. Yes, sir.

Senator HENNINGS. Thank you.

Mr. AGRONSKY. I would supplement that, Senator, by saying that this is an immense power really—this power of withholding and re-

leasing what it is convenient to release, and it should not be allowed to reside in the hands of any single public official.

In such a case I think it is obvious too that the Congress could not intelligently determine whether the policy under consideration was the one best adapted to our national security. And there again we have the analogy with the Gaither report, if you like.

I often wonder what goes through the minds of the Members of Congress when they are faced with the military budget. The Congress is required to examine and pass on the military budget in detail. One of the most important policies the military budget involves today is the balance our defense forces shall maintain between deterrent retaliatory forces, defense against enemy nuclear attack and conventional forces.

That is in terms of how much or what portion of the budget should be allocated to each of these missions or departments.

In addition, the relative likelihood of limited or general war and the adequacy of our current means of dealing with each are necessarily reflected in financial terms. Also the hard decision as to the comparative value of manned bombers, missiles fired from land bases, and missiles fired from submarines has to be made by the Congress. Under our Constitution, the Congress is required to raise and support armies. That is its constitutional function and obligation.

Thus it becomes the constitutional duty of the Congress to subject to its close scrutiny the entire strategy as well as the entire organization for national defense.

I think it is clear that the suppression or distortion of any of the information that should be available to the Congress on these matters is defensible only where the national security is truly involved.

I wonder how the Congress is to determine when information is justifiably withheld as a matter of national security or whether it is withheld or half-disclosed because to do otherwise might raise questions in congressional minds about the wisdom of the policies proposed.

Senator HENNINGS. As a matter of fact, Mr. Agronsky, I think it might be fair to say that to some extent Congress is working in the dark on these matters of the appropriation.

Mr. AGRONSKY. I think, sir, as the British say, that comes under the heading of an "understatement."

Senator HENNINGS. Yes, it certainly is an understatement. Not only in the dark, but it might even be said, don't you think, that Congress is oftentimes influenced by distortion because of the withholding of certain information—a distortion of what our own posture of defense might be?

Mr. AGRONSKY. Indeed that is so, sir.

I feel, Senator, that distortion is one of the trickiest, one of the most dangerous of all the methods that is used.

And distortion can occur merely by setting forth one fact, withholding another fact that might be pertinent to the original fact that they chose to disclose.

Senator HENNINGS. Which oftentimes has the same effect, does it not, of a direct misstatement?

Mr. AGRONSKY. Indeed it does, sir. And certainly can tend to mislead.

I would like to set forth another good example of how this problem is raised for the Congress and the public and reporters like myself is to be found in examining the current proposals for reorganization of the Department of Defense. Since I am not a military expert, I would not attempt to judge the relative merits of the various plans for this reorganization. What is pertinent to note, though, is that here again one sees the trend toward half-information, half-disclosure. Let me cite again a specific example.

I think generalizations are not effective in making a point like this.

Several months ago, the Joint Chiefs of Staff appointed a special committee, headed by Major General Wheeler, to examine the organization of the Defense Department and to recommend the necessary changes. The committee produced what is known as the Wheeler report. It was never published and has been withheld from both congressional and reportorial examination by being classified secret.

I have learned that the Wheeler report tends to endorse as satisfactory the broad principles now effective in the Department of Defense, though it also recommends some changes in organization and procedures to improve efficiency. It has been so carefully suppressed within the Defense Department itself that a number of responsible military men whose duties would normally require that they understand the report have not even been permitted to see it. The Wheeler report is in many ways in contradiction to the reorganization plan of the President. It implies substantially that the President and the Secretary of Defense already have adequate powers to bring about any needed changes in the Defense Department without the kind of massive reorganization the President proposed.

Senator HENNINGS. Now at that point, if you will indulge an interruption, Mr. Agronsky.

Mr. AGRONSKY. Yes, sir.

Senator HENNINGS. Are you not saying in effect that, just as was the case in the Gaither report a few months ago, the administration is now deliberately suppressing a report on the Defense Department organization prepared by a specially selected committee of experts, as in the case of the Gaither survey and study and report—

Mr. AGRONSKY. An even more qualified group.

Senator HENNINGS. These experts, as set out in the report, materially contradict some of the points in the reorganization plan the President says he is going to push?

Mr. AGRONSKY. That is correct.

Senator HENNINGS. Let me follow that up with another question and then I will give you the opportunity to expand on it.

If such a thing has occurred, it would seem to me to be entirely reprehensible, and in fact amounting to a dangerous deception to America, including the Members of both Houses of Congress.

How can we in Congress ever hope to evaluate the merits or demerits of the President's Defense Department reorganization plan and pass on the plan intelligently if we get only one side of the case?

Mr. AGRONSKY. Well, sir, you have anticipated the very point that I would certainly make and it is the obvious point that would be drawn from the fact that a report such as this has been suppressed. I think it might be going too far to say that they deliberately intend to deceive and that there is anything deceitful in the suppression of the report. I think the administration might argue—and perhaps it

will—that they have withheld this because it is a matter of internal business in the Pentagon, that the opinion went to the qualified authorities, was evaluated, and they chose to regard it as not one that they would accept.

This does not answer the point which you make so ably. And that is that whether the Wheeler report, what it recommends, makes sense or doesn't make sense, you as a Senator and certainly any Member of the Congress would be in a better position to evaluate the President's reorganization plan if you had an opposing critical opinion.

I think you are completely correct in making that analogy.

Senator HENNINGS. That would be true not only in the field of defense, but also in other fields.

This is just one side presenting its own formidable array of opinions and facts and statistics and so on. In a case like that you don't hear the adverse opinion, or there is no opportunity for the obtaining of sufficient material for cross-examination of certain of the witnesses who may appear before the armed services.

It is sort of like a lawyer going into court without having any idea whatever of what the hearing is about. He doesn't know what points he has to answer or rebut, such as may be fallacious. Some may be very easily disproved and some may not be. Certainly in a democracy such as ours and in order to do an effective job and to fulfill our mission and our duties here as representatives of the people, it would seem to me we are entitled to hear both sides or several sides—as many sides as possible, indeed.

Mr. AGRONSKY. I would certainly subscribe to that, sir. I would like to add to that observation, too, that as I indicated earlier, I don't say that the Wheeler report's recommendations are right, nor do I say that the President's reorganization plan is wrong; the opposite could be the case, as a matter of fact. But I would like to raise again the point that you just made.

I would like to ask whether the Congress, the public, and reporters wouldn't be in a better position to determine the merit of the President's reorganization plan if there were made available through publication of the Wheeler report these opinions of the most uniquely qualified experts on our military organization in our country, namely, the special committee appointed by the Joint Chiefs of Staff themselves.

And I wonder, Senator, why the Congress is so complacent about this kind of withholding of what is obviously vital information that could enable it to judge more intelligently the merits of the President's proposal, whether it agreed with the recommendations or not.

Senator HENNINGS. Now as you know, Mr. Agronsky, the President said he is going on television and I presume radio, to take his reorganization plan to the American people.

How can the people make any intelligent decision on this vitally important subject if they don't have the facts, or only a portion of the facts, let's say?

Mr. AGRONSKY. I certainly wouldn't attempt to answer that.

Senator HENNINGS. And, as you yourself, I believe, once called to our attention, the Secretary of Defense has put a gag on civilian and military defense department members who oppose the reorganization plan, and they risk their jobs if they speak their minds in public.

Apparently those who support the plan, however, have free range to sell the plan any way they please to do it.

Mr. AGRONSKY. I think that is true, sir.

Senator HENNINGS. It is not only unfair to the Defense Department people who may be involved but the people of the country as well, don't you think that is correct?

Mr. AGRONSKY. I do indeed.

I wrote a broadcast last January in which I reported on a secret meeting that was held in the Secretary of Defense's office and in which the gag rule was first laid down to the Joint Chiefs and the Administrative Officers of the Department of Defense. And just last week the Secretary of Defense restated that rule publicly in a speech before the National Press Club. That is the observation which you had reference to, I believe. But it was as far back as last January that they were privately and secretly told by the Secretary of Defense that—that is, the responsible officers of the Defense Department—that they were not publicly to criticize the reorganization plan.

Now, there again I don't think that the opposition to the President's reorganization plan in the military service in the Pentagon necessarily is right. The President may be completely right. But there again your point is raised.

Senator HENNINGS. I am disposed to think he probably is right in the main. I am inclined to go along with the plan. But I still would like to hear the other side of it.

Mr. AGRONSKY. Yes. We return to your point. What about the other side? I think clearly the administration's duty is to press the Defense reorganization case by all legitimate means available. Nobody could deny that. But does this mean the Congress or the electorate should be asked to act upon a matter as vital as this one with less than complete information? In this instance it is not readily apparent that the national interest in terms of security, is best served by withholding this information.

Under title 5, the executive department could hold that the Wheeler report pertains only to Defense Department housekeeping and is not the business of the public or the Congress. If the proposed amendment were passed, it might make such minority points of view more accessible.

But I would add to this, that there is existing authority under other statutes and regulations which even if this proposed amendment were passed would still mean that the Department of Defense or the executive department could completely withhold such a thing as the Wheeler report from public disclosure.

Senator HENNINGS. Has there been any publicity about the Wheeler Report that you know of up to now?

Mr. AGRONSKY. Yes. The Washington Post some months ago mentioned the naming of the Committee by the Joint Chiefs of Staff to function under Major General Wheeler at the time that that Committee was constituted. I have never seen another mention or I recollect no other mention of the Wheeler Committee in the Washington Post.

Mark Childs, I think, also wrote a column in which he indicated that the Committee had been formed and what its task would be, and which did appear in the Washington Post some months ago. I don't remember the exact date.

Senator HENNINGS. I generally read his column. There was practically nothing said about the Wheeler report, though. It certainly hasn't had the publicity and the general entirety of inquiry and indeed curiosity that the Gaither report seemed to generate.

In a real sense, it has been withheld.

Mr. AGRONSKY. I think it is very true.

Senator HENNINGS. Don't you think it is disturbing, Mr. Agronsky, with the seasoned newsman that you are—I know you covered part of World War II, or all of it—

Mr. AGRONSKY. Yes.

Senator HENNINGS. So I think you would certainly be qualified to speak with authority on this general subject. I think maybe it would be appropriate for me, if I have the consent of the other members of this committee, which I will undertake to get and try to get the authority of the committee to write not only on my own behalf but on behalf of the Committee on Constitutional Rights, to write the appropriate people in the Defense Department or even in the White House to try to find out what is behind all of this.

This is another one of these great mysteries.

Mr. AGRONSKY. Senator, I think you would be performing your duty as a Senator if you were to do just that. I repeat: I don't know the Wheeler report's recommendations are those with which you would agree or for that matter those with which I would agree.

Senator HENNINGS. That doesn't make any difference, whether we agree with it or not.

Mr. AGRONSKY. That is right. Our goal is to have the information to see whether it would help to evaluate the President's reorganization plan. Because it is apparently a minority point of view that I think should be available certainly to the Congress and the public to make an informed and intelligent judgment.

Senator HENNINGS. What does it profit us to have these committees generally composed of distinguished and able, disinterested objective men appointed, and then have their findings put into a receptacle or repository for use of obsolete documents? It doesn't mean anything; does it?

Mr. AGRONSKY. No, sir.

Senator HENNINGS. These men, I believe, came down here—how many were on the Wheeler Committee?

Mr. AGRONSKY. I don't know the exact number.

Senator HENNINGS. Well 5 or 6, probably.

Mr. AGRONSKY. I think it ran certainly 6 and perhaps 8. And with their deputies perhaps much more. I have not seen the report myself, sir; and this is information that comes to me from sources that I consider completely reliable.

Senator HENNINGS. Yes. Thank you.

Mr. AGRONSKY. Our official position on the cessation of nuclear testing and on the possible banning of nuclear weapons, is another case in point.

Has our Congress been told by the responsible spokesmen of our executive agencies that a basic factor in our policies vis-a-vis Russia, is that we are so solidly committed to the theory of nuclear deterrence? Does our Congress understand that our responsible policymakers would regard it as inimical to the national security to give up nuclear

weapons as long as the Russians are numerically superior in conventional forces to us?

Again I do not say that this official policy is wrong.

Senator HENNINGS. I read that many times. I am not prepared to say it is wrong either.

Mr. AGRONSKY. The question is rather whether the Congress has lived up to its obligation to get from the administration its real thinking on this matter so that in considering the prospect of nuclear disarmament the real issues involved can be understood and debated.

Mr. AGRONSKY. What I have in mind, Senator, if I may interpolate, is that officially our policy is that we seek complete nuclear disarmament. I have no reason to doubt that we do regard that as a worthwhile goal. I certainly don't doubt the honesty of the spokesmen of our administration when they say they seek that. I think all Americans support them there.

However, at the same time it is also a fact that our system of alliances and our whole military strategy is based on the thesis that as long as the Russians outnumber us so greatly in numerical forces as they do; as long as the Communist bloc is so numerically superior to the Western bloc in manpower, then it would be inimical to our national security for us to give up nuclear weapons.

I don't think that has ever been clearly stated or accepted as the official policy of our Government. And I wonder, without trying to go into this whole nuclear thing, which could take us the rest of the year, whether the Congress of the United States can realistically debate the virtues of moving toward a policy of nuclear disarmament if they do not know that it is in the opinion of our responsible military advisers a mistake and dangerous to our national security to give up nuclear weapons at this point.

Senator HENNINGS. I think you and several columnists and others have discussed those several points. I haven't heard any official pronouncement, although I have been privileged to go to these briefing sessions of so-called leadership at the White House. I have been to some 8 or 10 of them in the last 2 years. Some 20 members of the House and Senate go and sit around a table in the Cabinet room. I don't recall that that has ever been stated as a matter of absolute policy.

Mr. AGRONSKY. Nor do I. And, Senator, I can't think of a more legitimate issue for congressional and public debate.

We live in times when the wisdom of some of the decisions our Government takes could conceivably mean the difference between living and dying for millions of our own people and millions more in other countries. There's no need to belabor this point, which is obvious to every thinking person. It must constantly be in the minds of the distinguished members of this committee.

When the people's right to know involves their access to information that would enable them to judge for themselves the rightness or wrongness of such decisions, certainly the paramount importance of the fullest disclosure consonant with true national security becomes evident. James Madison once wrote:

A popular government without popular information or the means of acquiring it, is a prolog to a farce or a tragedy, or perhaps both.

Thomas Jefferson said:

My own opinion is that government should by all means in their power deal out the material of information to the public in order that it may be reflected back on themselves in the various forms into which public ingenuity may throw it.

I subscribe to both these opinions. The transcendent importance of the people's right to know, that they assert, is the base on which I rest my advocacy of the amendment under discussion.

Senator HENNINGS. Senator Hruska, would you like to interrogate Mr. Agronsky?

Senator HRUSKA. No; I have no questions at this time, Mr. Chairman.

Senator HENNINGS. Thank you.

It would seem to me, Mr. Agronsky, from your testimony, and your testimony only, on the question of the Wheeler report, that aside from any technicalities about executive privilege, shouldn't the people of this country have available all points of views, especially where a group of real experts are involved, before we are asked to pass on a question as important to the welfare not only of this country but possibly the free world as this?

And don't you think that people should, if the Wheeler report, as you describe it, is being suppressed, as you indicated before, request the committee to consider undertaking to request its release?

Mr. AGRONSKY. I certainly subscribe to that, sir.

Senator HENNINGS. We might even be derelict in our duty were we not to do that.

Mr. AGRONSKY. I agree with that, sir.

Senator HENNINGS. These are certainly not times to stand upon some technicalities and some formalities where the very existence of the life of this Nation is in the balance.

Mr. AGRONSKY. I certainly subscribe to that.

Senator HENNINGS. I want to say to you that we appreciate deeply your coming here and making the splendid statement that you made. You have contributed substantially and greatly to this committee in a field in which you have great interest and a field in which you can give this committee further enlightenment and further information.

Mr. AGRONSKY. Thank you, sir. It has been a privilege to come.

(The complete text of Mr. Agronsky's prepared statement follows:)

STATEMENT OF MARTIN AGRONSKY

Mr. Chairman and gentlemen of the subcommittee, my name is Martin Agronsky. I am a Washington correspondent for the National Broadcasting Co. I wish to state, however, that in my testimony before your committee I speak for myself alone. As the traditional formula goes, everything this reporter says reflects his own views and not necessarily those of his employer, the National Broadcasting Co.

I would like first to say that I endorse the subcommittee amendment to title 5, United States Code, section 22. The statute now reads:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performances of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

The proposed amendment would add this language:

"This section does not authorize withholding information from the public or limiting the availability of information to the public."

The reason I support this amendment is that I feel the record makes clear that Government agencies by their interpretation of the original statute have followed a course of action which has often resulted in the misuse and abuse of the authority to withhold from the public and the Congress information concerning administrative actions.

I would not confine this criticism solely to this administration. Whatever the label of the party that controls the executive, its tendency is to seek any legal means that enable it to withhold from public scrutiny any errors in judgment or implementation of executive policies. It is human nature to concentrate on successes rather than failures, and this human trait naturally applies to any administration as much as it does to any individual in that administration.

It has been suggested that the misuse of this so-called housekeeping statute can and will be corrected by administrative action. Granting the administration the best will in the world in this regard, it is unreasonable to expect that any administration would be consistently and impartially zealous in punishing those of its own members who abuse this housekeeping statute. I think it is the function of the Congress to guard against the abuse of this statute. The proposed amendment is one way in which Congress can perform this function.

It must be accepted that there are many executive records which executive agencies have good reason to hold confidential. Obviously, where there is legitimate reason to hold that dissemination of executive records would be harmful to the national security, then they should be withheld. However, when such is the case, the executive department has an easily available remedy. It can make its case for secrecy on specific matters to the Congress and, I am sure, wherever the facts justify, Congress would grant the specific withholding authority.

The basic approach to freedom of information I would support is that our Government belongs to the people. Any administration, whether its officials are elected or appointed, is a temporary custodian of this Government. All of the business of the Government is fundamentally the public business. When we speak of the people's right to know, the controlling word is "right." It is a "right," and not just a privilege to be granted or withheld at the discretion of any administration.

Where the people's right to know is accepted as being dependent upon official discretion, a fundamental tenet of democratic philosophy is corroded. Nations that accept the right of the executive to dole out or withhold information according to executive whim, have a system of government that goes by a name different from ours.

I am inclined to feel the founders of this Nation strove as well as they could to protect the people from the concept that any branch of the Government had either the right or the necessary wisdom to tell the other branches, or the people, what they should or should not know. Certainly the whole idea of checks and balances so firmly incorporated in the Constitution derives directly from the Founding Fathers' deep mistrust of a concentration of power in the hands of any one branch of the Government or in those of any one group of men in the Government. I submit that the most dangerous power in our country today would be that which would permit a department of the Government to say arbitrarily what the people, or for that matter, the Congress, are entitled to know or not to know.

I do not intend to try to deal word by word with the housekeeping statute, whose amendment I support. I have read the previous testimony before this subcommittee, and the semantical interpretations already set forth by the group of extremely able witnesses that have preceded me do that particular job adequately.

I would like to address myself specifically to the problem that is presented when various issues of great national importance must be decided, and some of the most vital information required for the public and the Congress to arrive at an informed opinion about the right solution is withheld on the grounds that the national security might be harmed through public disclosure.

Then there is the related problem that arises from half information, half-truths, the kind of thing that the New York Times' Washington correspondent, James Reston, has aptly described as "managed news."

The way this works is that the executive agencies may apply the process of selective security to the information they hand out. Let me cite one specific example (that is reported in the current Saturday Review of Literature) of how this works. When Mr. Charles E. Wilson was Secretary of Defense, he faced some severe congressional criticism of his policy of cutting back on production

of our B-52 long-distance bomber. When the criticism was at its height, Mr. Wilson drew on his access to our Government's top secret intelligence to announce our intelligence sources had reported the Soviets had sharply cut back their production of their Bison long-range bomber. Mr. Wilson contended then that the Soviet cutback justified the wisdom of his own cutback policy.

Accepting the rightness of Mr. Wilson's intelligence information, it seems reasonable still to ask why he didn't choose to make public simultaneously another piece of information our intelligence had reported at that time about the Russians. This was the tremendous progress the Soviets had at that time made in long-range missiles. Months later, the public learned about this Soviet missile progress. Actually, it was this progress which provided the real reason the Russians had cut down their long-range bomber production.

When, in a situation like this, a spokesman for the executive makes public only a portion of the information he has from our top secret intelligence sources and withholds the rest, the Congress and the public are not just being half informed, but are, in a sense, being misinformed. There is a point to keep in mind here. It is that if the responsible head of an executive agency is always to have it in his power to decide what information of a highly secret nature he shall disclose, and what he shall withhold, then he always will have the power to release that information which will support his policies and to hold back what is contrary.

This is an immense power that should not be allowed to reside in the hands of any single public official. In such a case I think it is obvious too that the Congress could not intelligently determine whether the policy under consideration was the one best adapted to our national security.

I often wonder what goes through the minds of the Members of Congress when they are faced with the military budget. The Congress is required to examine and pass on the military budget in detail. One of the most important policies the military budget involves today is the balance our defense forces shall maintain between deterrent retaliatory forces defense against enemy nuclear attack and conventional forces. In addition, the relative likelihood of limited or general war and the adequacy of our current means of dealing with each, are necessarily reflected in financial terms. Also the hard decision as to the comparative value of manned bombers, missiles fired from land bases, and missiles fired from submarines, has to be made by the Congress. Under our Constitution, the Congress is required to raise and support armies. Thus it becomes the constitutional duty of the Congress to subject to its close scrutiny the entire strategy as well as the entire organization for national defense.

I think it is clear that the suppression or distortion of any of the information that should be available to the Congress on these matters, is defensible only where national security is truly involved.

I wonder how the Congress is to determine when information is justifiably withheld as a matter of national security or whether it is withheld or half disclosed because to do otherwise might raise questions in congressional minds about the wisdom of the policies proposed.

Another good example of how this problem is raised for the Congress and the public and reporters like myself is to be found in examining the current proposals for reorganization of the Department of Defense. Since I am not a military expert, I would not attempt to judge the relative merits of the various plans for this reorganization. What is pertinent to note, though, is that here again one sees the trend toward half-information, half-disclosure. Let me cite again a specific example.

Several months ago, the Joint Chiefs of Staff appointed a special committee headed by Major General Wheeler, to examine the organization of the Defense Department and to recommend the necessary changes. The committee produced what is known as the Wheeler report. It was never published and has been withheld from both congressional and reportorial examination by being classified "secret."

I have learned that the Wheeler report tends to endorse as satisfactory the broad principles now effective in the Department of Defense, though it also recommends some changes in organization and procedures to improve efficiency. It has been so carefully suppressed within the Defense Department itself, that a number of responsible military men whose duties would normally require that they understand the report, have not even been permitted to see it. The Wheeler report is in many ways in contradiction to the reorganization plan of the President. It implies substantially that the President and the Secretary of Defense already have adequate powers to bring about any needed changes in the

Defense Department without the kind of massive reorganization the President proposed.

I do not say that the Wheeler report's recommendations are right or that the President's plan is wrong. The opposite could be the case. I would like to ask, though, whether the Congress, the public, and reporters would not be in a better position to determine the merit of the President's reorganization plan if there were made available through publication of the Wheeler report the opinions of the most uniquely qualified experts on our military organization in our country, namely, the special committee appointed by the Joint Chiefs of Staff themselves. I wonder that the Congress is so complacent about this kind of withholding of what is obviously vital information that could enable it to judge more intelligently the merits of the President's proposal.

Clearly, the administration's duty is to press its defense reorganization case by all legitimate means available. But does this mean the Congress or the electorate should be asked to act upon a matter as vital as this one with less than complete information? In this instance it is not readily apparent that the national interest, in terms of security, is best served by withholding this information.

Under title 5, the executive department could hold that the Wheeler report pertains only to Defense Department housekeeping and is not the business of the public or the Congress. If the proposed amendment were passed, it might make such minority points of view more accessible.

Our official position on the cessation of nuclear testing and on the possible banning of nuclear weapons, is another case in point.

Has our Congress been told by the responsible spokesmen of our executive agencies that a basic factor in our policies vis-a-vis Russia, is that we are solidly committed to the theory of nuclear deterrence? Does our Congress understand that our responsible policymakers would regard it as inimical to the national security to give up nuclear weapons as long as the Russians are numerically superior in conventional forces to us?

Again I do not say that this official policy is wrong. The question is rather whether the Congress has lived up to its obligation to get from the administration its real thinking on this matter so that in considering the prospect of nuclear disarmament the real issues involved can be understood and debated.

We live in times when the wisdom of some of the decisions our Government takes could conceivably mean the difference between living and dying for millions of our own people and millions more in other countries. There's no need to belabor this point, which is obvious to every thinking person. It must constantly be in the minds of the distinguished members of this committee.

When the people's right to know involves their access to information that would enable them to judge for themselves the rightness or wrongness of such decisions, certainly the paramount importance of the fullest disclosure consonant with true national security becomes evident. James Madison once wrote: "A popular government without popular information or the means of acquiring it, is a prolog to a farce or a tragedy, or perhaps both." Thomas Jefferson said: "My own opinion is that government should by all means in their power deal out the material of information to the public in order that it may be reflected back on themselves in the various forms into which public ingenuity may throw it."

I subscribe to both these opinions. The transcendent importance of the people's right to know, that they assert, is the base on which I rest my advocacy of the amendment under discussion.

Senator HENNINGS. The next witness is Mr. John Taylor representing the National Federation of the Blind.

Following Mr. Taylor is Mr. Irving Ferman, director of the Washington, D. C., office of the American Civil Liberties Union.

Gentlemen, it is very distasteful for me to undertake to hurry any witness or to summarily cut off any witness' testimony. However, I think you all should know that Senator Hruska has just come to the committee with the information that the yeas and nays have been ordered on a very important amendment to be voted on on the floor. The Senate, as you know, is in session now.

I do not want to limit or restrict anyone, but I would just suggest that we might all bear in mind the handicap under which we are

laboring this afternoon. We are sitting with the permission of the Senate while the Senate is in session. There are going to be quite a few votes before the day is over.

Senator HRUSKA. That is a good guess.

Senator HENNINGS. So, with that preliminary, we welcome you here today, Mr. Taylor. We appreciate very much your interest in this subject, and we would like to have you proceed in any manner that you please, sir.

Give us your name, your representation, and you may either extemporize or read your statement.

I believe you are using Braille; is that correct?

Mr. TAYLOR. That is correct.

Senator HENNINGS. You may proceed as you please.

STATEMENT OF JOHN TAYLOR, REPRESENTING THE NATIONAL FEDERATION OF THE BLIND

Mr. TAYLOR. For the record, Mr. Chairman, my name is John Taylor. And I wish to present a statement of the National Federation of the Blind in support of the Senate bill 921.

The National Federation of the Blind has for some time been deeply concerned with securing from the departments of the Federal Government information which is vital to the welfare of many blind persons. A substantial portion of our blind citizens are dependent at least in part for their economic support, their vocational rehabilitation, their education, or other opportunity areas, on one or another Government program.

To help to secure to each of these citizens what is due them, they and their organizations should be enabled to know the administrative rules and decisions that are made to govern these programs.

State blind aid programs, to which Federal funds are contributed, are required by Federal law to be made to conform with plans approved by the Secretary of the Department of Health, Education, and Welfare. The rights, if we may call them that, of recipients of these programs are frequently in very large measure determined by the terms of the plans approved by the Secretary or by the terms of the various interpretations, rulings, and decisions placed by officials in the Department of Health, Education, and Welfare upon these plans.

The efforts of the National Federation of the Blind and of its affiliated statewide organizations to assist and advise persons in respect to blind aid programs have frequently been thwarted simply because access to the plans and to the various Federal rulings and decisions made to govern these plans and Federal law has been denied.

A similar barrier has existed under State vocational rehabilitation programs that are financed in part by Federal funds.

Frequently rights of clients under these programs are determined by rulings and decisions made within the Department of Health, Education, and Welfare. The inability of the National Federation and its affiliated State organizations to obtain access to these rulings and decisions has been a major obstacle in our affording to blind citizens a full measure of helpful service in respect to their opportunities for rehabilitation.

The National Federation of the Blind is, of course, greatly concerned with the level of earnings received by blind workers in sheltered shops. We know that the Department of Labor has issued certificates of exemption which permit blind workers in sheltered shops to be paid wages as low as 10 cents an hour. We are, of course, frequently apprised of individual cases of workers in sheltered shops who are unable to maintain even the barest minimum living standards for themselves and their families.

We know that the Department of Labor is empowered to gather, and no doubt has gathered, statistics in respect to the earnings of our people in sheltered shops that would be of great value to us in our efforts to assist them in securing better working conditions.

Again our efforts in this direction are thwarted by inability to obtain access to information that is no doubt contained in our Government offices.

For more than 20 years the Federal Government under the so-called Randolph-Sheppard Act has regulated the programs of State agencies for the licensing of blind persons to operate vending stands on Federal and other property.

Individual vending stand operators in these programs have on many occasions found that their interests have been decided under Federal rulings and decisions to which they had no access and of which they had no knowledge. Each year Congress appropriates funds for the reproduction into braille or sound recordings of printed matter. The selection of the matter to be brailled or recorded is left to officials in the Library of Congress.

The information that has been made available to the public in respect to how these selections are made is negligible. The result has been that the National Federation of the Blind and its affiliated organizations have not been enabled to participate in any effective way in the making of these selections which concern us so vitally.

We understand that the passage of S. 921 will not in itself accomplish the release by the Department of Health, Education, and Welfare or by the Labor Department or by the Library of Congress of the information most needed by our organization and other organizations seeking to assist blind persons under the Federal programs here cited.

However, we recognize that section 161 of the revised statutes (5 U. S. C. 22), has been all too frequently incorrectly cited as authority for executive departments to withhold information from the public.

Accordingly we endorse and strongly urge enactment of S. 921, at the same time strongly urging that serious attention be given to the enactment of the amendment to section 1002 of title V of the United States Code that is contained in Senate bill 2148.

In conclusion, Mr. Chairman, we believe that there is in our Government offices and files, a great deal of information that should be made available to interested groups, organizations, and individuals.

We are not requesting the availability of personal or confidential information the disclosures of which would be injurious to the public interest. But where there are rules and regulations and decisions that are available within the Department and where these rules and decisions apply to programs that affect important segments of the population, we believe that the public interest is most ably served by having these materials available to the general public.

And this concludes my remarks, except just allow me to say that I appreciate the kindness of the members of the committee in allowing us to present our views on this occasion.

Senator HENNINGS. Mr. Taylor, I think we might well state that in reverse. We are most grateful to you for coming here with your carefully prepared and helpful statement.

Do you have any questions, Senator Hruska?

Senator HRUSKA. No; except I would like to join the chairman in commending the witness for this very clear statement.

I think it should be checked very carefully, Mr. Chairman. I know that under your leadership it will be. And if there is any occasion to take action even other than that embraced in your bill S. 921 to secure action for the situation outlined here, I am sure that this committee will in one fashion or another do so.

Senator HENNINGS. I associate myself with the comments of Senator Hruska. And you may be sure that the committee will meet some time in the near future to report this and the other bill to which you refer out of the subcommittee to the full committee.

We are indeed mindful of the points you raised and raised so eloquently and forcefully here today. You have done us all a great service.

Thank you for coming, sir.

Mr. TAYLOR. Thank you.

Senator HENNINGS. And keep in touch with us if we may be of any service to you or if anything else occurs to you during this time or any other time that you would like to expand your statement or make any suggestion to us.

Mr. TAYLOR. I assure you, Senator, that I will take full advantage of that opportunity.¹

(The complete text of Mr. Taylor's prepared statement follows:)

STATEMENT OF THE NATIONAL FEDERATION OF THE BLIND IN SUPPORT OF S. 921

The National Federation of the Blind has for some time been deeply concerned with securing from departments of the Federal Government information vital to the welfare of blind persons. A substantial portion of our blind citizens are dependent for at least a part of their economic support upon one or another Government program. To help to secure to each of these citizens what is due them, they and their organizations should be enabled to know the administrative rulings that are made to govern these programs.

State blind aid programs to which Federal funds are contributed are required by Federal law to be made to conform with plans approved by the Secretary of the Department of Health, Education, and Welfare. The rights, if we may call them that, of the recipients of these programs are frequently in very large measure determined by the terms of the plans approved by the Secretary, or by the terms of the various interpretations placed by officials in the Department of Health, Education, and Welfare upon these plans. The efforts of the National Federation and of its affiliated statewide organizations to assist and advise blind persons in respect to blind aid programs have been frequently thwarted simply because access to the plans, and to the various Federal rulings made to govern these plans, has generally been denied.

A similar barrier has existed under State vocational rehabilitation programs that are financed in part with Federal funds. Frequently, rights of clients under these programs are determined by rulings made within the Department of Health, Education, and Welfare. The inability of the national federation and its affiliated State organizations to obtain access to these rulings has been a major obstacle to our affording our blind citizens a full measure of helpful service in respect to their opportunities for rehabilitation.

¹ Subsequently, Mr. Taylor submitted additional remarks. See p. 679.

The National Federation of the Blind is, of course, greatly concerned with the level of earnings received by blind workers in sheltered shops. We know that the Department of Labor has issued certificates which permit blind workers in sheltered shops to be paid wages as low as 10 cents an hour. We are, of course, frequently apprised of individual cases of workers in sheltered shops who are unable to maintain even the barest minimum living standards for themselves and their families. We know that the Department of Labor is empowered to gather, and no doubt has gathered, statistics in respect to the earnings of our people in sheltered shops that would be of great value to us in our efforts to secure for them better working conditions. Again our efforts in this direction are thwarted by inability to obtain access to the information that no doubt is contained in our Government offices.

For more than 20 years the Federal Government, under the so-called Randolph-Sheppard Act, has regulated the programs of State agencies for the licensing of blind persons to operate vending stands on Federal and other property. Individual vending stand operators in these programs have on many occasions found that their interests have been decided under Federal rulings to which they had no access and of which they had no knowledge.

Each year Congress appropriates funds for the reproduction into braille of printed matter. The selection of the matter to be brailled is left to officials in the Library of Congress. The information that has been made available to the public in respect to how these selections are made is negligible. The result has been that the National Federation of the Blind and its affiliated organizations have not been enabled to participate in any effective way in the making of these selections.

We understand that the passage of S. 921 will not accomplish the release by the Department of Health, Education, and Welfare or by the Labor Department, or by the Library of Congress of the information most needed by our organization and other organizations, seeking to assist blind persons under the Federal programs here cited. However, we recognize that section 161 of the Revised Statutes (5 U. S. C. 22) has been from time to time incorrectly cited as authority for executive departments to withhold information. Accordingly, we endorse and urge enactment of S. 921, at the same time requesting respectfully that attention be given to enactment of the amendment to section 1002 of title 5 of the United States Code that is contained in S. 2148.

Senator HENNINGS. Mr. Ferman, I apologize to you. You are the anchor man on this thing.

Mr. FERMAN. I have a short statement to make, Senator. And I would like to read it.

Senator HENNINGS. We are glad to have you here. You may proceed in any manner you please, sir.

STATEMENT OF IRVING FERMAN, DIRECTOR, WASHINGTON, D. C., OFFICE OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. FERMAN. Mr. Chairman, my name is Irving Ferman. I appear this afternoon in behalf of the American Civil Liberties Union as its Washington, D. C., office director. The American Civil Liberties Union is a private nonpartisan organization devoted to the promotion of the Bill of Rights.

The protection of individual rights guaranteed by the first 10 amendments involves much of our work. However, our concern extends, particularly in matters relating to free expression, to the social utility of these freedoms.

Our organization, accordingly, supports S. 921, and urges this committee's approval and hopes for eventual passage.

We interpret title 5, United States Code, section 22 as merely an authorization to department heads to formulate rules for the house-keeping of records pertaining to their departments.

It is almost shocking that the amendment proposed by Senator Hennings providing that "this section does not authorize withholding information from the public or limiting the availability of records to the public" should be opposed by each of the 10 departments of the Federal Government, as reported in the proceedings of the House Committee on Government Operations.

The use of section 22 by certain executive departments as a statutory basis for prohibiting disclosure of governmental information to the American people about which they have a right to know more suggests the need for S. 921 becoming law.

At this point let me explain the interest of the union in the disclosure of Government information to the public. As I have indicated, most of our work involves denial to individuals of their constitutional guarantees.

However, we are likewise concerned with the social interest of these freedoms, particularly those of the first amendment relating to free expression.

The sustenance that freedom of expression produces for a society such as ours is our peculiar strength. Widespread public discussion and communication is the great weapon in democracy's arsenal against communism. It is this distinctive power of freedom upon which ultimately we must rely for victory.

The first amendment, in guaranteeing an individual freedom of expression from any governmental curb, not only recognizes his solemnity and dignity and worth as a man, but recognizes as well that the responsiveness of our society to truth and intelligence, a result of individual free expression, is so essential to the health of our Nation that it must not be diluted by any official action.

And I submit to you that when a department head withholds information from the public which is rightfully theirs, on a construction of section 22, he is doing violence to the very words of the first amendment which provides that Congress shall pass no law abridging the freedom of speech or of the press.

For Government to deny the public the raw substance for thought is to deny them their right to expression, and further, to deny Government the nurture that comes from such individual expression.

This the Congress did not intend to do when it adopted section 22 in 1789. And if department heads have misconstrued the statute making it the base for Federal secrecy, Senator Hennings' amendment is in order.

I would like to emphasize that the proposed amendment to section 22 is not a matter of fuzzing the separation of powers. The legal contentions embodied in the now famous order of Eisenhower prohibiting disclosures to Congress about executive discussions concerning the late Senator McCarthy are not in issue. The necessity for keeping secret investigative files containing undifferentiated allegations is not an issue.

Of course, such files must be kept secret and disclosed only before a grand jury or in a proceeding provided by law in which the aggrieved person is accorded due process.

I might say at this point that I am completely in accord with the Senator from Nebraska in his characterizing President Andrew Jackson's withholding the confidential files of the land case.

Likewise maintaining the secrecy of security information, or income tax returns, or crop reports, or trade secrets, and inventions is not in issue.

These types of information will be protected by section 22 itself which provides that—

The head of each department is authorized to prescribe regulations, not inconsistent with law, for * * * the custody of the * * * paper.

Since we have statutes on our books protecting the types of information I have mentioned, it seems to me that a reasonable construction of section 22 would indicate that Senator Hennings' amendment would not result in the disclosure of information which the public interest, as defined by these statutes, dictates should not be disclosed.

Passage of Senator Hennings' amendment would simply mean the housekeeping of records power provided in section 22 will not continue to be construed as an overall statutory power to deny the public their right to know.

In a letter sent to Chairman William L. Dawson of the House Committee on Government Operations under date of June 24, 1957, by Secretary of Commerce Sinclair Weeks, which appear in the printed hearings of this committee, the Secretary expresses opposition to Senator Hennings' amendment:

The proposed legislation would preclude reliance on section 161 of the Revised Statutes when departments undertake in the public interest to withhold information from the public or limit the availability in the public interest to withhold information from the public.

Mr. Weeks' statement, which is representative of many responses to the committee on the subject, I believe, is the best argument for Senator Hennings' amendment. We do not want to have our department heads use section 161 as Mr. Weeks would like to continue to use it. I suggest further that Mr. Weeks' statement is in contradiction, at least, in spirit to President Eisenhower's Executive Order No. 10501 dealing with document classification.

I would like to emphasize that those of us who urge more disclosure of Government information are not unsympathetic to the conscientious administrator, who very often feels that such disclosure would result in operating in a glass bowl, thus limiting his effectiveness. Certainly any active Washington lobbyist, or newspaperman, could appreciate this.

However, the democratic process in this growingly complex age of ours demands more and more Government disclosure of information if we are to effectuate intelligent and responsive citizen participation.

In the end, as a lawyer, I do not feel that we can draw precise lines for what ought to be disclosed, and what ought not to be disclosed. We will never be able to impose fine legal controls in this area of governmental activity. Broad discretion will always be with the administrator. The safeguards, therefore, lie in attitude, tradition, and understanding.

Accordingly, I feel that we need to develop a new spirit, a new attitude in our Government respecting the public's right to know.

Above all, this requires a faith in the intelligence of our people to understand, to evaluate, to respond to the experiences of Government. I am afraid the governmental official who jealously guards from public

knowledge these experiences is lacking in this fundamental democratic faith.

I submit that passage of S. 921 might help pave the way for the creation of such attitudes on the part of our Department heads.

Senator HENNINGS. Thank you, Mr. Ferman.

Senator Hruska, have you any questions or any expansions that you would like to make?

Senator HRUSKA. Yes, Mr. Chairman.

Directing your attention, Mr. Ferman, to page 2 of your statement, in the first full subparagraph there, you say this:

The first amendment in guaranteeing an individual freedom of expression from any governmental curb not only recognizes his solemnity and dignity and worth as a man, but recognizes as well that the responsiveness of our society to truth and intelligence, a result of individual free expression, is so essential to the health of our Nation that it must not be diluted by any official action.

That is a very unqualified statement. Would you think that the word "any" should probably be qualified in some way? You qualify it in later paragraphs by saying that there are certain things which from the ground of public policy should not be; and I do not want to lift it out of context.

Mr. FERMAN. I appreciate that, Senator. However, I do not want to quibble on words. I say "diluted." Certainly in many areas there are matters about which there should not be disclosure, which if not disclosed I do not think would dilute this.

Senator HRUSKA. In the next sentence you say:

If the department head withholds information from the public to which they are rightfully entitled * * *.

Mr. FERMAN. Yes.

Senator HRUSKA. That already furnishes some degree of modification which recognizes what the tenor of your statement clearly brings forth.

Mr. FERMAN. Yes.

I would like to add, if I may, the fact that I have a slightly different view of the problem that has been suggested by certain of the witnesses this morning.

Naturally I represent an organization who is deeply devoted to the cause of access to Government information. Nevertheless, personally I feel that as a lawyer that we may go too far in indulging in what might be termed "Hofeldian analysis of rights and privileges," and so on. I do feel that Executive responsibility carries with it, if you will, the concomitant of withholding information from time to time. It is part of responsibility, just as other concomitants involve the employment of persons, selection of persons, and so on.

Now, the significance of that is I do feel that one of the ways we can remedy this situation is by adoption of a new attitude toward disclosure that should come from the leadership of the President of the United States to members of the executive. I think it takes the building of that kind of tradition and attitude to really deal with this problem.

I do not think, as I said in my testimony, that we can ever hope to achieve a solution through imposing legal controls.

Senator HRUSKA. After all, in any form of legal control there does arise, does there not, the necessity for a decision in applying that legal

formula? And at that point you have to depend upon the discretion and the judgment of the person applying it; don't you?

Mr. FERMAN. Yes.

Senator HRUSKA. Isn't it, even in that field that you get into, a matter of desirability of new attitudes?

Mr. FERMAN. I think it is important to emphasize this, though there is no question but that an amendment to S. 921 is in order; but I think it is important to emphasize the inadequacy and possible ineffectiveness of legal controls in this area so that we could develop from the top of Government, the very, very top, the generation of a new attitude.

Senator HRUSKA. Thank you.

Senator HENNINGS. As you no doubt observed this morning in relation to the Andrew Jackson incident and other questions of the Senator from Nebraska, he is a very fine legal scholar. This is not an easy field. And it is not a field that we might say is open and shut.

Senator HRUSKA. In regard, Mr. Chairman, to that Andrew Jackson incident, it just seemed to me, as I walked away from the committee room this morning, that if that incident had happened in modern times when we had our FBI, the President would not have sent a commissioned officer of the Army down there to make the investigation. He would have called the FBI in that locality. And in that event, the raw file compiled by that FBI operator would certainly not have been even asked for by any representative of the press. And they would have respected the congressional policy imposing sacredness on it.

And therefore, I doubly appreciate the reference.

Mr. FERMAN. Our organization has been very active in seeing to it that the confidential files of our investigative agencies remain undislosed except in a manner provided by law. Because if they are disclosed, the whole structure of due process would fall.

Senator HENNINGS. In other words, it would be fair to say, would it not, that your point of view is that those statutes, which now protect certain files and records of the FBI, the Bureau of Internal Revenue, and other specific agencies that I read this morning, are right and proper?

Mr. FERMAN. That is right, Mr. Chairman.

Senator HENNINGS. What you object to is the misuse of the so-called housekeeping statute?

Mr. FERMAN. Yes. I think the problems involved in those statutes are completely irrelevant to the problem involved in Revised Statute 161 (5 U. S. C. 22).

Senator HENNINGS. That has been my impression. I am glad to have it confirmed by a distinguished member of the bar.

Has counsel any questions for Mr. Ferman?

Mr. SLAYMAN. No, sir. But I do have some requests to make of the committee itself about statements to go into the record.

Senator HENNINGS. Will you state them?

First, let me say to Mr. Ferman that I want to thank you and say that we appreciate very much your patience in indulging us this morning. We found ourselves rather helpless. You saw the discussion become very interesting. We imposed upon the time of the witnesses I fear.

But we thank you for coming and helping us in this work.

(The text of Mr. Ferman's prepared statement follows:)

STATEMENT OF IRVING FERMAN, DIRECTOR, WASHINGTON, D. C., OFFICE, AMERICAN CIVIL LIBERTIES UNION, IN SUPPORT OF S. 921

My name is Irving Ferman. I appear this morning in behalf of the American Civil Liberties Union as its Washington, D. C., office director. The American Civil Liberties Union is a private nonpartisan organization devoted to the promotion of the Bill of Rights.

The protection of individual rights guaranteed by the first 10 amendments involves much of our work. However, our concern extends, particularly in matters relating to free expression, to the social utility of these freedoms.

Our organization, accordingly, supports S. 921, and urges this committee's approval and hopes for eventual passage.

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It is almost shocking that the amendment proposed by Senator Hennings providing that "This section does not authorize withholding information from the public or limiting the availability of records to the public," should be opposed by each of the 10 departments of the Federal Government, as reported in the proceedings of the House Committee on Government Operations.

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At this point, let me explain the interest of the union in the disclosure of Government information to the public. As I have indicated, most of our work involves denial to individuals of their constitutional guarantees. However, we are likewise concerned with the social interest of these freedoms, particularly those of the first amendment relating to free expression.

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And I submit to you that when a department head withholds information from the public which is rightfully theirs, on a construction of section 22, he is doing violence to the very words of the first amendment which provides that Congress shall pass no law abridging the freedom of speech or of the press.

For Government to deny the public the raw substance for thought is to deny them their right to expression, and further, to deny Government the nature that comes from such individual expression.

This the Congress did not intend to do when it adopted section 22 in 1789. And if department heads have misconstrued the statute making it the base for Federal secrecy, Senator Hennings' amendment is in order.

I would like to emphasize that the proposed amendment to section 22 is not a matter of fuzzing the separation of powers. The legal contentions embodied in the now famous order of Eisenhower prohibiting disclosures to Congress about executive discussions concerning the late Senator McCarthy are not in issue. The necessity for keeping secret investigative files containing undifferentiated allegations is not an issue. Of course such files must be kept secret, and disclosed only before a grand jury, or in a proceeding provided by law in which the aggrieved person is accorded due process.

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Above all, this requires a faith in the intelligence of our people to understand, to evaluate, to respond to the experiences of Government. I am afraid the governmental official who jealously guards from public knowledge these experiences is lacking in this fundamental democratic faith.

I submit that passage of S. 921 might help pave the way for the creation of such attitudes on the part of our department heads.

Mr. SLAYMAN. I do not want to take up much of your time nor that of Senator Hruska. But this will take a minute or two.

These are housekeeping matters. It is a housekeeping statute we are dealing with. I want to be sure we have authorization in the record for the notices that have gone into the Congressional Record. Those should be in our hearings.

Senator HENNINGS. You are offering these for the record?

Senator HRUSKA. If a motion is necessary, I do move, Mr. Chairman.

Mr. SLAYMAN. I would just like to identify them right now. These are statements that have been submitted. This should all be a part of the record of the hearing itself.

And we have received a number of comments from editors, publishers, heads of journalism schools, political science and law school professors, press and news associations on the pending legislation. I have these summarized by States. But I would like to have the complete set put in the record since they have been collected by the subcommittee.

Senator HENNINGS. Without objection, it will be so ordered.¹

¹ See appendix exhibit No. 4.

Mr. SLAYMAN. This morning we put into the record the replies from all the executive departments to invitations for the Cabinet members' appearances as witnesses before the subcommittee.

In effect, they all stated they would stand on the record made by the Attorney General. However, we have in the past received copies of statements from several of the executive departments on the legislation, submitted in the regular legislative committee procedure to the parent committee.

There were also two agency reports submitted to the Committee on Government Operations when the bill had first gone there. I would like to have those in the record, too.

Senator HENNINGS. Is there any objection?

Senator HRUSKA. No.

Senator HENNINGS. There being no objection, they will be incorporated in the record and made a part of the record of these hearings.¹

Mr. SLAYMAN. Another thing, Mr. Chairman, is that a member of the House committee, Congressman Meader, has submitted a number of statements that he had made. He suggested the committee make whatever use it felt like making of them.

Senator HENNINGS. These are statements relating to the subject matter and to this amendment and cognate matters?

Mr. SLAYMAN. Yes.

Senator HRUSKA. Were they included in the House hearings?

Mr. SLAYMAN. No, they were not.

Senator HRUSKA. I think that is another reason that they be included here.

Senator HENNINGS. Without objection, they will be included.¹

Mr. SLAYMAN. And the last point is that some editors and news association people have asked to be allowed to submit statements within a short time of these hearings.

They are meeting in town now. I think if you would set a deadline, we should accept them.

Senator HENNINGS. What would counsel suggest as a reasonable deadline?

Mr. SLAYMAN. Within a week.

Senator HENNINGS. Representatives of the press who are asking that they be given permission to make statements, you mean?

Mr. SLAYMAN. Yes.

Senator HENNINGS. Is there objection?

Senator HRUSKA. No.

Senator HENNINGS. There being no objection, it will be so ordered. And the hearing is adjourned.

(Whereupon, at 3:45 p.m., the subcommittee adjourned.)

(The following statements have been received for the record of the hearing:)

WASHINGTON, D. C., April 17, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you ever so much for your letter of April 11, which I found awaiting attention upon my arrival here, giving me an opportunity to submit a statement in support of S. 921 for the record of the Senate Subcommittee on Constitutional Rights under your chairmanship.

¹ See appendix exhibit No. 2.

Personally and as freedom of information counsel for the American Society of Newspaper Editors, I am in favor of this amendment of section 161 of the Revised Statutes (5 U. S. C. 22) and submit herewith a statement in support thereof.

This is the position which I have taken before the House Government Information Subcommittee concerning the corresponding bill passed yesterday by the House and the enclosure is my statement in support thereof.

Respectfully,

HAROLD L. CROSS.

STATEMENT OF HAROLD L. CROSS, FREEDOM OF INFORMATION COUNSEL, AMERICAN SOCIETY OF NEWSPAPER EDITORS, AND AUTHOR OF THE BOOK, THE PEOPLE'S RIGHT TO KNOW, ON S. 921, H. R. 2767, AND OTHER PROPOSED AMENDMENTS TO THE SO-CALLED HOUSEKEEPING STATUTE, TITLE 5, UNITED STATES CODE, SECTION 22

My name is Harold L. Cross and my residence is Harlaine, East Boothbay, Maine. I am a member of the New York bar and, as counsel to the firm of Brown, Cross & Hamilton, have an office at 154 Nassau Street, New York, N. Y. I am withdrawn at present from regular active practice of my profession but have been acting for the past 7 years as special counsel in freedom of information matters for the American Society of Newspaper Editors.

The society just named is an unincorporated association having the usual officers, a 16-member board of directors and about 560 members and a few retired members. All but about 20 of the members are directing editors having immediate charge of editorial or news policies of daily newspapers published in the United States. Those who are not directing editors or retired members are persons found by the directors to have distinguished themselves by notable contributions to the profession of journalism or to the public service and elected to membership therefor. I am a distinguished service member.

The reasons for the deep concern of the members of the society, as citizens and as editors, with the people's right to know of the actions of Government and for their alarm by the current encroachments upon this freedom of information are as evident as they are important. Twice-concerned and doubly alarmed by measures that threaten the right to know, the members at their 1957 convention adopted unanimously a declaration of principles, the concluding paragraph whereof reads:

"The officers and directors of the American Society of Newspaper Editors are authorized and instructed by the members of the society to resist by all appropriate means every encroachment upon rights so indispensable to the exercise of their profession, so essential to the liberties of every free people, and so inseparable from all the other rights essential to self-government."

The subject matter of this hearing is action by Congress to put an end to one such encroachment and, indeed, one of the most important of the numerous existing encroachments.

I am the author of the book entitled "The People's Right To Know, Legal Access to Public Records and Proceedings" published in 1953, under the society's sponsorship, by Columbia University Press, New York, and of cumulative supplement No. 1, December 1953, published by the society itself. The book and the supplement are in the nature of reports by me to the society concerning the condition of the law, Federal and State, in the fields indicated by the title.

I have made statements before this subcommittee as follows:

As of November 7, 1955: Part 1—Panel Discussion With Editors et al., pages 9-13, 36-38.

As of November 26, 1955: Part 1—Panel Discussion With Editors et al., pages 67-76.

As of May 8-9, 1956: Part 3—Panel Discussion With Legal Experts, pages 430-451 and subsequent pages.

For a complete statement of my views of such encroachments created by the condition of the law applicable to access by public and press to public non-judicial records of the Federal Government I respectfully refer to the statements just cited and to chapters XIII to XVII of my book and to pages 27-29 of the supplement thereto.

I am here on this occasion in response to the request of Chairman Moss that I express my views concerning five pending House bills. I am honored by the request and sincerely appreciate the opportunity it affords.

The bills are:

H. R. 2767¹ by Subcommittee Chairman John E. Moss (California).

H. R. 2768¹ by Representative William L. Dawson (Illinois), chairman, House Committee on Government Operations.

H. R. 2769¹ by Subcommittee Member Dante B. Fascell (Florida).

H. R. 3497¹ by Representative Abraham J. Multer (New York).

H. R. 2810 by Subcommittee Member Clare E. Hoffman (Michigan).

All five bills propose to amend section 161, Revised Statutes, otherwise cited and hereinafter cited as title 5, United States Code, section 22, which provides:

"Departmental regulations. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

In all five the amendment consists of the addition of this sentence:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

In the first four bills cited, which are identical, that is all that is added. In the fifth bill that added sentence is qualified or modified by this addition: "nor shall this section be construed as requiring the giving of information or the making of records available where such action would endanger the national security, or unreasonably impair the efficiency of Government operations, or result in unfair advantage to any person, or disclose the source of information given an agency or official of the United States in confidence."

I favor enactment of the amendment proposed in the first four bills as the first of the essential steps needed to produce order out of chaos, to enlarge the areas of information available to the citizens concerning Government action, especially that of controversial character before it has reached the Thule deep-freeze of the fait accompli, and to bring the people's right to know about their Government's actions out from the obscurities, uncertainties and injustices characteristic of a government by men exercised by means of subjective, veering, judicially unreviewable official discretion into the light of a government by law as declared by the Congress and interpreted by the courts.

With far more than merely formal expression of respect for the introducer of the fifth bill, H. R. 2810, with whom I found myself, during the subcommittee hearings, in agreement on so many points, I oppose its enactment. Its provisions issue four invitations to diminish the information of Government action available to the people, whereas the need is not for congressional abdication but for congressional action withdrawing the invitations to secrecy already implicit in title 5, United States Code section 22. They are out of place in this housekeeping statute and thus would add to the confusion it has sired. Their terms are subjective, general and vague, whereas the objective, the specific and the certain are the crying needs of the hour. Even if they were desirable, were not out of place, they are unnecessary in the light of existing legislation, court decisions and Executive orders.

The following statement highlights the reasons for my views.

Chairman Moss, at the November 8, 1955, subcommittee hearing said:

"The people, in our American democracy, have a constitutional right to factual information concerning the plans, policies and actions of their Government. The burden of proof as to the need for withholding this information should, by every basic American principle, rest upon the agency or official who has determined to hold back the facts * * *. I think the recent statement of principles made last month at the National Editorial Association Convention in Chicago clearly points up the problem. The NEA freedom of information committee stated: 'The right of the people to know is basic to the preservation of our freedom and fundamental to our American way of life.'"

The Supreme Court has said:

"It goes to the heart of the natural right of the members of an organized society, united for their common good, to impart and acquire information about their common interests" (*Grosjean v. American Press Co. et al.*, 297 U. S. 233: 1936).

James Madison said:

"A people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or

¹ All identical.

the means of acquiring it, is but a prologue to a farce or tragedy, or perhaps both" (quoted p. 63, Laswell, National Security and Individual Freedom, McGraw-Hill, New York, 1950).

In the principles just stated and stated in the other authorities cited in my above-mentioned statements to the subcommittee I do believe. Accordingly, inasmuch as the application of these principles is being barred by virtue of title 5, United States Code, section 22, I favor the amendment proposed in the first four bills.

This subcommittee has reported:

"Slowly, almost imperceptibly, a paper curtain has descended over the Federal Government. Behind this curtain lies an attitude novel to democratic government—an attitude which says that we, the officials, not you, the people, will determine how much you are to be told about your own Government" (H. Rep. No. 2947, p. 81, July 27, 1956, 84th Cong., 2d sess.).

The late Prof. Zechariah Chafee, Jr., of the Harvard University Law School, has declared:

"The power of Government over the sources of information tends to grow * * *. Hence the misuse of this power by Government becomes a more and more serious danger * * *. What is significant is the enormous recent expansion of the subjects which officials are seeking to hide from publication until they give the signal" (Government and Mass Communications, vol. 1, p. 12-13 : Chicago University Press, Chicago, 1947).

A Hoover Commission task force reported in 1955:

"Although the Government has in various ways suppressed false advertising, there appears to be no agency to prevent the Government itself from applying misleading information or withholding significant facts."

A 1952 staff report of the Senate minority policy committee states: " * * * over the past 20 years the practice of the executive branch of the Government to conceal what it is doing and to suppress the facts has grown to such a point that Congress has to fight for information before it can legislate."

The Congressional Record carries this 1955 statement by a Democratic Senator:

"This shroud of silence which has descended over the Government prevents not only the American people from knowing what it is doing, but prevents the Government itself from functioning as it should."

That the matters of fact thus stated and stated in the other authorities cited in my above-mentioned statements to the subcommittee are true and are in conflict, open and in some instances unabashed, with the principles above stated I do believe. Accordingly, I favor the amendment proposed in the first four bills.

The California Legislature, additionally implementing the right of its people to know, has recently enacted:

"In enacting this chapter, the legislature finds and declares that the public commissions, boards, and councils, and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created" (Deering's California Codes, 1949, Government Code, ch. 9, Meetings, sec. 54950).

Florida's Legislature has declared:

"All State, county, and municipal records shall at all times be open for a personal inspection of any citizen of Florida, and those in charge of such records shall not refuse this privilege to any citizen" (Florida Statutes, ch. 5942, Laws of 1919 ; ch. 6922, Laws of 1915).

Kentucky's Legislature has declared:

"Unless otherwise provided by law, all papers, books, and other records of any matters required by law or administrative rule to be kept by any agency and all records arising from the exercise of functions authorized thereby, are public records and shall be open to inspection by any interested person, subject to reasonable rules established under the specified statute" (Baldwin's Kentucky Revised Statutes, Annotated, 1943 revision, section 12.140).

A Missouri appellate court has recently held:

"Generally, any writing or document constituting a public record is subject to inspection by the public * * *. Nor is it essential that the inspection of pub-

lic records be limited to persons who have some legal interest to be subserved by the inspection * * *." (*Disabled Police Veterans Club v. Long et al.* 279 S. W. 2d 220: 1955).

Michigan's Supreme Court has ruled:

"I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to and public inspection of public records. They have an interest always in such records, and I know of no law, written or unwritten, that provides that, before an examination or inspection is made, the citizen who wishes it must show some special interest in such record" (*Burton v. Twite, City Treasurer*, 78 Mich. 363: 1889).

That court has also declared:

"The citizens and taxpayers of this State are interested in knowing whether the public business is being properly managed. By denying him (the plaintiff, citizen, taxpayer, newspaper editor, and publisher) access to public records for the purpose of securing such information, he is deprived of legal rights for which he is entitled to redress by the writ of mandamus" (*Nowack v. Auditor General*, 243 Mich. 200: 1928).

New York's statutes making the public business the public's business include:

"All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on behalf of any county, town, village, or municipal corporation in this State are hereby declared to be public records and shall be open, subject to reasonable regulations to be prescribed by the officer having the custody thereof, to the inspection of any taxpayer" (General Municipal Law, sec. 51).

"All books, accounts and papers in the office of any borough president or any division or bureau thereof, or in any city department or any division or bureau thereof, except the police and law departments, shall at all times be *open to the inspection of any taxpayer*" subject to reasonable rules and regulations as to time and manner of inspection (New York City Charter, 1936, sec. 894).

Most of the States, by statutes or judicial decisions, have definitions of the term "public records" and declarations of affirmative, judicially enforceable rights to inspect them. In sharp contrast, neither the Congress nor the Federal judiciary has defined the term for purposes of inspection, and neither has declared a right to inspect such records except for a few specific statutes, hereinafter referred to and relatively few in number, applicable to specific records.

As the American Law Section, Legislative Reference Service, Library of Congress, has stated the situation (letter to subcommittee, January 6, 1956):

"No general doctrine as to what constitutes a public record or what right Congress or the public has with respect to such records can be derived from the Constitution, statutes, decisions or administrative regulations."

Therefore, vitally significant as the fact may be as a symptom of malformation which cries aloud for remedial surgery, it is not astonishing that there appears to be no reported case (aside from those involving production for a litigant for purposes of evidence) in which a citizen has ever been able to establish a right to inspect a Federal nonjudicial record. In the only appellate court case I have been able to find in which a citizen has ventured to try to breach the barriers of Federal discretionary secrecy—title 5, United States Code, section 22 being the first and chief of these barriers—relief was denied on several grounds, including this:

"Again, the writ sought by relator should not issue unless the law imposes a clear ministerial duty upon defendants to comply with the request relator has made upon them. No such legal duty is shown in this case. Defendant's duties are defined by statute and regulations, whereby the records in question are entrusted to their custody and control, and no provision is shown which mandatorily requires them to furnish copies thereof to private citizens upon request, or in the alternative to grant personal access to the records to all private citizens applying therefor" (U. S. ex rel. *Stovell v. Deming et al.*, 19 F. 2d 697: App. D. C. 1927).

In such a condition of the law, similarly significant but not astonishing are this "trend" and this "attitude" established in the subcommittee hearings and reported by it.

"It is difficult to evaluate overall Government information policies because so many intangibles are involved. But an impressive list of witnesses from science, Government, the legal profession, the press and public attested to a trend toward greater official reticence.

"Behind this curtain lies an attitude novel to democratic government—an attitude which says that we, the officials, not you, the people, will determine how much you are to be told about your own Government." (H. Rept. 2947, p. 83, 81, July 27, 1956, 84th Cong., 2d sess.).

Hence the contrasts of which there are many and the following are typical: California State bank superintendent (William A. Burkett): "I have always distrusted laws, public officials or regulations of Government agencies which attempt in any way to prevent the public from seeing and knowing the public's business. I subscribe to the principle that the public ought to know and has a right to know what is done by its officials."

"I do not think there is any public business that should remain private except in a case where the national security is involved, especially public business that involves the Government's financial affairs or its handling of public funds or that involves the honesty or integrity of the Government's employees or officials" (ASNE Bulletin).

The Michigan Supreme Court: "Ours is a government of the people. Every citizen rules. In Michigan the people elect by popular vote an auditor general. They prescribe his duties and pay his salary. He is required to keep a true account of the expenditure of all public moneys, and is answerable to the people for the faithful discharge of his duties. His official books and records are theirs. Undoubtedly it would be a great surprise to the citizens and taxpayers to learn that the law denied them access to their own books, for the purpose of seeing how their money was being expended and how their business was being transacted" (*Nowack v. Auditor General*, 243 Mich. 200: 1928).

The Michigan Supreme Court: "I do not think that any common law ever obtained in this free government that would deny to the people thereof the right of free access to, and public inspection, of public records" (*Burton v. Tuite*, 78 Mich. 374: 1889). There is no question as to the common-law right of the people at large to inspect public records and documents (*Nowack v. Auditor General, supra*).

New York public-service law, section 16: "All proceedings of the commission and all documents and records in its possession shall be public records."

James Madison: "* * * the right of freely examining public characters and measures, and of free communication thereon is the only effectual guardian of every other right." (Quoted at p. 63, Laswell, National Security and Individual Freedom, McGraw-Hill, New York, 1950.)

United States Comptroller General (Joseph Campbell): "We are concerned, however, that if the bill (H. R. 2810) is enacted in its present form it may result in requiring the disclosure of information to individual members of the public for their own private interests. For instance, in the case of claims by or against the Government filed in our office, we do not believe that an individual who has no personal interest in the matter should be permitted free access to the records relating to those claims solely on the basis that he is a member of the public" (pt. II, p. 2607, subcommittee hearings).

The United States Attorney General: "The records of your Department (Commerce and Labor, then a single Department) are executive documents acquired by the Government for the purpose of administering its own affairs; they are to a certain extent quasi-confidential and must therefore be classed as privileged communications whose production cannot be compelled without the express authority of a law of the United States" (25 Op. Atty. Gen. 326: 1905).

The United States Attorney General: "The Secretary of the Treasury for certain stated reasons 'or for any other sufficient public reason' may decline to produce in court communications in his custody whether or not made in the course of official duties" (15 Op. Atty. Gen. 415: 1877).

Federal Power Commission regulation: "* * records and files of the Commission and all documents, memorandums, exhibits, and information of whatever nature other than those specified are 'confidential'; some 'on good cause shown' may be disclosed 'to a particular applicant.'"

Assistant Secretary of State: "These bills would appear to be an attempt to limit the exercise of executive discretion which must continue to be vested in the heads of the various agencies so that the operations of the agencies are carried out effectively and in the best interests of the Government" (pt. II, p. 2582, subcommittee hearings).

So it is that our people, tall in the saddle as citizens of California, Florida, Michigan, New York and their sister States with declared rights to "impart and acquire information about their common interests" are unhorsed when they

venture along Constitution Avenue despite the presence hardby of the Congress and the Supreme Court. (The quotation is from *Grosjean v. American Press Co. et al.*, 297 U. S. 233 : 1936.)

So it is that records of governmental action of the kinds which lie open, relatively, in glass bowls, in State capitals and city halls are whisked into invisibility behind the "paper curtains" of Federal officialdom.

So it is that State court law reports bristle with instances in which civic organizations, tax research institutes, newspaper reporters and ordinary citizens won mandamus to obtain information and inspect records, whereas the Federal judiciary law reports are Mother Hubbard's cupboards.

Because such rights respecting Federal nonjudicial records involving neither "national security" nor "State secrets" are not secured to the people by congressional action (except in a relatively small number of specific statutes) or by Federal court decisions, because of the preponderant force of the reasons why such rights should be secured and because, not being thus secured, they are unenforced, unenforceable, flouted and denied, I favor the amendment as a first essential step to restore government by law.

Coming now to specific consideration of the respective effects of the pending bills and of title 5, United States Code, section 22 itself:

First, accentuating the negative:

1. The amendment proposed in the first four bills does not define the term "public records" or declare a right to inspect any "public records" or declare a general or specific right to any information.

Thus the amendment is not in any sense a public information act; it never has been such an act and it should not be made one now. That is one of the reasons why I am not in favor of H. R. 2810.

2. The amendment thus proposed does not affect whatever rights or discretions, if any, are vested in executive or administrative officials by constitutional or other law to withhold information from, or limit the availability of records to, the Congress.

That is so because the amendment speaks of the "public" alone, not at all of Congress. Those officials throughout the whole executive branch who insist upon such rights or privileges as against the Congress may rest in peace; these bills give them no cause for alarm.

3. The amendment does not affect whatever rights or privileges are vested in all the other administrative agencies (as distinguished from executive departments) to withhold information from, or limit the availability of records to, the Congress or the public or the press or anyone else.

That is so because title 5, United States Code, section 22, itself has no application whatever to such agencies. Its application is expressly restricted to the executive departments—State, Defense, Treasury, Justice, Post Office, Interior, Agriculture, Commerce, Labor, and Health, Education, and Welfare (5 USC 1,2).

It is typical of the mizmaze of confusions, uncertainties, and injustices sired by title 5, United States Code, section 22, and creating in themselves a need for major surgery that some other administrative agencies for years have been issuing and enforcing secrecy and confidentiality regulations based on this statute. Since this subcommittee was created and by reason of its proceedings, some of these agencies have beaten a hasty retreat from this utterly untenable position. Others still cling to it. As late as September 3, 1957, the National Labor Relations Board in a formal ruling on appeal stated: "Title 5, United States Code, section 22, which is applicable to independent agencies * * * expressly authorizes" the cited NLRB regulation (the Great Atlantic and Pacific Tea Company and Independent Bakery Workers Union, 118 NLRB No. 138). This is nonsense.

4. The amendment does not affect whatever rights or privileges to withhold information from, or limit the availability of record to, the Congress, public, press, or anyone else exist pursuant to the Constitution, acts of Congress other than title 5, United States Code, section 22, court decisions not based upon title 5, United States Code, section 22, or Executive orders.

That is so because the amendment says: "This section does not authorize * * *."

Therefore, among the unaffected rights or privileges, in addition to those, whatever they are, of constitutional sanction, are these:

(a) Those existing under title 5, United States Code, section 1002, the Administrative Procedure Act of 1946, the qualifications whereof, as the American Law Section of the Library of Congress advised a Senator, "have enabled agencies to assert the power to withhold practically all the information they do not see fit to disclose" (Letter to Senator Francis Case, November 8, 1951).

(b) Those existing under court decisions (not based on 5 U. S. C. 22) concerning the evidentiary privilege attaching to military information, state secrets, sources and content of confidential communications, and so on.

(c) Those existing under Executive Order 10501, which pertains to "official information which requires protection in the interests of national defense," and Executive Order 10450 which relates to "security requirements for Government employment."

(d) Those existing under or by virtue of the series of specific acts of Congress—upward of 60 in number—which deny inspection of, prohibit or restrict publication concerning, or otherwise restrict or qualify freedom of information in connection with, the particular records they respectively designate. These statutes (see Cross, *The People's Right To Know*, pp. 231-234) deal with information affecting national security, confidential information acquired from private persons under compulsion of law (e. g. income tax returns, trade secrets, census information, etc.), information acquired from persons who avail themselves of benefits or services offered by the Government (e. g. Veterans' Bureau files, postal savings deposits, etc.), information of such a nature that premature disclosure would give unfair advantage to some recipients (e. g. crop reports, plans which might affect the value of securities, etc.) and other information not readily to be grouped in classes.

(e) Those existing under title 18, United States Code, section 1905, which is a criminal statute, is captioned "Disclosure of Confidential Information Generally" and provides confidentiality for wide areas of information.

(f) Those existing under the numerous acts of Congress pertaining to the individual executive departments. Many of these have been cited in communications to this subcommittee.

5. The amendment does not change the authority conferred by title 5, United State Code, section 22, upon the head of each (executive) department to "prescribe regulation not inconsistent with law," in the matters stated, including "the custody use and preservation of the records, papers * * *" It does not deprive such heads of the authority by regulation to centralize in themselves the matter of determination as to whether or not applications for information or availability of records will be granted or denied by them. (That, as pointed out below, is the only authority which the Supreme Court has held to be conferred upon such heads by 5 U. S. C. 22.)

In sum, therefore, the amendment does not change the laws which the Congress and the courts, respectively, have specifically made and found when they were dealing with, and consequently, had their attentions directed to and concentrated upon, the issue of the people's right to know of Government action and the extent to which and the instances in which qualifications of that right were required by public necessity.

But it does put to death the authority, if any, of the heads of the 10 executive departments under this statute to exercise a final, judicially unreviewable discretion to withhold information from, or to limit the availability of records to, the public. Whether or not such authority actually and lawfully exists under title 5, United States Code, section 22, the fact is such authority has been exercised and is still insisted upon. Accordingly, that title 5, United States Code, section 22, bereft of standards and definitions, is the prime barrier of secrecy is a condition, and not a theory.

Second further accentuating the negative, the condition of the law is not:

1. As it should be in the interests of the public welfare, of the citizens' responsibility for sound self-government in parlous times, or of the people's right to know of Government action as evidenced in the records thereof.

As the United States Supreme Court declared: "It goes to the heart of the natural right of the members of an organized society * * * to impart and acquire information" (*Grosjean v. American Press Co. et al.*, 297 U. S. 233: 1936). As James Madison put it: "A popular government without popular information, or the means of acquiring it, is but the prologue to a farce or tragedy, or perhaps both," and "* * * the right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right" (Cross, *The People's Right To Know*, p. 129). As Edward Livingston said:

"No nation ever yet found any inconvenience from too close an inspection into the conduct of its officers, but many have been brought to ruin, and reduced to slavery, by suffering gradual imposition and abuses, which were imperceptible, only because the means of publicity had not been secured." (Ibid.)

And former Secretary of the Treasury Humphrey wrote the subcommittee: "I personally have no reservations about the Government's business being the public's business, and the public is certainly entitled to know, with a minimum of restrictions, exactly what its Government is doing (subcommittee questionnaire, p. 503).

So it is that the citizens of a self-governing society must have—not only at State and municipal levels but even more vitally at the seat of their National Government—the legal right to information of governmental activities subject only to those limitations imposed by urgent public necessity. To that end they must have the right to be heard in the courts with an enforcement procedure geared to cope with the dynamic expansion of governmental activities.

It is idle to say that such rights are declared or secured now. Accordingly, it is not enough merely to recognize this principle philosophically or to pay it pious lip-service. Nor is it enough that, by virtue of official grace and the self-serving incentives of publicity, some information, even in large volume, becomes available gift packaged as "exercise of administrative discretion." It is still not enough that, thanks to the industry, resourcefulness and courage of the Nation's organs of news dissemination, some information becomes available to the people speedily, in substantial volume and at bearable cost.

I intend no reflection upon the sincerity or the integrity or, in the main, the good judgment of the present or past heads of the executive departments. But I do urge—

(a) That determination of the application in specific instances of that which former Secretary Humphrey termed a "minimum of restriction" should be made in issues so vital pursuant to law and with due process thereof; and

(b) That such rights should be passed upon by those who are not judges in their own cause; and

(c) That the people's right to know of their Government's action is properly one for judicial determination and not for final decision by those who, in direct connection with information and records of such action, have programs to promote, policies to propagandize, and personnel to protect.

2. The condition of the law is not as it would be were it to be challenged on proper constitutional grounds. I have abiding faith that, as the mills, albeit slowly, grind exceeding fine, it will come to be judicially determined on the highest authority that these rights are guaranteed under the first, fifth, and ninth amendments. These are rights without which the rights of freedom of speech and of the press and of petition for the redress of grievances are futilities, are rights of which above all others no person should be deprived without due process of law and are rights retained by the people not denied or disparaged by anything enumerated in the Constitution. Yet, with title 5, United States Code, section 22, barricading the road, this is for another day.

3. The law is not as it would be were the courts free to determine, as matters of law and justice, whether the nature of the information and records withheld from the public actually and lawfully come within the scope of the privilege of secrecy invoked against disclosure.

Third, coming now to the positive:

The condition of the law so far as declared is that, in the absence of general or specific acts of Congress affirmatively creating clear, mandatorily required rights to inspect—and such acts, relatively, are not numerous—there is no enforceable legal right to inspect any Federal nonjudicial record. (See *U. S. ex rel. Stowell v. Deming et al.*, 19 F. 2d 697: App. D. C. 1927; cert. den. 275 U. S. 531: 1927, and quotations therefrom cited above on p. 9 and discussion below.)

It follows inexorably that, despite the dynamic expansion of governmental activities which the Supreme Court has called one of the dramatic legal developments of the past half-century (*Wong Yang Sung v. McGrath, Attorney General*, 339 U. S. 33 (1950)), the people's access to information of such activities by the best evidence—the records themselves—is, with the exceptions referred to, a matter of courtesy or grace hanging dependently upon the favorable and final and judicially unreviewable exercise of official discretion.

This, so far as the executive departments are concerned, is due primarily and in large part to title 5, United States Code, section 22. It is also due in substantial measure to other legislation which is not affected by these bills and includes title 5, United States Code, section 1002: the Administrative Procedure Act of 1946. That legislation, to whatever extent it was intended as a "public records" or "public information act," has proved to be an abject failure. It is due also to the fact that Congress in so many areas has not legislated at all. Abhorring this vacuum, officialdom has settled in. The result is that there is a pitiful

fully small amount of law for regulations under title 5, United States Code, section 22 to be inconsistent with.

Adopted in 1789, title 5, United States Code, section 22 was part of the process of organizing under the Constitution the executive departments which under the Articles of Confederation had been directly under the Congress. It was enacted as a housekeeping statute to get George Washington's first administration under way in internal management of functions. Conspicuously absent are expressions or other evidence indicating a purpose to legislate concerning relationships as between the heads of the departments and the Congress or as between such heads and the public.

The statute speaks of "custody, use, and preservation of records, papers * * *" It says nothing of nonuse or of withholding, secrecy, or confidentiality. If that had been the intention, the men of the times, singularly gifted in political science and expression, would surely have made it plain. Congress, in legislating inspection or confidentiality, as the case may be, for records has always been able to adopt language appropriate to its intent.

Present at the time of its birth were such men as James Madison, Thomas Jefferson, Edward Livingston, Patrick Henry, and others whose views concerning the rights of the people to know about their Government have been cited above. (See also Cross, *The People's Right To Know*, pp. 129, 130.)

A contemporary of the Bill of Rights, this legislation most assuredly would have had hard sledding if its known or suspected purpose or effect would be to deny or disparage rights retained by the people or to deprive them, in respect of such rights to know, of due process of law or to abridge rights under the first amendment, whereof it has been authoritatively said:

"To guard against *repressive measures* by the *several departments of the Government* by means of which *persons in power* might secure themselves and favorites from just *scrutiny* was the general purpose. The evils to be prevented were not the censorship of the press merely, but *any action of the Government* by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens" (2 Cooley, *Constitutional Limitations*, 8th edition, 1927, pp. 885, 886).

When the statute was enacted there were three department heads—State, War, and Treasury—and there were, in addition, an Attorney General and an embryonic Post Office agency. State's personnel was less than half a dozen. And now consider the department heads—a small, appointive top political directorate exercising authority, and claiming a judicially unreviewable discretion, to withhold information concerning Government action by great numbers of personnel and affecting in some way, directly or indirectly, visibly or invisibly, nearly every phase of our lives (26 George Washington Law Review, p. 1, October 1957; 87 American Bar Association Journal, p. 641, September 1951). These are indeed "persons in power" and that upon which they insist is indeed a means by which they may secure themselves and favorites from just scrutiny.

Whatever at long last may turn out to be the proper interpretation of title 5, United States Code, section 22, the facts that count here and now are that the *law as declared and as enforced* in the 10 executive departments is as I have just stated it. As convinced as I am that in the end the current interpretation and enforcement of the statute will be found to be an abridgment of constitutional rights and otherwise "inconsistent with law," it must be admitted that these departmental actions do have some judicial, though not final Supreme Court, sanction.

Thus the statute has been held constitutional. Valid regulations thereunder have the force of law and are binding upon the courts. Regulations are valid unless plainly and palpably inconsistent with law (Cross, *The People's Right To Know*, p. 214 and cases cited).

Regulations authorizing withholdings of information and records have been upheld. Records withheld pursuant to regulations have been ruled secret or confidential. While there are no decisions under title 5, United States Code, section 22 on the right of a citizen to inspect, there are decisions thereunder which tend to support the departmental interpretations (ib., pp. 216-218 and authorities cited). Attorney General Opinions have taken this view; and while these are not law, they do receive *prima facie* weight and respectful attention in the courts, especially those of original jurisdiction; and, moreover, they are in general followed by the officials to whom they are directed.

So it is that one court said: "It is within the executive authority to promulgate regulations severely limiting disclosures of government files" (*Nola Electric v. Reilly*, 11 F. R. D. 103, D. C. N. Y. 1950). A competent text writer states: "In

private litigation * * * the determination of the head of the department or agency that disclosure should not be allowed is for all practical purposes final and unreviewable" (Moore, *Federal Practice*, 2d edition, vol. 4, pp. 1170-1183).

It is unnecessary to labor the point further inasmuch as the executive departments have long taken the view that the law is as I have stated it to be declared, and pursuant thereto they have issued and enforced regulations for withholding information from, and limiting the availability of records to, the public and the press and, for that matter, Congress itself. In the proceedings before this subcommittee, and in connection with the pending bills, they have adhered thereto as respects public and press and, in some instances, Congress as well.

Each of the 10 executive departments is on record here as opposing the amendment. As is to be expected in the presence of a statute so vague and uncertain and bereft of standards and definitions and of a resulting factual situation so pitifully confused, the stated reasons for opposition range hither and thither. But none of them retreats from the position that there is the "discretion" referred to; the Department of State is the most specific and frank:

"These bills would appear to be an attempt to limit the exercise of executive discretion which must continue to be vested in the heads of the various agencies so that the operations of the agencies are carried out effectively and in the best interests of the government. Therefore, the Department of State recommends against favorable consideration of any these bills" (pt. 11, p. 2582, subcommittee hearings).

If such a "discretion" in executive department heads exists under title 5, United States Code, section 22 the courts are thereby reduced to the status of impotent, silent men under the well-settled rule stated by Chief Justice Marshall that—

"The province of the Court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion" (*Marbury v. Madison*, 5 U. S. (1 Cranch) 137, 170: 1803).

Even if there is doubt whether title 5, United State Code, section 22 has such an effect, the courts are thus reduced inasmuch as " * * * the legal right of (the) relator to the performance of the particular act of which performance is sought must be clear and complete" (*U. S. ex rel. Stowell v. Deming*, 19 F. 2d 697: App. D. C. 1927; cert. den. 275 U. S. 531: 1927).

With the people thus locked out of their courts, thus shorn of due process to review the justice and the lawfulness of their servants' acts, James S. Pope, executive editor of the Louisville, Ky., Courier-Journal and Times, past president of the American Society of Newspaper Editors and chairman of its freedom of information committee at the time, justly said:

"To my committee, * * * searching blindly for the fountainhead of secrecy, it (5 U. S. C. 22) is a new and enlightening clue. Our feelings about it are not unlike those of a doctor who has been observing the ravages of some kind of disease, and finally identifies the germ. It may be that '5 U. S. C. A. 22' in some form has to exist. That seems to be a basic law of life, applying to bacteria as well as to news. But we can never cease to fight for its qualification and modification" (*Harvard University Nieman Reports*, The Cult of Secrecy, October 1951, p. 9).

President Eisenhower, in his recent letter to Eric Johnston, said:

"In our free society the Government has a duty to keep the people informed on what it proposes to do and why. Without full public awareness it is difficult for the Nation to put forward maximum effort and obtain maximum results * * *

"In the light of the numerous requests that I have received, it would be highly gratifying to me and a great service to the Nation if you would be willing to call in Washington a conference * * * to explore means of conveying to our citizens a fuller flow of information on the foreign aspects of our national security" (*New York Herald Tribune*, January 12, 1958).

Congress, in enacting the proposed amendment, will take a giant step toward removing the source of infection of the malady of secrecy on what the Government "proposes to do and why" and, at the same time, toward aiding the high purpose of the President and "the great service to the Nation entrusted" to Mr. Johnston. The beneficial results will not be confined to information from the State Department on "the foreign aspects of our national security" but will bring "a fuller flow of information" of Government action elsewhere throughout the executive departments.

In the two leading cases of *Boske v. Comingore* (177 U. S. 459(1900)) and *U. S. ex rel. Touhy v. Ragen* (340 U. S. 462(1951)), so often cited as the bases for an all-embracing secrecy and confidentiality authority in the executive de-

partments, the Supreme Court held—and held only—that the head of an executive department may lawfully centralize in himself the authority to determine whether documents of the department may be released for use of persons outside the department.

In the Boske case the Court said :

"In our opinion the Secretary, under the regulations as to the custody, use, and preservation of the records, papers, and property of his Department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of revenue and reserve for his own determination all matters of that character."

In the Touhy case the Court held that—

"In view of the variety of information contained in the files of any Government department and the possibilities of harm from unrestricted disclosure in court, the usefulness, indeed the necessity, of centralizing determination as to whether subpenas duces tecum should be obeyed or challenged was obvious."

The proposed amendment does not diminish the authority thus held to exist under title 5, United States Code, section 22. But, pursuant to the amendment, if the department head withholds information from, or limits availability of records to, the public, he must seek (elsewhere than 5 U. S. C. 22) in the Constitution, other legislation, court decisions, Executive orders, or other law for legal justification for such action, which is not finally withdrawn from judicial review.

The Supreme Court has not placed its stamp of approval on the executive interpretation of the effect of title 5, United States Code, section 22 or regulations thereunder; nor has it or, so far as I have been able to ascertain, any other court of high authority, placed a stamp of disapproval on the situation proposed by the amendment.

Quite to the contrary, in the Touhy case Justice Frankfurter, in his concurring opinion, emphasized :

"There is not a hint in the Boske opinion that the Government can shut off an appropriate judicial demand for such papers.

Specifically the decision and opinion in this (Touhy) case cannot afford a basis for a future suggestion that the Attorney General can forbid every subordinate who is capable of being served by process from producing relevant documents and later contest a requirement upon him to produce on the ground that procedurally he cannot be reached. In joining the Court's opinion I assume the contrary—that he can be reached.

"To hold now that the Attorney General is empowered to forbid his subordinates, though within a court's jurisdiction, to produce documents and to hold later that the Attorney General himself cannot in any event be procedurally reached would be to apply a fox-hunting theory of justice that ought to make Bentham's skeleton rattle."

In *Reynolds v. U. S.* (345 U. S. 1 (1953)), not based on title 5, United States Code, section 22, the Court said :

"The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect.

"Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers."

To be sure, these utterances were in cases involving production of documents as evidence in litigation. There is—at least I can find—no reported case in which a citizen has ventured to climb the barricade of title 5, United States Code, section 22, to inspect a record. But if judicial control is not to be abdicated to executive caprice where the rights of only one or two individuals are involved, there most assuredly should be no such abdication where that which is involved "goes to the heart of the natural right of the members of an organized society * * * to acquire information about their common interests."

In the Reynolds case the Government asserted a privilege not under title 5, United States Code, section 22, but akin to that asserted by executive department heads under title 5, United States Code, section 22. The lower court reversed on other grounds by the Supreme Court, said: Nor "is there any danger to the public interest in submitting the question of privilege to the decision of the courts. The judges of the United States are public officers whose responsibility under the Constitution is just as great as that of the heads of the executive departments. When documents are submitted to them under a claim of privilege the judges may be depended upon to protect with the greatest care the public interest in preventing the disclosure of matters which ought to be privi-

leged. And if, as the Government asserts is sometimes the case, a knowledge of background facts is necessary to enable one properly to pass on the claim of privilege those facts also may be presented to the judge in camera."

The danger to the public interest, the Court indicated, loomed elsewhere. It said:

"Moreover we regard the recognition of such a sweeping claim of privilege against any disclosure of the internal operations of the executive departments of the Government as contrary to a sound public policy. The present cases themselves indicate the breadth of the claim of immunity which one Government department head has already made. It is but a small step to assert a privilege against any disclosure of records merely because they might prove embarrassing to Government officers. Indeed it requires no great flight of imagination to realize that if the Government's contentions in these cases were affirmed the privilege against disclosure might gradually be enlarged by executive determination until, as is the case in some nations today, it embraced the whole range of Government activities."

While the Supreme Court itself seems not to have settled the question, lower Federal courts, at least where "state secrets" are not involved, have adopted increasingly the view that it is for the courts, and not for the executive branch, to determine whether the nature of the information withheld comes within the scope of the privilege invoked (Cross, *The People's Right To Know*, p. 219 and cases cited).

Legal writers increasingly recommend this view as the better one (*ibid.*, p. 219 and authorities cited). Among them are Dean Wigmore, who has said:

"The public (in the words of Lord Hardwicke) has a right to every man's evidence. Is there any reason why this right should suffer an exception where the desired knowledge is in the possession of a person occupying at the moment the office of chief executive of a State? There is no reason at all. His temporary duties as an official cannot override his permanent and fundamental duty as a citizen and as a debtor to justice (8 Wigmore on Evidence, 3d ed. 733).

"The question then is reduced to this: Whether there are any matters of fact, in the possession of officials, concerning solely the internal affairs of public business, civil or military, which ought to be privileged from disclosure when material to be ascertained in a court of justice?

"1. Ordinarily there are not. In any community under a system of representative government and removable officials, there can be no facts which require to be kept secret with a solidity which defies even the inquiries of a court of justice. 'To cover with the veil of secrecy,' said Patrick Henry, 'the common routine of business, is an abomination in the eyes of every intelligent man and every friend to his country.' Such a secrecy can seldom be legitimately desired. It is generally desired for the purposes of partisan politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption" (*ibid.*, pp. 789-790).

"Conclusion. The privilege, when recognized, should therefore be subject to the following limitation:

"1. Any executive or administrative regulation purporting in general terms to authorize refusal to disclose official records in a particular department when duly required as evidence in a court of justice should be deemed void" (*ibid.*, p. 801)."

Mr. Justice Mondelet, of Canada, ruling upon refusal by a Provincial Secretary to produce a report of a superintendent of police, pointed out:

"[Conceding that the privilege may exist]. are you to compare the discretion, the unbiased mind, the position of the judge who is alike independent of the Crown and of the people, who is free from party spirit, who knows or, should know no one, to the biased mind—naturally, necessarily biased mind—of a politician, not independent as the judge is, but dependent on a party, who knows or must know, the contending parties, and may have the most cogent reasons for supporting one party in preference to another: who has to bear and does bear the external pressure which the judge is or should be inaccessible to: whose interest it may be, under the flimsy pretense, under the transparent veil of public interest, to screen some petty minion in office. The comparison cannot hold for a moment. In the case of the judge you have sacred guaranties; in that of the politician none" (*Gugg v. Maguire*, 13 Low. Can. 33).

All the considerations thus presented in favor of objective, judicial due process and against final, unreviewable, subjective official discretion apply not

only where the issue is the right of litigants (whose interests may be, and not uncommonly are, out of line with the public's interests) but also—and even with greater forces—where the issue is the right to know belonging to the citizenry.

That there was a difference in this respect between the right of a litigant and the right of a citizen had some basis in English decisions. It has been rejected in America by courts and legislatures for, as the Michigan Supreme Court has pointed out:

"The rule adopted by the English courts has no basis in reason or justice. It is absurd to hold that a man could inspect the public records, providing his purpose was to use the information in some litigation, and to deny him the right to inspect for some other purpose that might be equally beneficial to him. It does not protect all his substantial rights and has not been received with general favor in this country" (*Nowack v. Auditor General*, 243 Mich. 200: 1928).

Additional considerations in favor of the amendment include:

1. There can be no question of the power or authority of the Congress to enact the amendment. That which Congress granted, whatever its true lawful effect, the Congress may withdraw, modify, qualify or interpret.

2. The right of the people to know of government action is not one of those "political questions" withheld from legislative or judicial cognizance by executive prerogative. That is clear because—

(a) Congress itself has recognized that the right is of legal cognizance and within its competence in its series of acts attaching a public character to a variety of specific types of information: e. g. crop insurance indemnity payments, Lobbying Regulation Act, listing of persons in administrative positions, etc. (See Cross, *The People's Right To Know*, pp. 235-236.)

(b) The Supreme Court has said:

"Thus in the case of public records and official documents, made or kept in the administration of public office, the fact of actual possession or lawful custody would not justify the officer in resisting inspection. * * * The principle applies not only to public documents in public offices, but also to records required by law to be kept" (*Wilson v. U. S.*, 221 U. S. 361: 1911).

(c) In support of the people's right to know and to implement the duty to make information available, the courts, without action by Congress, have made the defense of privilege in libel suits available to executive department heads in respect of public statements and press releases (*Spalding v. Vilas*, 161 U. S. 483; *Glass v. Iokes*, 117 F. 2d 273, cert. den. 311 U. S. 718 and other cases).

In the Glass case the Court said: "Indeed such announcements serve a useful if not essential role in the functioning of democratic processes of government."

In *Sweeney v. Patterson* (128 F. 2d 457, cert. den. 317 U. S. 678), the court said:

"The protection of the public requires not merely discussion but information."

At the present time there is pending in the Supreme Court and district court of appeals libel litigation involving the question whether this privilege is available to policymaking Federal officials of less than Cabinet rank (*Barr v. Matteo*, *Barr v. Madigan*, Ct. of App. D. C., Nos. 13217, 13218; U. S. Supreme Court No. 409). In their petitions in behalf of the sued official Department of Justice attorneys contend:

"Press releases and press conferences have become an important and accepted phase of governmental operations, and the result of this decision, if allowed to stand, will be that officials or officers below the rank of a Cabinet officer may hold conferences with, or answer inquiries by, representatives of the press at the risk of having to answer in court for their remarks. This necessarily will bring about a disinclination by those officers to respond to inquiries * * * and necessarily will result in a sharp curtailment of information which the public will receive about controversial matters" (petition for rehearing in banc, p. 5).

"The result of the decision, if allowed to stand, will probably be a sharp restriction on an important source of information for the press * * * and, in turn, a curtailment of information which the public is entitled to and should receive" (petition for writ of certiorari, p. 14).

This praiseworthy devotion of this executive department to the right of the public to receive information about Government operations will be implemented substantially by enactment of the amendment. The risk alluded to of a sharp curtailment of such information adds to the need for the amendment.

In Tribune Review Pub. Co. et al v. Thomas (120 F. Supp. 362 (D. C. Pa. 1954)) the Court said:

"There has been a tendency to interfere with the fundamental right of the people to be kept thoroughly informed as to the events of the day. The courts should be alert and vigilant to make positive that sources of news should not be undermined, such as through the growing practice of secrecy in government on National, State and local levels; the growing tendency of public officials to feel that they are not accountable to the public; that they can conduct the business of their offices in secret; that they may seal or impound public records; that they may divulge only such information as they think is good for the people to know; that they may extend 'military security' into areas of news which have no bearing on the Nation's security."

Such trends and attitudes as these have been established in this subcommittee's hearings and in their presence the Congress too should be alert and vigilant.

In *Horsey v. Folsom et al.* (United States District Court, District of Columbia, Holtzoff, J., October 11, 1957), the court dismissed a suit for an injunction to restrain the Department of Health, Education, and Welfare and its Food and Drug Administration from use of a poster in post offices warning the public against the plaintiff's alleged cancer cure. The court upheld the constitutionality of a statute (21 U. S. C. 375b) authorizing dissemination of information of this nature and, in addition, held that, independently of the statute, the officials had not only the right but the duty to inform the public. Thus the court did take judicial cognizance of an executive department information issue. Enactment of the amendment would tend to protect the public's right to know that Government action had shown the "cure" to be worthless if the Department had not performed its duty to inform.

3. In some quarters apprehension has been expressed that enactment of the amendment might lead to recognition of rights which if enforced at the application of one citizen might lead other citizens to do likewise and so by numbers hamper the transaction of public business. This is seeing things under the bed.

The first citizen entering a courtroom in exercise of his right to attend judicial proceedings is not booted out lest other citizens seek to enter; the court has ample discretion to prevent overcrowding. The first citizen exercising his right to drive his car along a public highway is not barricaded lest other citizens wish to use their rights and so cause a traffic jam; the authorities have, and on occasion exercise, discretion to deal with tieups. The first citizen seeking to vote is not shut out lest too many voters show up. No such situation has arisen in the States which have such declared rights by statute or court decision. To be sure, the National Government is a "big government" but, for examples, California and New York City, where such rights are declared by law, are far from minute organisms and their respective populations are 10 or a dozen times bigger than that of the Nation's Capital.

There is ample power and authority to control the situation if masses of citizens descend upon the departments to inspect records of their action. Moreover, that will not happen. As a New York Supreme Court justice recently remarked:

"An overactive interest in the affairs of government on the part of an overly large percentage of the citizenry has not yet been discovered as an evil of democracy" (matter of Walker (Watson), Superior Court, New York County, Walter, J., New York Law Journal, Jan. 4, 1952).

4. If such an "evil of democracy" or any other evil flowing from enactment of the amendment comes about, the Congress and the courts have ample power and authority to cope with it.

The Congress does because "the founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times" (*Youngstown Co. v. Sawyer*, 343 U. S. 579 (1952) Steel Seizure case).

The courts do because "mandamus is an extraordinary remedial procedure, which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion. It will not issue to direct an act which will work a public mischief" (*U. S. ex rel. Stowell v. Deming et al.*, 19 F. 2d 697 (App. D. C. 1927); cert. den. 275 U. S. 531 (1927)).

If the courts seem to err, Congress has power to act, as has recently happened.

5. The people's right to know belongs in a government by law, not in a government of men's official (as distinguished from judicial) discretion.

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, D. C., April 16, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: Thank you for your letter of April 10, which both Mr. Swezey, the chairman of our Freedom of Information Committee, and I have received.

On behalf of both of us, this is to advise that we wish to accept your invitation to submit for the record a statement in favor of S. 921. Accordingly, I am enclosing a copy of a statement by Mr. Swezey, and respectfully request that it be made a part of the record.

I would also like to take this opportunity to acknowledge receipt of your letter of April 14, informing me of the plans of the subcommittee to publish my previous letter relating to S. 921 and S. 2148. I have no objection to the inclusion of my letter in the published record.

Sincerely,

HAROLD E. FELLOWS.

PREPARED STATEMENT OF ROBERT D. SWEZEY, CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. Chairman, my name is Robert D. Swezey. I am executive vice president of the WDSU Broadcasting Corp., New Orleans, La. I submit this statement in my capacity as chairman of the freedom of information committee of the National Association of Broadcasters, the trade association of the radio and television broadcasters of this country—whose membership includes 1,778 radio stations and 327 television stations, as well as the 4 national networks.

I greatly appreciate the opportunity accorded me to submit our views concerning S. 921, to amend section 161 of the Revised Statutes of the United States (5 U. S. C. 22) with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

This statement is in support of the philosophy expressed in the amendment which proposes to add the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

The right of the American people to be informed on the conduct of their Government is the very essence of the democratic process.

We are not pressing for—nor would any responsible citizen urge—the release of information which might place in jeopardy the national security of our country. On the other hand, the tight, unrealistic secrecy imposed by many Government officials and agencies is, in our opinion, quite unnecessarily stemming the free flow of information to the American people, information which is essential if they are to form reasonable and secure judgments with respect to the manner in which the affairs of their Government are being conducted.

We believe that information in Government files should be readily available to the public except where the Government can affirmatively show that the release of that information would be detrimental to the public interest or constitute unwarranted invasion of personal privacy or a disclosure of proprietary information obtained by the Government. We also earnestly suggest that the present system of security classification be carefully reviewed. From what little information we have, it appears that a great mass of material is quite unnecessarily withheld from public scrutiny. We have heard, for example, that certain Russian documents translated by Government agencies are classified—yet these same documents are in the public domain and intelligible to anyone having the inclination and the ability to translate them.

It is obvious that our law must keep pace with the march of growth and progress. The time has surely come to consider how the statute now under consideration, originally adopted in 1789, must be changed in word and interpretation to conform to present day requirements.

The term "housekeeping" has been applied to the statute. There is today a necessity for the same efficiency in governmental housekeeping as there was in 1789, but we have a far bigger and tremendously more complicated house to keep. To make full provision for the orderly and efficient administration of Government is one thing, but it is quite another to vest in any Government official full control of right, title, and interest in public documents. The tendency to withhold and secrete information gradually jells, solidifies, and finally hardens

into a sort of official inertia. Custom and procedure are thus built up which have no reasonable relation to the necessities of the situation.

We are seeking, in effect, merely a change in the law which will adequately reflect the changes which have taken, and are taking, place in our national life—recognition of which must be made if the law is to continue to serve the purpose for which it was originally intended.

The radio and television industry pledges its fullest cooperation and assistance to the committee in its commendable effort to arrive at a realistic solution of the important problems before it.

MAGAZINE PUBLISHERS ASSOCIATION, INC.,
New York, N. Y., April 16, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights, Senate Committee on
the Judiciary, the Capitol, Washington, D. C.*

MY DEAR SENATOR HENNINGS: Magazine Publishers Association, Inc., is an organization of 100 publishers of approximately 220 magazines and groups with a total circulation in excess of 145 million copies an issue.

Editors of these magazines, great and small, national and regional, general, agricultural, professional, trade, technical, scientific and religious, are immediately concerned with reporting or interpreting to their readers government affairs at all levels.

Their readers, in turn, depend upon these editors for accurate information, and base their judgments, as citizens and voters, in large part upon the information they obtain from magazines.

Our editorial committee is headed by Clarence W. Hall, a senior editor of Reader's Digest. Other editor members of the committee include David Botter and Daniel D. Mich (Look), Robert W. Carrick (Living for Young Home-makers), Hugh E. Curtis (Better Homes and Gardens), Richard F. Dempewolff (Popular Mechanics), Robert Fuoss (Saturday Evening Post), Hugh Grey (Field and Stream), Robert M. Jones (Family Circle), Gerard Piel (Scientific American), G. Elson Ruff (Lutheran), James A. Skardon (Coronet), Carroll P. Streeter (Farm Journal), Edward K. Thompson (Life), Mrs. Helen Valentine (Charm), Edward A. Weeks (Atlantic Monthly), and Gill Robb Wilson (Flying).

Upon the committee's authority, Mr. Hall had asked me to forward to you the attached statement on S. 921, now before your committee for hearings. I do so with pleasure.

At the same time, I should like to express for this organization our appreciation of the tremendously important work your committee is doing in the area of opening Government operations in nonsensitive areas to public inspection in a day when the right to know has become the need to know if we are to survive as a democracy.

May I respectfully request that this letter, with Mr. Hall's letter which it covers, be included in the record of your hearings?

Sincerely,

ROBERT E. KENYON, Jr., President.

MAGAZINE PUBLISHERS ASSOCIATION, INC.,
New York, N. Y., April 16, 1958.

Mr. ROBERT E. KENYON, Jr.,

*President, Magazine Publishers Association, Inc.,
New York, N. Y.*

DEAR MR. KENYON: The Congress of the United States in 1789 passed what today is known as title 5 of section 22 of the United States Code to authorize heads of George Washington's departments to conduct their business in an orderly way. Title 5 of section 22 of the United States Code reads:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Passed without remark in a day when Congress and the administration were populated with men dedicated to the principle that democracy can only survive

when the public is well informed, the measure for more than 100 years was considered a mere housekeeping statute.

There certainly was no thought that a grant of authority to "prescribe regulations * * * for * * * the custody, use, and preservation" of records and papers was a grant of authority to withhold information from the public.

The growth of our Government has seen the development of a need to preserve from general public knowledge certain governmental information bearing on state secrets, national security, and private matters strictly personal.

Congress has taken cognizance of these legitimate needs by specific statutes. These statutes protect military information, diplomatic papers, trade secrets, tax information, and other legitimate confidential matter from general public circulation.

At the same time, administrators with a craving for secrecy, a desire not to be bothered by the public which they serve, or a need on occasion to cover administrative bungling, have resorted more and more frequently to title 5 of section 22 to justify refusal of access to Government records and papers in nonsensitive offices.

Their argument—sustained by lower courts, but never brought before the United States Supreme Court—was that "custody," "use" and "preservation" implied the power to withhold from the public.

This ridiculous argument was carried to ridiculous extremes when independent regulatory commissions, whose probity should be under constant fierce citizen scrutiny, resorted to the same title 5 of section 22 to close their doors to press and public, although by no wild construction of law are they "departments" of the administration.

There is now pending in the United States Senate a bill to amend this act by making clear, in one sentence, that a housekeeping act is not a grant of censorship powers. Senate bill 921, introduced by Mr. Hennings, of Missouri, and now pending before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, would add to title 5 of section 22 (sec. 161 of the Revised Statutes) this sentence:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

Public hearings before the subcommittee were held last month, and will resume on April 16.

Under authority vested in me by the editorial committee of Magazine Publishers Association, Inc., on March 6, 1958, I should like to ask you to file with the subcommittee the following expression, which I believe you will find compatible with MPA policy and objectives:

Ultimate power in this Nation lies—and must always lie—in the hands of the individual citizen. His judgments, his opinions, his votes create the Government. The Government in all its branches is his servant.

The individual citizen can judge his Government—his servant—only if he knows what his Government does. There has been much talk about the citizen's right to know. That right is unassailable. There should also, however, be consideration of the citizen's need to know.

That need is universal, from coast to coast and from border to border. That need must be met. In a nation the size of the United States, it can only be met through the vigilance of the magazines, newspapers, and other news disseminating media. Through them alone can the citizen of this Nation keep informed concerning the activities of his servant, the Government.

S. 921 would strip from nonsensitive, nonsecurity officers of the Government their fictitious right to secrecy. S. 921 would in no way remove from the books any of the many specific statutes which protect the sanctity of citizen-confidences of trade or military or state secrets.

But S. 921 would force Government officials with a craving for secrecy in expense accounts, contracts, agreements, and regulations either to open their records—the public's records—on request, or to justify to Congress a request for statutory authority to conceal.

The American Society of Newspaper Editors, the American Newspaper Publishers Association, the Southern Newspaper Publishers Association, Sigma Delta Chi, the great honorary journalistic fraternity, have expressed themselves repeatedly and ably in support of S. 921 or identical legislation. I think it is important that the Magazine Publishers Association, representing the most significant grouping, by size and number, of consumer, business, agricultural, trade and professional magazines, large and small, in the world, take a stand on this important matter with our colleagues.

S. 921 and an identical measure (H. R. 2767) now awaiting House action are important to every American. They will reopen doors which never should have been closed. They will make possible impartial court review of secrecy edicts which could not be challenged heretofore because of legal technicalities based on tradition, custom, and lower court actions.

Their passage will curb bureaucratic whim, will improve the quality of magazine and newspaper journalism, will encourage more responsible Government, will restore to Congress powers it has defaulted.

Most important, passage of S. 921 will result in a better-informed America.
Sincerely,

CLARENCE W. HALL,
Chairman, Editorial Committee.

NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION, INC.,
Urbana, Ill., April 18, 1958.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Senate Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: I certainly appreciated your invitation to submit a statement concerning the proposed amendments to section 161 of the Revised Statutes (title 5, United States Code, sec. 22). We of the NPPA have been watching the progress of these particular amendments with great interest.

Enclosed you will find a statement concerning the amendments which the NPPA is submitting to your committee. We appreciate the time and effort which you and your committee are putting forth to uphold the basic rights of the American public. You are certainly to be commended.

Sincerely,

ROBERT K. McCANDLESS,
Chairman, Freedom of Information Committee.

STATEMENT SUBMITTED BY THE NATIONAL PRESS PHOTOGRAPHER'S ASSOCIATION
ON PROPOSED AMENDMENTS TO TITLE 5, UNITED STATES CODE, SECTION 22 AND
TITLE 5, UNITED STATES CODE, SECTION 1002

The moral integrity of various Government officials and workers, as concerns the American public's "right to know and see" what is occurring within our Government, has dropped to a new low during the last 20 years. General and specific coverups of nonclassified information has occurred frequently, and the reason cited has been section 22 and section 1002 of title 5 of the United States Code.

These coverups are a complete turnaround from the spirit upon which this country was founded—that of freedom. Freedom, itself, is only a seven-lettered word used extensively by many people, but which has no real meaning unless put into actual practice. How, then, can America display itself to the world as a country of freedom if its own Government misuses an aged statute to justify the denial of one of our basic freedoms?

The National Press Photographer's Association (NPPA) has, for many years, attempted, through its freedom of information committee, to help guard the American public against secrecy and censorship of essentially public matters, both in all levels of Government, and in dealing with private groups.

We would like to refer the Subcommittee on Constitutional Rights to the report of the advancement of freedom of information committee of Sigma Delta Chi, as adopted by their convention, November 16, 1957, in which are cited 93 specific examples of hiding facts from the public, facts which they have the right to know.

Because of these examples and other occurrences of Government censorship, the National Press Photographer's Association would like to go on record as supporting the amendments to section 22 and section 1002 of title 5 of the United States Code, as set forth. We realize that these amendments are not a right of the press, per se, but that they are the right of the American public, to whom the various news media are responsible. However, we would desire that it be clearly understood that the visual means of communication (still and motion-picture photography) would be equal with the written means of communication in the gathering and dissemination of facts to the American public.

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 1, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: Pursuant to our conversation I am enclosing here-with tearsheets from the Congressional Record containing remarks and correspondence on the power of congressional investigation and the so-called executive privilege to withhold information from Congress asserted by the Attorney General.

It occurred to me that you might like to incorporate this material in the hearings of your subcommittee on this general subject in connection with the testimony given to your subcommittee by the Attorney General.

Sincerely,

GEORGE MEADER.

[From Congressional Record, pp. 3280-3286, Mar. 10, 1958]

GOVERNMENT SECRECY

The SPEAKER pro tempore (Mr. Edmondson). Under previous order of the House, the gentleman from Michigan [Mr. Meader] is recognized for 60 minutes.

Mr. MEADER. Mr. Speaker, last Thursday the Attorney General of the United States, the Honorable William P. Rogers, appeared before the Senate Judiciary Subcommittee on Constitutional Rights to present his views on the power of Congress to obtain information from the executive branch of the Government. His statement asserted a privilege in the executive branch of the Government to withhold information from the Congress in such broad terms that it should not go unanswered.

Increasingly in recent years, as the executive bureaucracy has grown in power and in numbers of officials, there has been a parallel tendency to assert limitations and restrictions upon the investigative power of the Congress and its committees with respect to documents, papers, and information in the possession of the executive branch of the Government.

I fully realize that silence on the part of the Congress has no legal significance in fortifying these executive assertions. Yet such statements often enough repeated create a public impression of congressional acquiescence.

The Congress should be jealous of its constitutional powers, and Members in both Houses should be alert to strike down assertions of limitations upon congressional powers and should resist encroachments by the executive branch into legislative authority vested by the Constitution in the Congress.

For that reason I am impelled to repudiate the doctrine announced by the Attorney General to the Senate Judiciary Committee, to deny that it is a valid statement of constitutional law and to urge the Congress and its committees to disregard his doctrine in the exercise of their legislative and investigative functions.

For 29 pages of his prepared statement the Attorney General cites unilateral acts and pronouncements by Presidents, editorials from newspapers, congressional debates, and textbooks and asserts that a number of principles have been established. The court cases cited in this portion of the statement deal only with the doctrine of the separation of powers. Then, for the first time in his statement we learn from the Attorney General that "there is no judicial precedent governing this question."

Subsequently in his statement the Attorney General, quoting his predecessor and enlarging somewhat on the quotation, concludes that the so-called independent regulatory agencies, as well as the executive departments, come within the executive privilege from congressional inquiry as to their administrative functions; that as to their judicial functions they should be just as free of any demand from Congress or the executive branch as a court would be; and that as to the legislative functions of the independent agencies, congressional inquiries should be subject to restraining considerations.

The net effect of the Attorney General's statement is that the executive branch of the Government will give to the Congress or its committees such information as the executive branch chooses to give and no more.

I wonder if the American people and their elected representatives in Congress appreciate the significance of this latest pronouncement of the executive branch of the Government. If this is sound constitutional doctrine, then it is permissible, without amending the Constitution, for the huge executive bureaucracy

we have built up over the years to become the master, not the servant, of the people. It places within the sole and unfettered discretion of an organization of well over 2 million persons in the executive branch of the Government the power either wholly to deny Congress access to facts about the public business, or to make known, only on such terms, at such times and under such conditions as the executive sees fit, those portions of the total picture which the executive wants the public or the Congress to know. The latter course makes possible a rigged, distorted, slanted factual foundation for the formulation of public opinion and thus grants the executive greater power over policymaking than is healthy under a system of self-government by the people.

Mr. Speaker, I recall as a law student listening to an address by the famous lawyer, Clarence Darrow. He said, in substance, that he did not care who made the decision if only he could write the facts. The unlimited discretion in the executive branch of the Government over access to information in its possession asserted by the Attorney General, would vest in the departments the power by ex parte presentations of half-truths to build a record which would permit of only one conclusion. Under such circumstances, what has become of the proud principle of self-government through elected representatives? Solemnly elected representatives under such circumstances become mere figureheads, performing no substantive function.

Mr. Speaker, having called attention to the importance of the fight of Congress to obtain information from the executive branch of the Government and the fundamental unsoundness of the position taken by the Attorney General, let us now examine in greater detail the Attorney General's statement and analyze the principles he stated as well as the logic and precedents upon which they purport to be founded.

SO-CALLED PRECEDENTS

The Attorney General recites instances in which the Congress asked the executive for documents and information. Some of the requests were granted, some were denied. He also recites statements made by Presidents concurrent with the granting or denying of congressional requests. He asserts that those events establish a great number of principles which he asserts are founded upon executive privilege.

In opposition to the instances cited by the Attorney General where the executive branch of the Government has refused congressional requests, there are countless instances where congressional requests for information from the executive branch of the Government have been fulfilled. Records and testimony frequently have been obtained by congressional committees from officials in the executive branch of the Government by subpena. It might be illuminating to refer specifically to some of these.

One of the most notable examples of Congress' forcing the production of records from the executive was the order of Senator Truman, as chairman of the Special Senate Committee Investigating the National Defense Program, to serve subpenas duces tecum on two members of the President's Cabinet, as a result of which documents were delivered to the possession of the Truman committee.

On May 20, 1944, a subpena duces tecum was served upon the Honorable Francis Biddle, Attorney General of the United States, commanding him to appear before the Truman committee on Thursday, May 25, 1944, at 10 a. m. in room 318, Senate Office Building, and to produce a file of papers and documents kept by Comdr. John D. Corrigan in his office at the Navy Department.

On the same date a subpena duces tecum was served upon the Honorable James V. Forrestal, Secretary of the Navy of the United States, to appear before the Truman committee on Thursday, May 25, 1944, at 10 a. m. in room 318 of the Senate Office Building and to produce certain papers and documents kept by Comdr. John D. Corrigan in his office at the Navy Department.

It is also interesting to note that when the present Attorney General served as chief counsel for the Senate Permanent Subcommittee on Investigations, a subpena was issued by that committee and served August 1, 1949, on one Frank Udoff, a courier at the Department of State, and on August 22, 1949, a subpena duces tecum was served on Darrell St. Clair, a legislative and liaison official in the Department of State.

Another noteworthy series of subpenas were served on March 30, 1955, by the Senate Permanent Subcommittee on Investigations on various officials of the Foreign Operations Administration.

On April 1, 1955, a subpena duces tecum was served on the Honorable Harold E. Stassen, Administrator of the Foreign Operations Administration.

On November 1, 1955, a subpoena duces tecum was served on Hugh W. Cross, Chairman of the Interstate Commerce Commission.

Another interesting reference to the use of the subpoena of a congressional committee to obtain information from the executive branch of the Government is contained in the hearings on the activities of Gen. Bennett E. Meyers held by the Special Committee Investigating the National Defense Program of the United States Senate. These hearings were conducted when the present Attorney General was the chief counsel of that committee. On pages 27018-27019 of part 43-1947-of that committee's hearings occurs the following:

"Senator FERGUSON. Right there, we might clear up the matter. It is your contention that the committee could not have found this directive and reply without your aid?

"Mr. MEYERS. The committee had so informed me that they were unable to get the directive; and, furthermore, after I had brought the directive to the committee's attention on several occasions, I was informed by the committee counsel that there wasn't any such directive, that they had even subpoenaed this directive from the War Department and the War Department had advised the committee there was no such directive."

It is interesting to note the testimony of Mr. Hugh Fulton, first chief counsel of the Truman committee, before the Special Subcommittee on Government Information of the Committee on Government Operations of the House of Representatives on May 9, 1956. In a prepared statement Mr. Fulton said:

"Several times during the proceedings before the Truman Senate committee, the Attorney General refused us information, subpoenas were issued to him, and he complied with the subpoenas under protest.

"The authority of the Congress is, I think, crystal clear. The difficulty is that this problem has not risen as the great constitutional problems did in England by a clear-cut dispute between the Stuart kings and Parliament (House Government Operations Committee hearings on Availability of Information from Federal Departments and Agencies, pt. 3, p. 525)."

Subsequently, Mr. Fulton amplified this statement in a colloquy with committee counsel as follows:

"Mr. MITCHELL. What we are particularly interested in is: Did the Truman committee withdraw its subpoena after serving or was it in effect a real subpoena where he complied because of the subpoena?

"Mr. FULTON. It was never withdrawn. It was complied with. And the Attorney General complied with the subpoena rather than bring the question to an open breach between the two agencies, the Senate and the Department of Justice.

"Mr. MITCHELL. Therefore, there is legal status then to the fact that a subpoena has been served and has been recognized by the head of a department?

"Mr. FULTON. There never was any statement that I know of on behalf of the Attorney General during discussion of any of these subpoenas to the effect that the Senate did not have the authority to issue the subpoena to the Attorney General as an individual. He did raise questions as to his alleged privilege but he did not assert that privilege when it was necessary for him either to be in a position where our committee might have cited him to the Senate for contempt or to drop his privilege. In other words, he dropped his privilege but at the same time stated he had had it if he had wanted to exercise it (House Government Operations Committee hearings on Availability of Information from Federal Departments and Agencies, pt. 3, p. 541)."

It will serve no good purpose to develop further the multitude of instances in which, in the exercise of its investigative power the Congress has required and obtained information from the executive branch of the Government through the issuance of subpoenas, or otherwise. The point of reciting those instances is to show that if a series of events never tested in a judicial controversy is to be regarded as precedents for a principle, it is just as easy to establish the right of Congress to obtain information from the executive branch of the Government as the right of the executive to withhold information from the Congress.

Forbearance does not make law. The fact that Congress, in instances where the President has refused to comply with a congressional request for information, took no action does not prove that there was any executive privilege. It proves nothing at all except that Congress chose not to assert its authority or to test its powers.

The reasoning of the Attorney General as contained in the section of his statement on precedents may very well come home to roost. If this reasoning is sound law, a company charged with violation of the antitrust laws could very well as-

sert that over a course of years in repeated instances the company had engaged in a course of conduct and had made pious pronouncements concerning its right to do so and that no action had been taken by the Department of Justice to enforce the law. On subsequent indictment for the same offense which repeatedly has been committed previously, the defendant company, using the Attorney General's logic, could assert that a long line of precedents had established its right to engage in such conduct.

The simple fact is that as a matter of legal logic a course of conduct and ex parte pronouncements do not make law and are not precedents for anything. Neither the historic occasions cited by the Attorney General in his statement and the pronouncements of Presidents and others nor the long history of the successful use of congressional subpoenas to procure information from the executive establish any rule of law at all. The unquestionable fact is that the question never has been adjudicated.

Mr. LIBONATI. Does the gentleman feel that a committee of the Congress has an absolute right to issue subpoenas indiscriminately regardless of the subject matter they are investigating or does the gentleman feel that the Congress in its entirety reserves that power?

Mr. MEADER. The gentleman, I hope, might wait for that question to be answered later in my remarks, but I will advance to that part of my remarks to say this. The Constitution vests in the Congress all legislative power. The lawmaking power has within it the power to know the necessary facts upon which to found intelligent policy. The House of Representatives and the Senate operate through committees. The committees are the agent of the parent body and they have only the authority given them by the parent body. So that if the House or the Senate authorizes a committee to engage in an inquiry, the committee has the power given to it by the House and the legislative authority and the investigative authority given to it by the parent body. For that reason, it is difficult to say that all committees can ask all kinds of questions--and I understand that is what the gentleman is asking me. I recognize no limit to the legislative authority of the Congress or the investigative authority that it needs to exercise that legislative authority.

Mr. LIBONATI. Would you not say, sir, that the Speaker of the House in this instance would have the power to determine whether or not they exceeded the authority under which they were holding their hearings, the Speaker of the House, of course, being the supreme officer of the legislative body involved? Does the gentleman not feel that under those circumstances the Speaker would have the power to call it to the attention of the committee when they exceeded such powers in accordance with the purposes their investigation was conducted?

Mr. MEADER. The gentleman is attempting to draw me into an area which is not the subject of my discourse. I am not discussing the parliamentary rules of the House of Representatives or the manner in which the House works its will. The Speaker of the House obviously has very great power as the chief officer of the House.

Whether or not the Speaker should arbitrate all disagreements within a committee or whether the committee should settle those matters itself I think is a wholly different matter. I am addressing myself to the question of whether or not the executive branch of the Government can destroy the investigative power of the Congress.

Perhaps it is well that between two great coordinate branches of Government the controversy has never arisen in such a way as to be passed upon by the third great coordinate branch of the Government. Under our tripartite system comity, cooperation, and teamwork between the three branches of Government are the best assurance of the successful functioning of a democratic Government of limited powers.

The growing tendency, however, on the part of the executive branch of the Government to disregard the investigative authority of the Congress, such as is evidenced by the statement of the Attorney General last Thursday, may well, however, lead to an impasse where this historic constitutional question will have to be resolved. I, for one, hope this can be avoided and that discretion, restraint, and statesmanship will be displayed by both the executive and the legislative branches of the Government so as to make unnecessary such a constitutional showdown.

SEPARATION OF POWERS

In his discussion of the doctrine of the separation of powers between the legislative, judiciary, and executive branches of the Government, the Attorney

General cites decisions and statements of principle with which no one will quarrel. Every eighth-grade student knows we have three branches of government and that the foundation for this unusual tripartite system was the fear of the tyranny of an absolute monarchy. Hence, we established a government of limited powers, with adequate checks and balances.

Yet under the Constitution the three branches are not entirely watertight compartments. No one department possesses all the executive powers. No one department possesses all the legislative power and no one department possesses all the judicial power. Each has authority and functions in the field of the other.

Article I of the Constitution vests all legislative power in the Congress. Yet under article II the President has the power first, to make treaties, with the advice and consent of the Senate; second, to give Congress information on the state of the Union and recommend measures; third, convene both Houses of Congress; and, fourth, veto bills. All of these are legislative powers expressly vested by the Constitution in the President. In addition, it may be noted that statutes have delegated legislative authority to the executive branch of the Government and to the so-called independent agencies which, although they are said not to be within the executive branch of the Government, are subject in some degree to the control of the President. In addition of course, the President by reason of his powers, his prestige, and his position as the leader of his party and the head of the executive branch of the Government wields immeasurable influence on the course of public policy.

Likewise, the Congress by the Constitution is vested with executive powers: First, important positions in the public service can be filled only with the consent of the Senate; second, the Senate must advise and consent to treaties and the appointment of ambassadors; third, without funds which only the Congress can appropriate, the executive department could not exist; fourth, the Congress can impeach the President, Supreme Court Justices, and subordinate officials in the executive and judicial branches of the Government; fifth, in extraordinary situations the House of Representatives elects the President; sixth, the Congress has the power to regulate and make exceptions to the appellate jurisdiction of the Supreme Court; to ordain and establish inferior courts of the United States; to fix the compensation for judges—except that it may “not be diminished during their continuation in office”—and provide funds for the operation of the judiciary.

The judicial branch of the Government reviews and passes judgment upon the constitutionality of the acts of both the legislative and executive branches of the Government.

The foregoing are cited not as a complete list of mixed powers but only to dispel the inference drawn by the Attorney General from the doctrine of the separation of powers that there are three tightly compartmentalized branches of government and that their functions are not in any way intermingled. From the foregoing examples drawn from the Constitution itself and the basic Supreme Court decisions interpreting it, it is clear that the checks and balances devised by the founders of the Constitution wisely provided not only three great areas of governmental power, but within each devised relationships and cross authority so that each department, even within its own sphere, is not wholly autocratic.

What bearing, then, does the doctrine of the separation of powers have upon the right of the Congress to obtain information in the possession of the executive branch of the Government?

In considering whether or not the power of the Congress to obtain information from the executive branch of the Government conflicts with the doctrine of separation of powers, we must distinguish between those executive powers which are derived from the Constitution and those created by statutes.

As to the latter it is clear that what the Congress creates by statute, it may destroy or modify. Frequently in statutes creating agencies, a provision is included that reports be made to the Congress from time to time. The validity of such provisions has never been challenged to my knowledge. If the Congress may create an agency in such form as it desires, it obviously can provide as a feature of the agency it creates that the files, records, and papers in its possession should be available to the Congress and its committees upon such terms as the Congress may specify. The Congress can repeal or amend any statutes creating agencies and specifically provide for congressional access to information in the agency's possession. I see no reason why, if it should be necessary, Congress could not pass a general statute applicable to all agencies created by statute specifying that, and the terms upon which, the Congress and its com-

mittees should have access to information in the possession of such agencies. This power resides in the Congress wholly aside from its power through subpoena or otherwise to make inquiries.

It should be observed that the Legislative Reorganization Act of 1946 signed by the President on August 2, 1946, contains provisions for the subpoena power of all committees of the Senate and several committees of the House of Representatives. No exclusion of persons within the executive branch of the Government is mentioned. None could reasonably be inferred from the language authorizing the issuance of subpoenas. The bill was signed by the President and no claim of Executive immunity or Executive privilege was made.

The foregoing reasoning, of course, does not apply to the important constitutional powers of the President, his power to execute the laws, his powers as Commander in Chief of the Armed Forces, and his power to conduct diplomatic relations. As to any powers granted to the President by statute, however, there would seem to be no difference, on the basis of logic, between such activities and those of agencies created by Congress with respect to congressional access to information.

The doctrine of separation of powers can have no relationship to the problem at hand unless it is assumed that the power of Congress to obtain information is an invasion of the powers and prerogatives of the executive branch of the Government. Congressional access to information within the possession of the executive branch would not seem in and of itself to interfere in any way with the orderly discharge of the responsibilities and duties of officials of the executive branch. The mere possession of information is not tantamount to making administrative decisions, directing and supervising officials in the executive branch, employing or discharging subordinates or performing any of the functions commonly associated with executive or administrative authority. It is difficult to see how mere knowledge of facts within the possession of the executive branch—not associated with any further action whatever on the part of Congress—could constitute legislative invasion of executive power.

Mr. Speaker, I have been as zealous as anyone in keeping the Congress from injecting itself into the performance of executive and administrative duties and responsibilities. I disapprove of the practice which has grown up lately of requiring the consent of a congressional committee before administrative action can become effective. This, it seems to me, is an unconstitutional invasion by the legislature into the execution of the laws. But certainly this is a far different matter from mere knowledge of the public business.

Marbury against Madison established that the executive has political power which is purely discretionary and that the courts have no power to review and overrule such a decision.

Though the court did not say so—the question was not before it—let us agree that Congress likewise could not overrule executive decisions even those made under authority given to the executive by Congress through legislation. Nevertheless, there are sound reasons why Congress should have knowledge concerning such a decision. The power to legislate includes the power to unlegislate or to amend. How can an experimental public policy be improved if Congress is unable to observe its operation?

Even actions taken by the executive under his constitutional authority should be open to congressional observation since the Congress has the power to propose to the States amendments to the Constitution including amendments of those provisions vesting power in the President.

There is no reason why the judicial branch should inform itself about the decisions under the political power of the executive since his discretion in the exercise of that power is not reviewable in a court case.

But there is every reason why the Congress should know about the exercise of such discretionary power since it can take action, not perhaps to reverse a presidential decision, but either to amend existing statutes, pass new ones, or propose constitutional amendments in the States. It is noteworthy that the Constitution excludes the President from any part in the proceedings by which the Constitution is amended.

No case has been made that the doctrine of separation of powers in any way conflicts with the power of Congress to investigate. It therefore should not impair or limit in any way the power of Congress to obtain facts from citizens or from the executive branch of the Government which it needs as a foundation for a sound and intelligent determination of public policy.

POWER OF CONGRESS TO INVESTIGATE

The central and unmistakable constitutional fact is that a part of the legislative power which the Constitution vested in the Congress is the power to inquire and to compel the production of information necessary or helpful in the formulation of public policy.

The power of legislative inquiry is so well established that it is amazing that the Attorney General gave it scant notice. It comprises one sentence in his entire statement. He mentioned the classic case of *McGrain v. Daugherty* (273 U. S. 135 (1927)) only in a footnote. He preferred to quote extensively and rely heavily upon *Kilbourn v. Thompson* (103 U. S. 190). That case was decided in 1881, did not relate to the right of Congress to obtain information from the executive branch of the Government, and is probably one of the most unskillful decisions in the field of constitutional law ever written by the Supreme Court.

It is obvious from the heavy reliance the Attorney General placed on this discredited case that he was completely unaware of the brilliant law review article written by Gerald D. Morgan, now the Special Counsel to the President of the United States, in the California Law Review for December 1949, entitled "Congressional Investigations and Judicial Review." Mr. Morgan, who for 10 years served as assistant legislative counsel to the House of Representatives, contributed one of the most thoughtful discussions of the investigative power of the Congress I have ever read. The subtitle of his article was "Kilbourn Versus Thompson Revisited."

Because of its bearing upon the reliance the Attorney General has placed on Kilbourn against Thompson for the position he has taken in his statement, I quote a few paragraphs from Mr. Morgan's excellent discussion:

"A legislative committee of inquiry vested with power to summon witnesses and compel the production of records and papers is an institution rivaling most legislative institutions in the antiquity of its origin. * * * Prior to the adoption of our Constitution colonial assemblies frequently assume authority to punish for contempt any person who refused to appear in answer to a summons or who failed to disclose information required for the effective administration of Government" (*Fields v. United States* (App. D. C. 1947)).

"For almost 100 years following the adoption of the Constitution this institution of inquiry flourished virtually free from judicial supervision or control. Indeed, in 1821, Chief Justice Marshall's court, in *Anderson v. Dunn*, intimated that the institution was not subject to control by the judiciary, and a similar intimation is found in *Ex parte Nugent*, decided in 1848 by the circuit court of the District of Columbia, in which it was held by the court, after an exhausting review of the English authorities, that the court had no power in a habeas corpus proceeding to go behind a warrant of the Senate ordering a witness committed for contempt.

"It was not until 1881 in *Kilbourn v. Thompson* that the Supreme Court undertook to pass upon the validity of a judgment of the House of Representatives adjudicating a witness to be in contempt of the authority of the House, and to do so in a proceeding (false imprisonment) that constituted a collateral attack upon that judgment. The judgment was held void on the grounds that the subject matter of the inquiry was one on which Congress could not validly legislate. Thus began the doctrine whose effect was to treat the Senate and House of Representatives, when exercising an inherent power at the very threshold of the legislative process, as having a status analogous to that of an inferior court of limited or special jurisdiction.

"Indeed for some 46 years following *Kilbourn v. Thompson*, because of the broad sweep of its reasoning (and also, as has since been shown, by reason of an incorrect view taken by the Court as to the origin of the inquisitorial power possessed by the British Parliament), the very existence in this country of a power in the Senate and House of Representatives to compel testimony and punish for contempt in aid of the legislative function was in grave doubt. And this doubt was not finally resolved until a short 22 years ago when the Court in *McGrain v. Daugherty*—upon review of a decision of a district court in a habeas corpus proceeding—held that the Senate was acting within its lawful authority in arresting the brother of former Attorney General Daugherty for refusing to respond to a subpoena directed to him by a Senate committee investigating the administration of the Department of Justice.

* * * * *
"The Court in *Kilbourn v. Thompson* merely held that Congress had no jurisdiction to legislate on the subject matter into which the committee of the House

of Representatives was inquiring, and that hence the committee had no jurisdiction to inquire on that subject matter.

* * * * *

"But more important, *Kilbourn v. Thompson* indicates a lack of understanding as to just what the legislative function is. Legislatures exist not merely to enact laws. They have the equally important function of determining that laws should not be enacted and their decisions in the performance of this latter function must in the nature of things frequently be influenced by consideration of whether or not the power to legislate exists. Yet *Kilbourn v. Thompson* would prevent the legislature from gathering the information that it believes will enable it to make such decisions, to make them intelligently, and to persuade others that such decisions are correct.

* * * * *

"*Kilbourn v. Thompson* sought to treat the legislative branch of the Government, when exercising a power (punishment for contempt) like that which courts exercise, as if it were an inferior tribunal in the judicial hierarchy, confined in its jurisdiction to the consideration of a limited number of easily defined 'cases' or subject matters. The Oklahoma Press case, as well as the nature of the legislative function itself, shows that the legislative power of inquiry cannot be so confined. Would dire consequences result if we should abandon *Kilbourn v. Thompson* and return the workings of the legislative process to the exclusive jurisdiction and control of the legislature? Perhaps the consequences would be beneficial. Legislators, like other members of the human race, are subject to the common human failing of being careless if someone else is available to review and correct their mistakes. 'Interference by the courts is not conducive to the development of habits of responsibility.' Full and final responsibility for power, on the other hand, induces care in its exercise."

I believe it is also helpful to quote from a speech ex-President, and former Senator, Truman made on August 7, 1944, on the floor of the United States Senate at the time he announced his resignation as chairman of the Special Senate Committee Investigating the National Defense Program. He said:

"In my opinion, the power of investigation is one of the most important powers of the Congress. The manner in which that power is exercised will largely determine the position and prestige of the Congress in the future. An informed Congress is a wise Congress; an uninformed Congress surely will forfeit a large portion of the respect and confidence of the people.

"The days when Webster, Clay, and Calhoun personally could familiarize themselves with all the major matters with respect to which they were called upon to legislate are gone forever. No Senator or Representative, no matter how able or diligent, can himself hope to master all the facts necessary to legislate wisely.

"The accomplishments of the Truman committee—and I am referring now to the other members of the committee and its staff, rather than to myself—present an example of the results that can be obtained by making a factual investigation with a good staff. Similar accomplishments can be made by other special committees, as well as the standing committees of the Congress, and I particularly urge upon the Senate that it be liberal in providing ample funds for the prosecution of proper investigations. The cost of a good investigation is negligible when compared with the results which can be obtained."

Mr. Hugh Fulton, first chief counsel for the Truman committee, the excellence of whose performance in that capacity is widely credited for the rise and prestige which led to Senator Truman's becoming President of the United States, made this comment on the investigative power of the Congress:

"Second, the Congress not only should assert and maintain but should vigorously exercise its power to investigate.

"No one has the temerity to challenge the right of Congress to exercise the power expressly granted to Congress by the Constitution, although, in my opinion, there is an ever-growing tendency on the part of bureaucrats generally to assume that it is too bad that matters which they think would be handled best by experts such as they consider themselves to be should have to be explained to politicians who are not experts and whose opinions may reflect what they consider to be the desire of their constituents (House Government Operations Committee hearings on Availability of Information from Federal Departments and Agencies (pt. 3, 84th Cong., 1956, pp. 523-524))."

Curious things seem to happen to individuals who move from one end of Pennsylvania Avenue to the other. The Attorney General, whose statement I

am now analyzing, succeeded me as chief counsel for the Senate War Investigating Committee and then stayed on with the Senate after the expiration of that special committee and served as chief counsel for the Investigations Subcommittee of the Committee on Expenditures in the Executive Departments.

We all know of the important role a committee counsel plays in the preparation of committee reports.

While Mr. Rogers, the present Attorney General, was chief counsel for the Investigations Subcommittee a report was filed September 4, 1948, on an investigation of Federal employees loyalty program. On page 19 of that report—Senate Report No. 1775, 80th Congress, 2d session—is the following interesting passage:

**"NONDISCLOSURE POLICY OF THE EXECUTIVE BRANCH ON
LOYALTY INFORMATION"**

"Under our constitutional form of government Congress has the duty to enact laws for the public welfare. To perform this duty intelligently it must have the complete facts upon which to base its judgment. Congress is entitled to learn by direct investigation whether present laws are satisfactory or, if not, then in what respects they fail. Under our system of checks and balances Congress should not be placed in the position of enacting legislation merely at the request of the executive branch of the Government and solely for reasons advanced by it. Congress is entitled to know the facts giving rise to the requests and to satisfy itself by firsthand information that the reasons furnished are valid. Any other course blinds the legislative branch and permits action only when the President provides a 'seeing-eye dog' in the form of a request for legislation desired by the Executive. Good legislation and ignorance of the facts are incompatible. President Truman, in discussing the importance of congressional investigations on the floor of the Senate when he retired as chairman of the War Investigating Committee, forcefully emphasized this basic fact by saying: 'An informed Congress is a wise Congress; an uninformed Congress surely will forfeit a large portion of the responsibility and confidence of the people.'"

The Attorney General appears to agree that the Congress does have investigative power but maintains that with respect to the executive branch of the Government that investigative power extends only as far as the executive determines.

Thus, the Congress is in the ludicrous position of having full authority to inquire into the business of private citizens, but is impotent when it comes to inquiry about the public business. The main responsibility of the Congress is the public business, the formulation of public policy and dealing with problems of the operation of the Government. Yet, according to the theory of the Attorney General, the Congress is entitled to know about this subject only what the executive condescends to allow it to know.

Referring again to the Legislative Reorganization Act of 1946, a Committee on Expenditures in the Executive Departments—later changed to Government Operations—was created in each of the Houses of the Congress with the duty of "studying the operation of Government activities at all levels with a view to determining its economy and efficiency." Those committees were given the subpoena power to enable them to make that study.

Is it possible that the intent of the Legislative Reorganization Act was that those committees should study the operations of the Government, but only have access to information outside the possession of the executive branch of the Government? The great bulk of information on which any such study must be based naturally would be in the possession of the executive branch of the Government.

Is it possible that when the President signed the Legislative Reorganization Act of 1946, he had some mental reservation, which he did not express, that because of executive privilege the Congress, in the provision cited was doing a meaningless thing?

Similarly, section 136 of the Legislative Reorganization Act of 1946 provided:

"26. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government."

How can this duty be performed if congressional committees are denied access to the files and records of the agencies?

Frequently when commissions have been created, such as the Hoover Commission, the Randall Commission, the Kestnbaum Commission, and others, provision is made that each department and agency, and so forth, furnish estimates, statistics, and information to the Commission or any committee thereof upon request. Has the doctrine of executive privilege ever been raised as a basis for vetoing bills creating commissions with these powers? If the Congress itself, in its own right, does not have access to information and statistics in the possession of the executive branch of the Government, how can it delegate such authority to a commission?

Mr. Speaker, one of the things which disturbs me most about the assertion of executive discretion to withhold information from the Congress and the denial of the existence of the investigative power of the Congress is the implication that the elected representatives of the people are not to be trusted. Those making such an assertion, and unfortunately all too frequently we see among them Members of the Congress, and even congressional leaders, seem to take the attitude that officials in the executive branch are wise and trustworthy and that Senators and Representatives are irresponsible.

Of course, Mr. Speaker, the plain fact is that officials in both branches are but human beings. Certainly, with respect to the preservation of the classified character of information regarding the national defense, the record of the Congress is a good one. Indeed, it is far better than that of the executive branch in which many instances have been exposed where classified information has found its way into the hands of unauthorized persons to the public detriment.

Mr. Speaker, the investigative power is said to be auxiliary to, or an adjunct to, the legislative power. I prefer to think of the investigative power of the Congress as an integral part of its legislative power. Laws are not made like the declarations of the oracle at Delphi. The policymaking process is a long and involved one, only the last portion of which is the bill which becomes a law. No sound judgment can be picked out of the air. It must be preceded by extensive and thorough study and consideration of the facts, arguments, conflicting views, conflicting interests and calculations as to probable future effects, all measured against the standard of the general public good. That study is the investigative part of the legislative process and may well be said to be the major part of it.

When, therefore, there is an attempt to destroy, impair or weaken the investigative power of the Congress, the capacity to legislate intelligently is undermined. Asserting an executive privilege to deny to Congress facts and information which Congress in its legislative judgment believes it needs, is to attack the legislative power itself.

It is amazing to me that a nonexistent, imaginary so-called executive privilege, nowhere recognized in the Constitution, in statutes or in court decisions, can seriously be advanced to destroy the expressly vested legislative power, as well as the investigative power which inheres in it, so clearly established in the Constitution and in an unbroken line of court decisions throughout the entire history of our Government.

There is no question that the power to investigate is subject to abuse. The same is true of the power to execute the laws or the power to adjudicate cases. But as the court so well said in *McGrain against Daugherty*:

"The contention is earnestly made on behalf of the witness that this power of inquiry, if sustained, may be abusively and aggressively exerted. If this be so, it affords no ground for denying the power. The same contention might be directed against the power to legislate, and of course would be unavailing."

Mr. Speaker, there may be limits to the investigative power of the Congress. There may come a time when those limits will be defined with respect to access to information in the executive branch of the Government. As we all know, they have already been defined in some respects as to private citizens where the investigative power comes into conflict with rights guaranteed by the Bill of Rights, such as the right of self-incrimination. I think it would serve little purpose at this time, however, to attempt to speculate and map out in advance the limits of the investigative power of the Congress with respect to the executive branch of the Government. Certainly there are areas where unusual restraint, sound discretion, and forbearance on the part of Congress are needed. I refer to such areas as the conduct of our diplomatic relations and matters affecting the national security. It is to be hoped that the statesmanship both in the ex-

ecutive branch and in the Congress is of such caliber that there never will have to be an adjudicated controversy involving these sensitive areas.

But, Mr. Speaker, let me make it as clear as I can that the discretion on matters of legislative inquiry must remain in the Congress.

In this view I am fortified by a clear statement by the Vice President of the United States when he was a Member of the House of Representatives. Mr. Nixon said in debate on House Resolution 522, 80th Congress, 2d session:

"I am now going to address myself to a second issue which is very important. The point has been made that the President of the United States has issued an order that none of this information can be released to the Congress and that therefore the Congress has no right to question the judgment of the President in making that decision.

"I say that that proposition cannot stand from a constitutional standpoint or on the basis of the merits for this very good reason: That would mean that the President could have arbitrarily issued an Executive order in the Meyers case, the Teapot Dome case, or any other case denying the Congress of the United States information it needed to conduct an investigation of the executive department and the Congress would have no right to question his decision (Congressional Record, Apr. 22, 1948, p. 4783)."

Vice President Nixon referred to the Meyers and Teapot Dome cases. Today we have fresh in our minds the inquiry of the House Interstate and Foreign Commerce Subcommittee on Legislative Oversight into the operations of the Federal Communications Commission and other regulatory agencies. If the doctrine asserted by the Attorney General is sound, the power rests in the executive branch of the Government, if "executive privilege" is exercised, to deny Congress access to information concerning facts bearing upon possible improper influence in the discharge of public authority.

The Attorney General asserted the independent regulatory agencies, with respect to their judicial functions, "should be as just as free of any demand from Congress or the executive branch as a court would be."

Let us test this:

First. The Federal Communications Commission is an independent regulatory body.

Second. The licensing of channel 10 in Miami, Fla., was a "judicial" determination.

Third. The Federal Communications Commission enjoyed "privilege" from inquiry either by Congress or the executive branch with respect to this determination.

Fourth. The Legislative Oversight Subcommittee of the Committee on Interstate and Foreign Commerce of the House and the grand jury established by the Justice Department are without power to inquire into this determination of the FCC or the matters which led to it.

Fifth. The FCC, and presumably all subject to its jurisdiction should invoke "privilege" and refuse to divulge any facts relating to the judicial determination or anything that led up to it.

It is quite apparent that the Attorney General has chosen the wrong word. What he advocates is not "executive privilege" but "executive license."

If there ever was time when the investigative part of legislative power should be strengthened rather than weakened, it is today. The American economy and the United States Government have grown huge and complex. More study, not less, is required for intelligent policymaking in these days. Because of the size and complexity of the problems of modern society, Congress has delegated vast policymaking authority to agencies such as the Federal Communications Commission. If the particular system Congress chose to meet a public need is not functioning effectively, or even honestly, if a new and better way of meeting the public need must be found, how could the Congress ever hope to solve the problem if its power of inquiry, its ability to assemble the facts and consider the arguments, is stripped from it?

EXECUTIVE PRIVILEGE

Mr. Speaker, it is difficult to prove that a nonexistent thing does not exist. That is the dilemma with the so-called executive privilege. The burden of proof should be upon those who assert that there is executive privilege which, of course, is nowhere mentioned in the Constitution or in any court decision in any controversy concerning the investigative power of the Congress.

Mr. Speaker, I wish to comment briefly on another question discussed by the Attorney General before the Senate Judiciary Committee last Thursday. Although a different subject, it is related to this discussion. The Attorney General opposed S. 921 of the 85th Congress, identical with H. R. 2767, which would amend section 161 of the Revised Statutes by adding at the end thereof the following:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

The Attorney General asserted the Department of Justice was unable to determine the effect of this legislation with any degree of certainty. The Attorney General said, however, that although he thought the bill was meaningless, he would have no objection to it if an amendment made clear that the bill "in no way intended to impair the executive privilege."

I suggest that this latter statement is the understatement of the year. If the Attorney General could get Congress in any statutes to recognize the existence of the nonexistent executive privilege, he certainly would have achieved a lot. The Congress shortly will consider this legislation and I believe a warning should be issued at the earliest moment to be on guard against including any words in this or any other law which would give congressional sanction to executive privilege to withhold information, either from the Congress or the public.

Mr. Speaker, I have not tried to make an exhaustive analysis of all of the weaknesses and fallacies and erroneous conclusions contained in the Attorney General's statement to the Senate Judiciary Committee. I believe, however, I have demonstrated sufficiently that its legal reasoning is unsound and that its assertion of unbridled executive authority is unfounded.

[From Congressional Record, pp. 5239-5241, Mar. 31, 1958]

DECAY OF THE POWERS OF THE CONGRESS OF THE UNITED STATES

The SPEAKER pro tempore. Under the previous order of the House, the gentleman from Michigan [Mr. Meader] is recognized for 20 minutes.

(Mr. Meader asked and was given permission to revise and extend his remarks and include related matter.)

CONGRESSIONAL INVESTIGATIVE POWER

Mr. MEADER. Mr. Speaker, I have listened with a great deal of interest to the discussion of the gentleman from Iowa [Mr. Schwengel] and his colleagues who participated in colloquy with him on the subject of the extension and improvement of the east front of the Capitol.

I want to talk to you about another matter which similarly, it seems to me, should be dear to the hearts of the American people and particularly the Members of Congress; I want to talk about erosion, not in buildings, but in the powers of the Congress of the United States.

Mr. Speaker, I am interested in the power of congressional investigation—because to me it is vital to the effective exercise of the policymaking authority of the Congress in modern, complex society.

Our economy has grown, not only in size but in the variety of our society's endeavors. It is vastly different from the economy of our ancestors. The responsibilities of the Federal Government have grown not only in size and in cost but in the complexity of their nature, and the responsibilities of the Congress for determining national policy likewise have become more difficult because the problems are more numerous and more complex.

Is it not clear that the Congress must modernize and equip itself to understand the subjects with which it deals? If the Congress fails to do this, then the Congress will become of less and less importance in our national life.

Only through specialization through committees, equipped with able staffs and through the intelligent and effective exercise of its investigative power can the Congress preserve its strength, its powers, its prerogatives, and make itself a more useful and effective instrument for determining national policy under modern conditions. Therefore, I am disturbed when the executive branch of the Government, attempts to whittle away and to erode the policymaking authority of the Congress of the United States.

That is what caused me earlier this month to discuss at some length the testimony given by the Attorney General of the United States before the Senate Judiciary Subcommittee on March 6, 1958. My remarks on that occasion will be found on pages 3280 to 3286 of the Congressional Record for March 10, 1958. The Attorney General apparently had my remarks called to his attention and on March 14, 1958, addressed a letter to me. That letter is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., March 14, 1958.

Hon. GEORGE MEADER,
House of Representatives,
Washington, D. C.

DEAR GEORGE: I am enclosing herewith a copy of the prepared statement which I made before the Senate Subcommittee on Constitutional Rights on March 6. I assume from reading your remarks in the House on March 10 that you may not have read it. Your remarks evidence a serious misunderstanding of my position on inquiry by the legislative branch concerning the decision-making process and documents of the executive branch.

You assert that in my testimony before the Senate subcommittee I championed a policy and privilege which would deny to Congress and the public access to all executive documents and papers. This is simply not so. I emphasized the necessity of furnishing all possible information to Congress and the public, only withholding that which in the public interest it is necessary to withhold. I reiterate now that this administration, and particularly the Department of Justice of which I have been a part for the past 5 years, has furnished more information to Congress and the public than ever before.

In your remarks you stated, "There are countless instances where congressional requests for information from the executive branch of the government have been fulfilled." Certainly there have been "countless instances." It is my hope and full expectation that there will continue to be. To imply as you have that it is my view that under the Legislative Reorganization Act "committees should study the operations of government but only have access to information outside the possession of the executive branch of the Government" is to distort completely my testimony. I fully agree with the view stated in your very next sentence: "The great bulk of information on which any such study must be based naturally would be in the possession of the executive branch of the Government"—and it is my intent and I believe the intent of this administration that congressional committees shall have access to that great bulk of information.

Nor have I made any denial of the existence of the investigative power of the Congress. The position which I have cited and upheld by precedent, law, and logic is the position which every Attorney General and every President beginning with George Washington has taken when the issue arose. As I read your remarks, you appear to place no limit on the legislative right to inquire and investigate into the documents and actions of persons in the executive branch. Are there any limits? If so, where? In my opinion the limits are dictated by the fundamental doctrine of separation of powers. Unless you are prepared to recognize limits to the right of legislative inquiry based on the separation of powers, you are asserting a theory of legislative supremacy embodied in the unworkable Articles of Confederation but rejected in our Constitution.

Speaker Rayburn, then House minority leader, in 1948 put it pretty bluntly:

"I do not know what you think the powers of Congress are. Are they limitless? Is there no limit under the Constitution to which any Congress, much less a very partisan one would go? Back in the formative period of this Government there was a great jurist. * * * In 1803 he gave forth this language in a very familiar case (and at this point Mr. Rayburn quoted the language of Chief Justice Marshall in *Marbury v. Madison*, dealing with the principle of the separation of powers, which I cited on page 25 of my prepared statement)" (Congressional Record, May 12, 1948, p. 5740).

You will notice in my statement that I gave full recognition to the existence of like legislative and judicial privileges based fundamentally on the constitutional separation of powers as is the executive privilege.

The historical precedents cited in my statement define the principles and circumstances calling for the exercise of executive discretion in furnishing papers and information to Congress. The 81st Congress defined its own legislative privilege in these words, that "no evidence of a documentary character under the control and in the possession of the House of Representatives can

by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission."

You might consider the consequences if such executive, legislative, or judicial privilege did not exist, if the executive could not assert under the Constitution a privilege against unrestricted legislative and public inquiry. For example, how much information would the Antitrust Division of the Department of Justice receive from aggrieved small-business men if the executive did not have a right and duty to keep confidential the names of those who make complaint of violations of the antitrust laws? How much information would the Federal Bureau of Investigation continue to receive from its confidential informants if the FBI files could not be protected by the executive from the demands of any curious congressional committee? Most people agree that the executive has a right and duty to keep such information confidential, and that of course is merely the exercise of the executive privilege.

This has been clearly put by the present House majority leader, Mr. McCormack:

"I must recognize that there must be an independence of the other branches which must be preserved the same as the independence of the legislative branch must be preserved, and I say that under our form of government, consisting of the three coordinate branches, the President of the United States is the one to judge, and not the Congress. And, in turn, the judge of the President of the United States is the people" (Congressional Record, May 12, 1948, p. 5712).

Your fears of an unwarranted withholding of information by the executive are unfounded. The true guard and judge of the reasonableness with which the executive exercises its privilege is the people, the force of public opinion, as Congressman McCormack recognized. The Founding Fathers foresaw this when they created the three branches with coequal privileges, leaving it to public opinion to sustain or condemn the exercise of those privileges as their reasonableness might appear.

In my opinion there is no question but that the executive branch of the Government of the United States makes available to Congress and the public vastly more information than does the executive of any other government in the world. This is an asset of great value under our republican form of government, and its real worth should not be obscured by a misplaced emphasis on the relatively few instances where the executive has deemed it necessary to withhold information.

In the past the executive has acquiesced in the great majority of requests for information from Congress. It no doubt will continue to do so. If in any particular case the executive under this administration exercises its privilege and declines a request of Congress, it will first make very sure that its declination is truly on the ground of overall public interest. And it will rely on a public opinion informed by a free and conscientious press to support its decision, for this administration indeed considers itself accountable to the people for all its decisions.

With best personal regards, I remain,

Yours cordially,

WILLIAM P. ROGERS, Attorney General.

Mr. Speaker, I read the letter very carefully and reviewed again the testimony the Attorney General had given before the Senate Judiciary Committee. I also reviewed the remarks I had made in the House of Representatives and composed a reply to the Attorney General, dated March 28, 1958, which I will insert in my remarks at this point:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 28, 1958.

Hon. WILLIAM P. ROGERS,

The Attorney General, Department of Justice,
Washington, D. C.

DEAR BILL: This is in reply to your letter of March 14, 1958, commenting on my speech on the floor of the House March 10, 1958, during which I discussed the investigative power of the Congress and your testimony before the Senate Judiciary Committee on alleged "executive privilege" to withhold information from the Congress.

I am glad to reply to your letter because I believe arguing the constitutional principle involved will be useful providing we confine our debate to legal principles, using skill in legal reasoning and avoiding irrelevancies.

Your high position as the chief legal officer of the United States renders your views significant because they are likely to be given great weight by officials in the executive branch of the Government from whom the Congress from time to time may desire information. They are important, too, because the Department of Justice and United States district attorneys have responsibilities under section 102 of the Revised Statutes for the enforcement of the investigative powers of the Congress.

Although your letter does not clearly say so, the central point of difference between us seems to be whether, in the event of disagreement as to the production of information Congress has requested from the executive branch of the Government, the power to decide resides in the Congress or in the President. I hold that the power resides in the Congress, and you apparently contend that the power resides in the executive branch of the Government. We both concede that historically a constitutional showdown on this question has been avoided, and I have expressed the hope that such a showdown will never be necessary.

You have conceded that included within the legislative power vested in the Congress is the power of inquiry. Apparently you also concede that the legislative power cannot be exercised intelligently in our modern, complex society without adequate means for ascertaining facts and considerations which are a necessary foundation for an enlightened declaration of public policy. Yet you assert that this power is unavailing in the event the executive branch decides it is in the public interest to withhold information from the Congress.

I do not concede the existence of an executive privilege to withhold information from Congress. Nevertheless, we might narrow the area of disagreement between us if you would be willing to describe the nature and characteristics of this executive privilege with greater exactitude. Such a description should include answers to the following questions:

1. Is there the executive privilege one which may be exercised solely by the President personally with respect to each congressional request for information limited only to that request?

2. May the President validly issue a blanket order to all officials and employees in the executive branch of the Government instructing them to deny Congress: (a) all requests for information; (b) all requests for a certain type of document or testimony; (c) all information in certain areas of governmental activities?

3. May this Presidential executive privilege and the power to exercise it be delegated to inferior officials in the executive branch of the Government? If so to (a) Cabinet members? (b) division heads? (c) economists and clerks? (d) any and all of the personnel in the executive branch of the Government?

4. Is the decision to withhold information from the Congress on the basis of executive privilege subject to any review whatever?

5. With respect to information properly classified, can the executive privilege be invoked where satisfactory arrangements are made to preserve the classified character of the information?

You have been unable to cite any express language in the Constitution authorizing executive privilege or any recognition of executive privilege by the Congress in statutes or by the courts in decisions.

You seem to rely rather vaguely upon the doctrine of separation of powers which I discussed at some length in my remarks on the floor of the House on March 10, 1958. I failed to find any refutation or other reference to this discussion in your letter of March 14, 1958.

I stated in my speech, and I again affirm, that I disapprove as vigorously as you of attempts Congress has made in the past to inject itself into the execution and administration of the laws and to assume the right to make executive decisions. I shall continue to follow that policy.

There is a considerable gap in logic, however, between stating the doctrine of separation of powers and concluding that congressional access to the facts about the conduct of the public business is an attempted usurpation of executive authority. To say that Congress has no right to know fully about the public business but must depend only upon the information the executive is willing to give it, in such color and completeness as the executive elects, it seems to me, is to assert untouchability in public servants totally out of line with our democratic concept that executive agencies are the servants, not the masters, of the sovereign people.

If the doctrine of separation of powers has any application to the question in controversy between us, it seems to me it supports the position I have taken. If,

as the court decisions clearly hold, the power of inquiry is an essential ingredient of the power to legislate, then the interference with that investigative power and the obstruction of its exercise by the Executive is an invasion of legislative authority and an unconstitutional assumption by the Executive of legislative power vested by the Constitution in the Congress.

As I have pointed out, the Supreme Court has time and again upheld the power of inquiry of the Congress because of its necessity to sound and intelligent legislation. This view was excellently expressed in *McGrain v. Daugherty* (273 U. S. 135) :

"A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it."

Of course, a great deal of information needed by Congress to determine public policy is in the possession of individual citizens, corporations and various types of nongovernmental organizations, but probably by far the great bulk of information needed by Congress to legislate intelligently is in the possession of the executive branch of the Government which in the last two and one-half decades has grown to mammoth proportions, not only in dollar expenditures and personnel, but in control and regulation of our national life. It is unthinkable to me that a court would hold that information in the possession of nongovernmental persons and agencies is more readily accessible to Congress than information in the possession of a public official.

The information possessed by a public official is not his private property, and the right of "privacy" conceived to exist in individual citizens by reason of the Bill of Rights and otherwise would not seem to apply to public officials who act as agents of the people in a position to trust. After all, the records and files of the Department of Justice are not the personal property of Bill Rogers or any subordinate official in the Department of Justice. They are Government property. If a private citizen may not withhold from congressional inquiry his private papers, is there not much more reason to hold that Government information needed in the formulation of public policy should be available to that part of the Government to whom it is most useful in determining how we should be governed?

The principle that public officials in their official capacity act as agents of the Government and exercise their powers and possess Government property and records as trustees is well established. Thus it would appear that the decisions of the Court in upholding the power of congressional inquiry with respect to private citizens are precedents establishing the power of Congress to obtain information in the possession of Government officials.

Another passage in *McGrain v. Daugherty* is relevant to that portion of your contention that it is sufficient for Congress to have such information as the executive branch of the Government voluntarily supplies it:

"Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed."

You suggest that my view of the investigative authority of the Congress asserts "a theory of legislative supremacy embodied in the unworkable Articles of Confederation but rejected in our Constitution." You are correct that I do assert the supremacy of Congress in the field of legislation, but I base this upon the Constitution, not the Articles of Confederation. I find nothing in the Constitution which indicates any intent to strip from the legislative power it vests in Congress the power of inquiry which has always been considered to inhere in the legislative power. In this view I am confirmed by repeated decisions of the Supreme Court.

I refer you again to the brilliant law review article of Gerald Morgan, the President's special counsel, who criticized penetratingly, it seems to me, an attempt by the courts to review legislative judgments by undertaking to decide whether the subject matter of the congressional inquiry was relevant to a subject on which Congress could legislate. This, of course, was the holding of *Kilbourn v. Thompson* (103 U. S. 190). Mr. Morgan expressed this idea as follows:

"Now, if, as indicated in Oklahoma Press case, the congressional power of investigation extends to investigating for the purpose of determining if the facts show whether or not Congress can legislate at all, if an investigation does not have to be preceded by the adoption of a resolution defining its scope and

purpose, and if the congressional power of investigation is like the inquisitorial power of a grand jury, then it becomes impossible for a court to exercise a power of review with respect to the lawfulness of such investigations, unless the court presumes bad faith on the part of a coordinate branch of the Government. And moreover, questions of pertinency in legislative inquiries become questions that by their very nature cannot be determined judicially—they become questions that courts cannot determine at all without in effect rendering advisory opinions as to what facts it would be appropriate for Congress to consider, for the Senate or House to consider, in forming a legislative judgment first as to whether it may legislate, next as to whether it should legislate, and finally as to how it should legislate. The exercise of that judgment is made through the collective action of the Members, upon their oath of office—substantially the same oath that judges take. And their decision as to what is or is not relevant to the exercise of that judgment should be binding and conclusive upon the world."

Yet it must be said that even in *Kilbourn v. Thompson*, the Supreme Court did not go nearly as far in invading legislative prerogatives as you do in asserting an executive privilege since the Court recognized the power of Congress to inquire but held only that its inquiry must be limited to matters on which it validly could legislate. Your assertion of executive privilege has no such limitation but only the very broad one that whenever the executive thinks it is in the public interest to withhold information, Congress may not obtain it. What is or is not in the public interest, of course, is a concept so broad as not to have any limitations whatever. Therefore, I have said, and repeat, that the asserted executive privilege is equivalent to saying that the President need not give any information at all to Congress since he may always say, and no one can review or disagree with his statement, that it would not be in the public interest to give Congress the information.

I would appreciate your directing your attention to the questions I have asked above and particularly to an explanation of the steps of logic in your thinking by which you arrive at the conclusion that knowledge by Congress of facts about the public business is an attempt to exercise executive powers. It seems clear to me that knowledge in and of itself does not amount to an attempt to make executive or administrative decisions.

It is, of course, true that a complete knowledge of the facts about an executive decision might reveal its fallacy, but this would be a matter which would appeal only to the minds of the people and would not serve to overrule an administrative decision within executive discretion which is valid and binding regardless of its soundness or unsoundness. The only possibility I can see that knowledge of the conduct of the public business could be regarded as invading executive authority is the assumption that executive decisions, good or bad, are the sole and exclusive business of officials in the executive branch of the Government and that neither the Congress nor the people have any right to be concerned about them. This asserts a doctrine of executive power which I believe is wholly out of keeping with our concept of democracy and self-government. It smacks of totalitarianism, and I hope it will never prevail in this country.

President Truman wrote a letter March 13, 1948, intended to deny to the Senate committee for which you were then counsel certain files concerning the loyalty of executive personnel.

President Eisenhower May 17, 1954, wrote a similar letter growing out of an effort of that same Senate committee to obtain certain information relating to the Army-McCarthy hearings.

Though the matters which gave rise to those two letters have long since passed from the scene, the letters still are being relied upon by personnel in the executive branch to deny information to the Congress.

Regardless of the constitutional controversy between us, the sincerity of the desire you express to make available the maximum amount of information to the Congress would seem to call for sweeping away those cobwebs either by a declaration that those letters no longer have any validity or that at the least they are confined to the subjects then in controversy.

Sincerely,

GEORGE MEADER.

I only wish to add that I hope all Members of the Congress and all committees will continuously be jealous of the powers and the prerogatives of the Congress; that they will not permit those powers to be frittered away carelessly or will not countenance the actions of those who seek to weaken or destroy them.

NATIONAL POSTAL TRANSPORT ASSOCIATION,
Washington, D. C., April 22, 1958.

Hon. THOMAS C. HENNINGS, Jr.

United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: On April 10 you graciously invited the National Postal Transport Association to submit a statement in regard to the attention given by your subcommittee to S. 921.

Twelve copies of our statement are enclosed. We are pleased to comply and we hope that our thinking and our presentation will in some way aid in the deliberations of your subcommittee.

Sincerely yours,

PAUL A. NAGLE, President.

PREPARED STATEMENT SUBMITTED BY PAUL A. NAGLE, PRESIDENT, NATIONAL POSTAL TRANSPORT ASSOCIATION

Mr. Chairman, my name is Paul A. Nagle. I am president of the National Postal Transport Association, representing 30,000 employees of the Post Office Department's Postal Transportation Service.

Mr. Chairman, I appear before you this morning in support of S. 921. This bill would amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and to limit the availability of records. The proposed legislation would amend section 161 of the Revised Statutes by adding the language, "This section does not authorize withholding information from the public or limiting the availability of records to the public."

The National Postal Transport Association wishes emphatically and enthusiastically to subscribe to the recommended amendment.

It is especially appropriate to point out to this distinguished Subcommittee on Constitutional Rights that a familiar outcry of postal employees is that they are second-class citizens in the sense that their rights of utterance are circumscribed, their political activities are limited, and they are denied the reasonable right of collective bargaining to improve their conditions of employment.

In some instances today postal employees are being disciplined and suspended from the payroll under regulations they have never seen. We are told that a newly revised version of the Postal Manual is being prepared and will shortly be available. Even after this happens we understand that if an employee should decide that he wishes to read the regulations, he will have to make a request of his supervisors. Lack of availability of information in this case, we think, amounts to suppression of that information. When an employee is not advised of a change in the regulations governing the conditions and the nature of his employment, he is, in our opinion, being exposed unduly and unnecessarily to jeopardy of his position.

On other occasions members of the National Postal Transport Association have been brought up under disciplinary charges for having presumed to declare publicly their convictions that the Post Office Department is pursuing a mistaken transportation policy. On still other occasions, employees have been visited by Post Office inspectors because they have dared to inform Members of Congress of the need to establish highway post office routes in the areas covered by the districts of those Congressmen.

Part 744.442 of the Postal Manual governs the release by employees of postal information. The text of part 744.442 is as follows:

"Employees in active status shall not engage in campaigns for or against changes in mail service. This regulation shall not be construed to infringe on rights guaranteed employees under the Lloyd-LaFollette Act of 1912 as set forth in part 741."

The cited language might not appear to restrict the release of information properly in the public domain. However, the cited portion has been applied in such fashion as to create that type of restriction.

At the time that the quoted portion of the Postal Manual was issued in August 1956, the distinguished chairman of this subcommittee released a three-point statement explaining the ways in which the changed version was an improvement over what had preceded it. The chairman's letter was dated August 9, 1956, and it said his purpose had been achieved by the following:

"(a) Removing completely from the new version of the section the unreasonable requirement which appeared in it before that information relating

to the policies and decisions of the Post Office Department 'be released by postal employees only through official channels.'

"(b) Removing completely from the new version of the section the arbitrary rule which was included before that postal workers would not be permitted to furnish information to be used for or against changes in the postal service 'unless prior approval has been obtained from higher authority.'

"(c) Removing completely from the new version of the section the harsh oppressive rule which existed before that if a postal employee had 'justifiable reasons for favoring or opposing changes in the postal service,' he was required to 'contact the proper officials and await specific instructions before engaging in local hearings or activities.'

The National Postal Transport Association contends that the cited portion of the Postal Manual continues to be detrimental to the best interests of the public because it enables the suppression of criticism of managerial error and inefficiency. Its practical application tends to intimidate employees and to restrict the activities of organizations such as the National Postal Transport Association. The National Postal Transport Association has actually found that under the cited portion of the Postal Manual employees have been reluctant to give detailed information even to their own national officers, and thus we in turn have been handicapped in our efforts to base appeals to the Department or to Congress for improvement in service, in working conditions, or in adjusting grievances.

On January 25, 1958, the Post Office Department announced a major reorganization involving district transportation and operations offices. We were given no access to information regarding the plans for the reorganization despite our having 1,000 members affected by the reorganization. Since that time the information we have been given has been of a most general character.

From numerous areas of the country we have learned that employees assigned to district transportation offices have been extremely reluctant to protest or to talk about the changes being imposed upon them. Many of the affected employees have been fearful of carrying their stories to Members of Congress. Some office employees are afraid even to write Congress in support of postal pay increase legislation.

In the opinion of the National Postal Transport Association, this type of repressive atmosphere in administrative levels of the Post Office Department is indicative of suppressed freedom of utterance.

Mr. Chairman, the information which the Post Office has made available to the press has not always been accurate. Further, it seems to be clear that the Post Office Department has been seeking not only to withhold information from the public but also to prevent free expression on the part of those who are employed by the Post Office Department. A free exchange of information is needed to build a sound postal service as well as to build united and healthy postal employee spirit.

On behalf of the employees of the Postal Transportation Service, Mr. Chairman, I want to thank you for the opportunity you have provided for me to appear before you today to present testimony in support of S. 921.

WASHINGTON, D. C., April 16, 1958.

Hon. THOMAS C. HENNINGS,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: The Radio-Television News Directors Association fully supports your bill to amend the housekeeping statute so as to keep it from being used by Government agencies as justification for withholding information from the public. RTNDA President Jack Krueger has asked me to communicate this view of our organization to you and the membership of the Senate Subcommittee on Constitutional Rights.

We share your feeling that the statute has been misused when it has been made the basis for what you have described as "clearly unwarranted withholdings of information." We agree with you that the statute was never intended to authorize the purposes of secrecy to which it has been put. We appreciate the effort you and your colleagues are making to restore the housekeeping statute to its original limited purpose of authorizing Government

offices to maintain filing systems. We wish you every success in your efforts to enact your bill.

With best wishes.
Sincerely yours,

EDWARD F. RYAN,
*Chairman, Freedom of Information Committee, Radio-Television News
Directors Association.*

THE WASHINGTON POST AND TIMES HERALD,
Washington, D. C., April 14, 1958.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Committee on the Judiciary, Subcommittee on Constitutional
Rights, Washington, D. C.*

DEAR SENATOR HENNINGS: This is in response to your letter of April 10 which was delayed in reaching me and only arrived Saturday.

The American Society of Newspaper Editors has long favored an amendment to title 5, United States Code, section 22 of the kind you propose in S. 921. The arguments raised over Presidential power to withhold it seems to me are wholly irrelevant to this particular measure.

I am sure that title 5, United States Code, section 22 initially was adopted as a mere housekeeping statute. There is nothing in the record to sustain the belief that the authors ever intended it to direct all the employees of the Federal Government to exercise their unlimited discretion to keep secret the affairs of all public institutions. In spite of this, many Government officials have construed it as an authority for withholding information. Your amendment will merely make it clear that the statute was not so intended. It leaves the Presidential powers unaffected and untouched and has no reference to them whatsoever. If the Constitution confers these powers upon the President, as some people argue, they will remain with him after the passage of this amendment.

I hope the amendment will be adopted.
Sincerely yours,

J. R. WIGGINS.

NATIONAL FEDERATION OF THE BLIND,
Washington, D. C., April 24, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I am enclosing a more complete statement of the National Federation of the Blind in support of S. 921 with the request that it be printed in the appendix of the record as an addendum to the oral statement which I presented at the April 16th hearing before the Senate Subcommittee on Constitutional Rights.

It is our hope that the Senate will take favorable action on S. 921 and that your Subcommittee on Constitutional Rights will seriously consider recommending enactment of the amendment contained in S. 2148.

Yours very cordially,

JOHN N. TAYLOR,
Washington Representative.

STATEMENT OF THE NATIONAL FEDERATION OF THE BLIND IN SUPPORT OF S. 921

The National Federation of the Blind has for some time been deeply concerned with securing from departments of the Federal Government information vital to the welfare of blind persons. A substantial portion of our blind citizens are dependent for at least a part of their economic support upon one or another Government program. To help to secure to each of these citizens what is due them, they and their organizations should be enabled to know the administrative rulings that are made to govern these programs. Traditionally programs for the blind conducted by both public and private agencies have treated our blind citizens as though they were mentally incompetent to judge of their own welfare. These traditions have developed out of years of ignorance and misunderstanding of blindness. These years are now past. Today, those of our

citizens who become blinded through accidents, military injuries, or illness can be and are restored by modern day rehabilitation processes to full competence and usefulness. Today even those of our citizens who are blind from birth can be and are educated and trained to a full use of all their mental and physical capacities. It is now well understood by the students of blindness that our adult blind citizens have the same competence to judge of their own welfare as have other groups of educated citizens. However, this understanding has not yet accomplished a change in many of the accustomed ways of public and private agencies that work for the blind. Most of these agencies still impose their programs upon the blind in manner as though the blind could neither read, nor write, nor think.

Public agencies, and particularly the agencies of our Federal Government, that are responsible for the conduct of programs for the blind should be among the first to cast off the mistaken ways of the past. Unfortunately, at least to the present time, our Federal agencies in the executive departments of our Government have been among the slowest to admit the competence of our adult blind citizens to participate in the shaping of programs for their own welfare. One important symptom of this failure on the part of our Federal agencies to advance with the times is reflected in their general refusal to supply to blind persons, and to organizations of the blind, the administrative orders, rules, and interpretations that are made by these agencies to shape the various programs enacted by Congress for aid to the blind.

Examples of this antiquated conduct of our blind-aid programs by our Federal departments and agencies occur wherever the Congress to aid the blind has enacted laws the full meaning of which wait upon agency rulings. Five important instances are cited in this statement.

1. BLIND AID PROGRAMS

State blind-aid programs to which Federal funds are contributed are required by Federal law to be made to conform with plans approved by the Secretary of the Department of Health, Education, and Welfare. The rights, if we may call them that, of the recipients of these programs are frequently in very large measure determined by the terms of the plans approved by the Secretary, or by the terms of the various interpretations of the Federal law imposed by officials in the Department of Health, Education, and Welfare upon these plans. The efforts of the National Federation and of its affiliated statewide organizations to assist and advise blind persons in respects to blind-aid programs have been frequently thwarted simply because access to the various Federal rulings made to govern the State plans, has generally been denied.

These plans and rulings are available. They are, of course, in writing. As a matter of fact, the Federal agency's rulings that govern the blind-aid programs are all collected and maintained in a looseleaf manual entitled, "The Handbook of Public Assistance." The handbook is reproduced in only limited numbers and is distributed on a confidential basis only to those administrators in Federal and State agencies that are concerned with conducting the blind-aid programs. Blind persons and representatives of the organized blind are generally denied access to the handbook. In our experience, even the Members of Congress who may interest themselves in the predicament of some blind individual emmeshed in an administrative tangle of conflicting rules and rumors will find that this handbook may be had only through exercise of a considerable weight of congressional persuasion, and then normally only with utmost reserve, page by page. The national federation, despite its constant and seemingly undeniable need for this handbook, has never been provided with a copy, or with means for keeping a copy current. Until this, or some equivalent action is taken, no organization, and no individual representing our blind citizens, will be enabled to protect adequately against administrative error, the grants that Congress has made to our blind citizens.

2. REHABILITATION PROGRAMS

A similar barrier has existed under State vocational rehabilitation programs that are financed in part with Federal funds. Frequently, rights of clients under these programs are determined by rulings made within the Department of Health, Education, and Welfare. The inability of the national federation and its affiliate State organizations to obtain access to these rulings

has been a major obstacle to our affording our blind citizens a full measure of helpful service in respect to their opportunities for rehabilitation.

The rulings that govern these rehabilitation programs are kept in a looseleaf volume entitled the "State Plan Rehabilitation Manual." Again, this is a collection of rulings that is distributed only among Federal and State administrators of the rehabilitation programs. To all others it is held on a confidential basis. The national federation has never been provided either with a copy or the means to keep a copy current.

3. MINIMUM WAGES IN SHELTERED SHOPS

The National Federation of the Blind is, of course, greatly concerned with the level of earnings received by blind workers in sheltered shops. We know that the Department of Labor has issued certificates which permit blind workers in sheltered shops to be paid wages as low as 10 cents an hour. We are, of course, frequently apprized of individual cases of workers in sheltered shops who are unable to maintain even the barest minimum living standards for themselves and their families. We know that the Department of Labor is empowered to gather, and no doubt has gathered, statistics in respect to the earnings of our people in sheltered shops that would be of great value to us in our efforts to secure for them better working conditions. Again our efforts in this direction are thwarted by inability to obtain access to the information that no doubt is contained in our Government offices.

A conspicuous illustration of the extent to which the blind are treated as unable to guard their own welfare is the poster that the Labor Department requires each sheltered shop to display if it holds certificates permitting payment of wages less than the minimum Fair Labor Standard. Customarily all minimum wage notices required by the Labor Department are designed primarily to tell each employee the lowest wage to which he is by law entitled. This is, of course, the central purpose that such a poster is meant to accomplish. Nevertheless, the posters that the Labor Department requires to be put in sheltered shops operating with subminimum wage certificates do not contain any statement of the lowest wage allowed to be paid the workers and this information is not made known to the workers.

4. VENDING STAND PROGRAM

For more than 20 years the Federal Government under the so-called Randolph-Sheppard Act, has regulated the programs of State agencies for the licensing of blind persons to operate vending stands on Federal and other property. Individual vending stand operators in these programs have on many occasions found that their interests have been decided under Federal rulings to which they had no access and of which they had no knowledge. Until recently, even the broad overall regulations that governed the basic outlines of the programs were not made known to the vending stand operators. By act of August 3, 1954, the issuance of regulations and the opportunity for a fair hearing for vending stand operators were prescribed and incorporated into the earlier vending stand law. These amendments were brought about very largely through the work of organizations of the blind. In this manner, the notion that blind operators in vending stand programs are entitled to know and have access to the detailed rulings that regulate their enterprise, and to have those rulings applied openly and fairly, is gradually taking effect in the vending stand program.

5. BRAILLE PUBLICATIONS

Each year Congress appropriates funds for the reproduction into braille and sound recordings of printed matter. The selection of the matter to be brailled and recorded is left to officials in the Library of Congress. The information that has been made available to the public in respect to how these selections are made is negligible. The result has been that the National Federation of the Blind and its affiliated organizations have not been enabled to participate in any effective way in the making of these selections.

Over the past year, the National Federation of the Blind has made a number of efforts to learn from the Library of Congress the procedures used by it to make selections for braille and talking book publication. These inquiries were made so that the National Federation might formulate an appropriate mechanism whereby organizations of the blind might cause their preferences and their recommendations for braille and recorded publications to be considered in the

selection processes. The National Federation learned only that the Library of Congress does consult with an advisory group. Who are members of the group; how they are selected, what they do, was not revealed. What purpose can be served by withholding from the organized blind the procedures by which selections for braille and talking book publications are made? Can it be that disclosure of these procedures might arouse organizations of the blind to concern that the blind themselves are not consulted?

We understand that the passage of S. 921 will not accomplish the release by the Department of Health, Education, and Welfare or by the Labor Department, or by the Library of Congress of the information most needed by our organization and other organizations, seeking to assist blind persons under the Federal programs here cited. However, we recognize that section 161 of the Revised Statutes (5 U. S. C. 22) has been all too frequently incorrectly cited as authority for executive departments to withhold information. Accordingly, we endorse and strongly urge enactment of S. 921, at the same time strongly recommending that serious attention be given to enactment of the amendment to section 1002 of title 5 of the United States Code that is contained in S. 2148.

In conclusion, the National Federation of the Blind and its affiliated organizations respect the confidentiality of personal case records, the disclosure of which would be injurious to the interests of individual clients, recipients, claimants, and beneficiaries. However, the right to know and have access to the regulations and interpretations of federal law which govern programs for the aid and rehabilitation of the blind is in the best tradition of American democracy. It is essential that citizens be well informed concerning the programs and policies of their government. In the departments and programs cited above there can be no justification for withholding information from the public and limiting the availability of rules, regulations and interpretations. On the contrary, the public interest can be adequately served only by making such rules, regulations and decisions available to the public.

A P P E N D I X

EXHIBIT No. 1

[From Congressional Record, vol. 104, No. 57, Apr. 15, 1958]

NOTICE OF RESUMED PUBLIC HEARINGS ON S. 921—FREEDOM OF INFORMATION LEGISLATION

Mr. HENNINGS: Mr. President, public hearings will be resumed on S. 921 by the Senate Subcommittee on Constitutional Rights on Wednesday, April 16, 1958, beginning at 10 a. m. in room 357, Senate Office Building, Washington, D. C.

Prior to the congressional Easter recess, the date of April 16 for resuming freedom of information hearings was set by the subcommittee during a meeting held on April 2 and publicly announced that day.

S. 921 proposes an amendment to section 161 of the Revised Statutes, title 5, United States Code, section 22, by adding the following sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

The Attorney General of the United States testified on S. 921 before the subcommittee on March 6, 1958, and has subsequently submitted further written comments. All other Cabinet officers heading executive departments have been invited to testify but each has declined. Most of the witnesses to be heard on April 16 have indicated they favor enactment this year of S. 921.

EXHIBIT No. 2

AGENCY AND DEPARTMENT REPORTS ON S. 921, 1ST SESSION, 85TH CONGRESS

[During the 1st session of the 85th Congress, the following reports from agencies and executive departments were received by the Government Operations Committee, to which S. 921 was originally referred, and by the full Judiciary Committee, to which the bill was re-referred. Recent comments on S. 921 by all of the executive departments, are set forth at pp. 517-521 of the record of the hearing, in the replies to Senator Hennings' letter inviting heads of departments to present their views before the Constitutional Rights Subcommittee.]

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D. C., April 17, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on S. 921, 85th Congress, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes (5 U. S. C. 22) now provides that—

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

S. 921 would amend this statute by adding thereto the following sentence: "This section does not authorize withholding information from the public or limit the availability of records to the public."

This proposed amendment purports to affect the duty of the Executive to safeguard certain information in the public interest. It is the view of the Department of Defense that it does not do so.

The Defense Department's view is based on its understanding that section 161 in its present form is declaratory of existing fundamental law. As it stands, this section reflects the recognition by Congress of the necessity of certain reasonable procedures employed by the Executive in the execution of the duties imposed by the Constitution, particularly, the duty to faithfully execute the laws. The suggested amendment which attempts to qualify this recognition with respect to the duty to safeguard certain information could only create uncertainty as to the source and extent of the Executive's responsibility in this area.

The Department of Defense considers that the safeguarding of certain information is essential to the proper functioning of Government, and is, accordingly, in the public interest. That categories of information which should be protected are carefully described in regulations promulgated by the Secretary of Defense—Department of Defense directives 5200.1 and 5200.6.

A good example of information requiring protection is that gathered in the course of an investigation. It is considered that failure to safeguard the sources of information supplied on a confidential basis would necessarily result in a reluctance on the part of people who are approached by investigative agents to cooperate with such agents. In addition, the investigative process may develop information which is hearsay or otherwise unreliable, the indiscriminate dissemination of which might do great and unjust harm to individuals. Moreover, certain communications between individuals are privileged from disclosure on the basis of historical principles of law, such as in the case of the doctor and patient. It would be anomalous for the Federal Government to adopt a policy in relation to its own officers and employees at variance with this long established legal principle. Equally cogent and compelling reasons can be offered with respect to each of the other categories covered in Department of Defense directives to demonstrate that the public interest may be best served by non-disclosure of this information.

It is worthy of note that Congress itself has recognized the importance of protection of certain types of information by the enactment of various statutes, such as those dealing with trade secrets and financial data (18 U. S. C. 1905), with information on income-tax returns (26 U. S. C. 6103), and with information in census statements (13 U. S. C. 9).

It is considered that the regulations of the Department of Defense, including those of the military departments, are reasonable and adequate for keeping the public fully informed as to the Department's activities, while at the same time assuring the protection of information which should be safeguarded in the overall national interest.

For the above reasons the Department of Defense strongly recommends against the enactment of Senate bill 921 to amend section 161 of the Revised Statutes.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

ROBERT DECHERT.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 18, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 921) to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes of the United States (5 U. S. C. 22) provides:

"*Departmental regulations.*—The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

This bill would add to the quoted statute a sentence reading: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Insofar as the purpose of this legislation is to assure the full and free flow of information to the public not inconsistent with the national interest, the Department of Justice is in full accord. We believe that within limits the executive and legislative branches should keep the public informed as to their activities, and should make available information, papers, and records. Without doubt the legislative and executive branches are in agreement with this fundamental principle.

The Attorney General has publicly stated his awareness of the importance of seeing to it that the obstacles to the free flow of information are kept to a minimum. In line with this, provision has been made for pardons and commutations of sentence to be matters of public record. Likewise, the settlement of litigation, the disposition of Government claims, and other phases of the Department's operations are matters concerning which the public and the Congress are kept advised.

Regarding the proposed amendment, we believe that it would not clarify the present law. Considerable study has been given to it, but in the absence of legislative history or more specific language we are unable to determine with any degree of certainty its effect. If the amendment could more precisely delineate its intended effect on the authority of the executive departments under this statute to regulate the orderly access of the public to their records we would be glad to amplify our comments.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

UNITED STATES DEPARTMENT OF LABOR,
Washington, April 30, 1957.

Hon. JAMES O. EASTLAND,

Chairman, Committee on the Judiciary,

United States Senate, Washington, D. C.

DEAR SENATOR EASTLAND: This is with further reference to the request for my views on S. 921, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Section 161 of the Revised Statutes provides department heads shall have authority to prescribe regulations not inconsistent with law on various aspects of departmental business, including the custody, use, and preservation of records, papers, and property. The bill would add language that the section does not authorize the withholding of records or information.

Under authority of section 161, regulations have been issued by department and agency heads restricting the functions of subordinates in relation to disseminating information. The proposed measure is objectionable in that it would appear to remove this authority, which is essential to effective executive management and protection of Government records. As pointed out by the Supreme Court in *United States ex rel Touhey v. Ragan, Warden, et al.* (304 U. S. 462), the variety of information contained in the files of any Government department and the possibilities of harm from unrestricted disclosure make obvious the necessity and usefulness of centralizing determination of whether information is to be restricted or disclosed, and the manner of so doing.

The proposed bill is also objectionable in that it is subject to the interpretation that release of all Government documents and information is required. This would be contrary, not only to both public and private interests in many cases but also to the expressed intent of Congress that records and documents compiled under various programs should be properly protected.

For the reasons stated, I am strongly opposed to the enactment of this bill.

The Bureau of the Budget advises that it has no objection to the submission of this report.

Sincerely yours,

JAMES T. O'CONNELL,
Acting Secretary of Labor.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., April 15, 1957.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for a report on S. 921, a bill to amend section 161 of the Revised Statutes with respect to withholding information and the availability of records of the executive departments of the Government.

This bill will add a new sentence to section 161 of the Revised Statutes, reading: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

The Department is opposed to enactment of this bill.

The Revised Statute to be amended is codified in title 5, United States Code, section 22. It reads:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

On a number of occasions this section has been considered by the courts of the United States. They have uniformly held that the section is constitutional and that its evident purpose is to furnish each executive department head with authority to regulate the conduct of its officers and employees and the distribution and performance of the functions of the department.

It is on the basis of this law that each department head instructs his subordinates and directs them in the manner in which they shall perform their duties. Under it, the Postmaster General has issued regulations which forbid the disclosure of departmental records or information by employees. The current regulation published in sections 114.3 and 114.4 of the Postal Manual (also secs. 4.3 and 4.4, title 39, Code of Federal Regulations), read, in part, as follows:

"The following records, documents, and information are confidential, and may not be disclosed by subordinate officers or employees of the Department without authorization:

- "a. Reports of Postal Inspectors.
- "b. Records of the Postal Inspection Service.
- "c. Names of post office box holders.
- "d. Names and addresses of post office patrons and former patrons, except as provided in 123.5.
- "e. Records regarding mail matter.
- "f. Records regarding postal savings accounts.
- "g. Records regarding money orders."

These regulations are directed to employees of the Department rather than to members of the public although they are published so that the public will be aware of them. They do not, as such, constitute a decision by the Postmaster General that he will not disclose these records and information when request therefor has been made to him instead of his subordinates. It should be observed, however, that for many years the Postmasters General have refused to make available to the public or to Congress reports of postal inspectors or records of the Post Office Inspection Service. On particular occasions other records and information have been released when the conditions recited in section 114.4 of the Postal Manual (39 C. F. R. 4.4) have been satisfied. For the information of the committee, these regulations are attached hereto.

If the law is amended as proposed by these bills, we believe it will prohibit the Postmaster General from instructing his employees that they may not release to the public certain information. We believe that the law as presently written should remain unchanged. It does not constitute authority in the heads of executive departments to withhold records and information. Authority of executive heads to withhold information from the public stems from the basic authority of the President under the Constitution which was given statutory recognition by title 5, United States Code, section 1002.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

(Signed) MAURICE H. STANS,
Deputy Postmaster General.

(The regulations enclosed are as follows:)

114.453—INTRODUCTION: INFORMATION ON POSTAL MATTERS

114.3 PRIVILEGED MATTER

The following records, documents, and information are privileged matter, and may not be disclosed by subordinate officers or employees of the Department without authorization:

- a. Reports of Postal Inspectors.
- b. Records of the Postal Inspection Service.
- c. Names of post office box holders.
- d. Names and addresses of post office patrons and former patrons, except as provided in 123.5.
- e. Records regarding mail matter.
- f. Records regarding postal savings accounts.
- g. Records regarding money orders.

114.4 AVAILABLE RECORDS

.41 Formal hearing records. You may inspect formal records of proceeding in which a hearing has been held or offered if you have a proper interest in them.

.42 Conditions. You may inspect all other records of the Department or field service if permitted to do so by the head of a bureau or office in the Post Office Department. In making such determinations, the following items will be taken into consideration:

- a. The interest of the person requesting permission to make the inspection.
- b. Whether disclosure of the information contained in the records will violate the privacy of mail matter.
- c. Whether the release of the record will jeopardize future Government access to information.
- d. Whether the release of the record at the time is premature and will improperly affect a pending action.
- e. Whether the disclosure of the record will have the effect of hindering free administrative decisions in the same or similar matters in the future.
- f. Whether the purpose for which the record is sought is prejudicial to the public interest.
- g. Whether the record is already otherwise made public, such as reports of public hearings and conferences, recorded maps, plats and documents, records published for the information of the public, and material of a similar public nature.

.43 Transfer of records. All records of the Post Office Department and its field service are the property of the Department. Postmasters and other employees are not authorized to turn over such records to other persons without authorization from the head of a bureau or office of the Post Office Department.

.44 Compliance with subpoenas duces tecum. Postmasters and postal employees will comply with a proper subpoena duces tecum issued by a court of record only after consultation with the Post Office Department and authorization from the Department. When employees are authorized to comply with subpoenas duces tecum, they will not leave the records themselves with the court but will leave copies prepared for that purpose.

.45 Compliance with summons

.451 A postmaster or other postal employee will comply with a summons requiring his appearance in court. He will not testify as to names and addresses of post office patrons, mail matter, postal savings accounts, or money orders unless he is specifically directed to do so by the court after first calling attention of the court to this regulation.

.452 Postal inspectors and other employees having possession of inspectors' reports or Inspection Service records are prohibited from presenting such reports, records, or information in a State court or for the use of parties to a suit or habeas corpus proceedings in a Federal court, if the United States is not a party in interest. They will inform the parties interested that the regulations of the Post Office Department prohibit them from furnishing official reports, records, or information direct unless authorized by the Department. Should an attorney for a private litigant attempt to compel an employee to disclose sources of official information or similar privileged matter, the employee will decline to produce

the information or matter and state that it is privileged and cannot be disclosed without specific approval from the Department.

.453 When appearing as a witness for the United States in Federal grand jury proceedings, criminal prosecutions of violations of postal laws, suits brought by the United States, or other actions in which the United States is a party in interest, postal inspectors and other officers and employees will testify as to their knowledge of the facts in the matter involved. With respect to privileged matters, each case must be given individual consideration as it arises. The Department will offer every possible assistance to the courts, but the question of disclosing privileged information is a matter entirely in the discretion of the head of the Department.

.46 Costs. The head of any bureau or office of the Post Office Department may authorize copies of records which are open to public inspection to be furnished to members of the public at the cost of the person requesting them.

CIVIL AERONAUTICS BOARD,
Washington, May 20, 1957.

Hon. JOHN L. McCLELLAN,
Chairman, Committee on Government Operations,
United States Senate, Washington, D. C.

DEAR SENATOR McCLELLAN: This is in further reply to your letter of February 5, 1957, acknowledged February 14, 1957, requesting the Board's views on S. 921, a bill to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records. Section 161 of the Revised Statutes (5 U. S. C. 22) provides: "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it."

S. 921 would amend section 161 of the Revised Statutes by adding the following new sentence: "This section does not authorize withholding information from the public or limit the availability of records to the public."

With respect to section 161 of the Revised Statutes, it should be pointed out that this statute provides a basis for regulations prohibiting disclosure of information in the files of Government executive agencies except as authorized by the appropriate agency or department head. Inasmuch as it is not applicable to an independent regulatory agency such as the Civil Aeronautics Board, it does not appear appropriate for the Board to comment on the proposed amendment of this specific statute.

However, section 205 (a) of the Civil Aeronautics Act of 1938, as amended (52 Stat. 984, 49 U. S. C. 425), confers upon the Board powers under which the Board has authority comparable to that given the executive departments by section 161 of the Revised Statutes. This section provides, "The Authority [Board] is empowered to perform such acts, to conduct such investigation, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out such provisions and to exercise and perform its powers and duties under this Act."

Although the proposed bill would not amend the Civil Aeronautics Act and therefore would not curtail the Board's powers with respect to the withholding of information, it is nevertheless a possibility that it might also be proposed to amend section 205 (a) of the Civil Aeronautics Act of 1938 to make its provisions accord with the amended version of section 161 of the Revised Statutes. In such a case, the Board does not believe that either version of the proposed amendment is necessary or desirable. The Board has always made freely available to the press and to the public, information concerning its activities which it believed might properly be released. However, in view of the nature of the Board's work in certain fields, such as in connection with its quasi-judicial functions, and in the area of accident investigations, it is imperative that certain classes of information not be prematurely released.

Accordingly, while the Board would not be affected by the proposed legislation in its present form, and therefore has no recommendation to make thereon, we should point out that we would be opposed to the enactment of similar legislation applying to the Board through amendment of the Civil Aeronautics Act.

The Board appreciates the opportunity afforded it to comment on the proposed legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

JAMES R. DURFEE, *Chairman.*

INTERSTATE COMMERCE COMMISSION

JULY 17, 1957.

Hon. JOHN L. McCLELLAN,
Chairman, Committee on Government Operations,
United States Senate, Washington, D. C.

DEAR CHAIRMAN McCLELLAN: Your letter of February 5, 1957, addressed to former Chairman Anthony Arpaia, requesting an expression of the Commission's views on a bill, S. 921, introduced by Senator Hennings, to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records, has been referred to our Committee on Legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

Section 161 of the Revised Statutes (5 U. S. C. 22) now provides that the head of each department may prescribe regulations respecting the so-called housekeeping functions of his department, i. e., the conduct of officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining thereto. S. 921 would amend this section by adding the following new sentence:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

The provisions of section 161 of the Revised Statutes (5 U. S. C. 22) do not apply to independent regulatory commissions, such as the Interstate Commerce Commission, since that section applies only to departments, which are defined in title 5, United States Code, sections 1 and 2 as the Cabinet departments.

Whether or not S. 921 should be enacted is, in our opinion, a matter of broad congressional policy on which we take no position.

Respectfully submitted.

COMMITTEE ON LEGISLATION,
OWEN CLARKE, *Chairman.*
HOWARD G. FREAS.
RUPERT L. MURPHY.

EXHIBIT No. 3

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, May 14, 1958.

Hon. THOMAS HENNINGS,
Chairman, Subcommittee on Constitutional Rights,
United States Senate.

DEAR SENATOR HENNINGS: On April 16, 1958, Mr. John Taylor, representing the National Federation of the Blind, in his testimony on S. 921 before the Senate Subcommittee on Constitutional Rights, stated among other things, that the Federation and its local affiliates have been denied access to State plans, regulations, and rulings governing the administration of certain grant-in-aid programs of agencies of this Department. Mr. Taylor contends that the inability to secure this information has been an obstacle to the Federation in advising and helping blind individuals secure the services and assistance which these several programs provide.

Since the statement by Mr. Taylor does not reflect the practice of this Department in relation to the release of information to the public, we felt the subcommittee would want a clarification of our position for inclusion in the report of its hearings.

As you know, the Federal responsibility for the public assistance provisions of the Social Security Act, which include aid to the needy blind, has been placed in the Social Security Administration. Operating responsibility for the programs rests with the States. We have not been aware of any requests from the Na-

tional Federation of the Blind for access to State plans. A State plan is composed of State documents submitted by the State describing the system under which it proposes to operate its program in relation to the specific requirements set forth in title X of the Social Security Act. It is a flexible instrument, readily amended to reflect changes in State law, administrative regulations, or policy. Although the States are in a better position to explain or interpret their specific plan provisions than this Department, the plans are available in Washington or in the nine regional offices to anyone properly interested. Inasmuch as the plans are technical documents and in most instances quite lengthy, the Social Security Administration issues periodically, a summary of the provisions in which experience shows the public is interested (copy enclosed). This publication is distributed widely to interested public and voluntary agencies and may be purchased from the Government Printing Office.¹

The approval of State plans is governed by specific requirements set forth in the Social Security Act. It has not been necessary, therefore, for the Social Security Administration to issue separate policy decisions regarding aid to the blind [in addition to those applicable to all the assistance programs] except a definition of blindness and provisions relating to the exemption of \$50 per month earned income in determining the financial need of a blind applicant for or recipient of public assistance. These are distributed to the States and are available in Washington and in the regional offices. The Social Security Administration has no record of denying any requests for information from the National Federation of the Blind.

The Office of Vocational Rehabilitation is responsible for the administration of the Vocational Rehabilitation Act and the Randolph-Sheppard Act. Not only are the regulations, State plans, administrative policies and rulings available to interested agencies, organizations, and individuals upon request, but this office has reproduced copies of both laws and the regulations issued thereto, in Braille in order to make this information more readily accessible to blind persons.

Approved State plans required under the Vocational Rehabilitation Act and approved applications for the designation of State licensing agencies, required under the Randolph-Sheppard Act, are available in Washington and in the nine regional offices of the Department for review by interested organizations and individuals upon request. All administrative rulings and policy interpretations of the acts and regulations as may be required, are issued by the Director of this office to the State rehabilitation agencies. These issuances are available, upon request, to interested organizations and individuals. The annual report of this office which includes a record of each State agency's accomplishments is distributed to interested agencies, individuals, and organizations, and is available to the public. The Office of Vocational Rehabilitation likewise has no record of having denied the National Federation of the Blind any information it has requested.

We hope this statement will be helpful to the subcommittee in clarifying the practice of this Department in the release of information governing the administration of programs administered by the Social Security Administration and the Office of Vocational Rehabilitation.

Sincerely yours,

ELLIOT L. RICHARDSON,
Acting Secretary.

EXHIBIT No. 4

SURVEY OF OPINION ON S. 921 AND S. 2148

(A) INTRODUCTION

[In connection with its work on the subject of freedom of information and secrecy in Government, the Subcommittee on Constitutional Rights has conducted a nationwide survey to obtain a cross section of opinion concerning the bills, S. 921 and S. 2148.

[Senator Hennings, as chairman of the subcommittee, requested the views of scores of editors and publishers, including members of the American Society of Newspaper Editors; of members of leading press and news associations; of a

¹ Characteristics of State Public Assistance Plans Under the Social Security Act. Social Security Administration, Bureau of Public Assistance, Department of Health, Education, and Welfare, 1957.

a selected group of constitutional lawyers; heads of journalism schools; political scientists; law school deans; and other interested persons.

[Comments were received from 35 States and Hawaii, and from 37 press and news associations. Some editors and publishers included with their letters copies of editorials on the subject of freedom of information, which had appeared in their papers, and these have been reprinted herein. Others replying enclosed copies of studies on Government information made by private groups. Frederic E. Merwin, director of the Rutgers School of Journalism, for instance, sent for the subcommittee's information a copy of Public Records in New Jersey, Old and New Problems Affecting Access, which has been reprinted with his letter herein.]

[Many unsolicited, informative comments on S. 921 have been received by the subcommittee, and several of these have been included with the survey replies.

[Following is Senator Hennings' letter requesting views on the legislation:]

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,

June 12, 1957.

DEAR ____: Under separate cover, I am sending you a copy of S. 2148, a bill concerning freedom of information which I recently introduced in the United States Senate and which is now pending before the Senate Constitutional Rights Committee for consideration.

Accompanying this copy of the bill is a statement explaining in detail its provisions and purposes, as well as those of S. 921, another freedom of information bill which I introduced last January and which is also pending before our committee.

Before taking final action upon either S. 2148 or S. 921, the committee is interested in obtaining a cross section of informed opinion about each bill. Accordingly, I would appreciate very much receiving from you an expression of your views about both bills.

Your comments and suggestions will be most helpful to the committee.

Sincerely yours,

THOMAS C. HENNINGS, Jr., *Chairman.*

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THE ANNISTON STAR,
Anniston, Ala., June 18, 1957.

Hon. THOMAS C. HENNINGES, Jr.,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: I appreciated very much indeed your sending me a copy of your bill on freedom of information, and the explanation which you made in that connection.

I turned this data over to my associate editor and I hope that he will have some comment to make within the next few days.

In the meantime, please allow me to congratulate you on the step you have taken in this regard.

With every good wish, I am,
Very sincerely,

H. M. AYERS.

UNIVERSITY OF ALABAMA,
University, Ala., July 20, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for your letter of July 17 and its enclosure of Senate bill 2148 concerning freedom of information. As a citizen and as a student of government and administration, I am pleased that there is proper legislative concern with the right of the public to full and complete information concerning governmental operations so long as that information does not endanger national security, invade unwarrantedly personal privacy, or reveal materials exempted from disclosure by statute.

I therefore support the purposes of Senate bills 2148 and 921 as I understand them. The right of the public to full and free information of what all branches of Government are doing is indispensable to maintain our elective system as an effective process of democratic selection. Our Government necessarily is founded on the assumption that the people will make their electoral decisions on the basis of their understanding of current issues; this they cannot do unless they have the information about public operations that will provide the basis for intelligent discussion and consideration.

It is essential, I believe, that administrative officials not withhold information from the public or limit to the public the availability of records. In as complex a society and Government as ours is today, the blunt truth must be that administrative officials are frequently the only persons in a position to know best what their agency is actually doing. If information is withheld, or if it is dishonest, or if it is sweetened falsely for the impression it will make, any electoral decision taken by the public will be a mockery of our democratic processes and institutions.

Senate bills 2148 and 921 are aimed, of course, at a central problem of improving public reporting. The partisan advantages to which public reporting can be put are obvious. The measures that you have proposed do not eliminate such partisanship, of course, but they should make possible the utilization of public records and information by persons interested in the determination of factual bases of governmental operations and hence of governmental issues.

Sincerely yours,

ROBERT B. HIGHSAW,
*Director, Bureau of Public Administration,
 Professor of Political Science.*

EVENING TRIBUNE,
San Diego, Calif., June 24, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Office Building, Washington, D. C.

DEAR SENATOR: Enclosed is a tear sheet of the Evening Tribune editorial page of June 22, in which you will find an editorial on your freedom-of-information bills.

Your letter arrived about the time we had completed our research and writing of the editorial.

We are pleased to forward it as our comment on the subject.

Sincerely,

EUGENE F. WILLIAMS, *Editor.*

[From the Evening (San Diego) Tribune, June 22, 1957]

PUBLIC RIGHT TO INFORMATION ENHANCED BY PROPOSED BILLS

Any measures aimed at preserving the fundamental right of the American people to know what's going on in their Government are deserving of support.

Two such proposals have been introduced in the Senate by Senator Thomas C. Hennings, Jr., Democrat, of Missouri, to clarify some of the legalistic barriers behind which secrecy-minded bureaucrats have been hiding information that should be public.

Specifically, the bills would amend a couple of sections of the United States Code which sets up rules and operating conditions of Federal agencies.

There is considerable history behind this worthy corrective action.

Secrecy in governmental affairs is not a partisan matter. The riskful tendency traces back over several administrations.

To get to the root of the problem, the Senate Subcommittee on Constitutional Rights a year ago began a study of the extent to which restrictions on freedom of information may be infringing the constitutional rights of the people.

It found, Hennings says, "many instances of what appear to be clearly unwarranted withholdings of information from both the public and Congress by various governmental departments and agencies."

When these agencies and departments were asked by what authority they justified such withholdings, they frequently cited section 22 and section 1002 of title 5 of the United States Code.

Section 22 goes all the way back to 1789. Its language, unchanged over all those years, reads:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Clearly, this is nothing more than a housekeeping statute, simply setting up day-to-day operations.

There is nothing in it about authority to withhold information from the public. And there is nothing in the legislative history of the section to indicate that Congress intended it to bestow such authority.

The proposed amendment would add this unequivocal sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Section 1002 was enacted June 11, 1946, as the public-information section of the Administrative Procedure Act. Congress clearly stated its intent at that time when it said that "(sec. 1002) was drawn upon the theory that administrative operations and procedures are public property which the general public is entitled to know."

Ironically, the very statute that was designed to protect this right is now being used to deny it.

Part of the explanation for this perversion of purpose lies in the loose wording of the section. It permits officials wide latitude in interpreting such woolly phrases as, "any function * * * requiring secrecy in the public interest * * *" or "* * * required for good cause to be held confidential. * * *"

The proposed amendment would tighten such meaningless language and provide specific rules to be drawn by the various agencies and published in the Federal Register and the Code of Federal Regulations.

These are commendable steps toward restoring and assuring the public's right to know.

UNIVERSITY OF CALIFORNIA,
DEPARTMENT OF POLITICAL SCIENCE,
Berkeley, Calif., July 19, 1957.

Senator THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I was delighted to get a copy of Senate bill 2148, and I certainly hope that the bill will be approved.

The free flow of information is as the very breath of life to democratic institutions. Indeed, if there is one thing which more than any other distinguishes modern democracies from totalitarian tyrannies, it is the respect which democracies accord to the people's right to know the truth about public affairs. The growth of secrecy in this country and the practice of withholding vital information not only from the people but from the Congress itself is one of the most unfortunate byproducts of the cold war. Too often our legitimate zeal for keeping vital military information from potential enemies operates also to keep our own scientists and engineers in ignorance and has delayed scientific and technological developments in this country. Even while admitting the necessity for guarding information intimately related to our national security, we need to be always alert lest this serve as a justification for a general withholding of information only remotely related to the national defense. It is not easy to calculate how much the withholding of information from our own people impairs our own strength. Anyone who has followed the hearings before John Moss' committee must be impressed and alarmed by the extent to which the passion for classification and suppression of information has been extended in the Government

of the United States. Files of classified secret information in executive departments and agencies have grown in both number and volume since 1945. Indeed, this trend has already gone to a point where even congressional committees, let alone the general public, are finding it increasingly difficult to know exactly what goes on in many parts of our Government. This torment of secrecy, unless checked, may well prove our undoing as a democratic state. The essence of dictatorship is not only to be found in star-chamber proceedings and vast armies of secret police but in the systematic suppression or distortion of official information. I heartily approve every effort to stem this tide in our own country.

According to Harold Cross, counsel for the American Society of Newspaper Editors, "in the absence of general or specific acts of Congress affirmatively creating a clear right to inspect (quite rare, in fact * * *), there is no legal right in public or press to inspect any Federal nonjudicial record." If this is an accurate statement of the law, it is high time it was changed. When a people are kept in ignorance by their own Government, they soon cease to be citizens and become subjects. We ought not to allow this to happen here.

Sincerely yours,

PETER H. ODEGARD.

CALIFORNIA NEWSPAPER,
PUBLISHERS ASSOCIATION, INC.,
February 26, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR: This is a delayed acknowledgement to your letter of November 20, 1957, which was addressed to Seymour C. Sterling, 1956 president of California Newspaper Publishers Association. It was forwarded to me toward the end of my term which is now expired and further correspondence pertaining to bills S. 2148 or S. 921 should be directed to Mr. Bert J. Abraham, president of our association, who is publisher of the Herald-Enterprise, Bellflower, Calif., or to John B. Long, general manager of CNPA, 809 Pacific Electric Building, Los Angeles, Calif.

Enclosed are 2 copies of a resolution passed at our 70th annual convention just 2 weeks ago on behalf of the people's right to know, which I am sure will be valuable to you and your Subcommittee on Constitutional Rights.

With all good wishes.

Sincerely yours,

EUGENE C. BISHOP,
Immediate Past President.

RESOLUTION

Whereas the people's right to know is an essential part of their democratic freedoms; and

Whereas the Nation's press is an agent of the people in this right to know: Now, therefore, the California Newspaper Publishers Association, Inc., assembled in annual convention this 8th day of February 1958, at Coronado, Calif., does hereby

Resolve—

1. That the legislature, particularly Assemblyman Ralph Brown, and the Governor of the State of California be commended for their action in enlarging this right to know by the passage and approval of necessary legislation to keep open the workings of State and local governments; and

2. That the National Administration and Congress are urged to extend this right to know to all segments of Government save where the national security precludes the revelation of military information, and we commend Congressman John Moss for his determined efforts on behalf of freedom of information; and

3. That the free exchange of newsmen be encouraged by the national administration between this Nation and all the nations of the world except where a state of war exists between the United States of America and any nations so that the people have full access to the information necessary for sound decisions; and

4. That copies of this resolution be sent to the President of the United States, the Secretary of State of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives, the Governor of the State of California, the president of the senate of the State of California, the speaker of the assembly, the California congressional delegation, and to Congressman John Moss and Assemblyman Ralph Brown.

YALE UNIVERSITY,
DEPARTMENT OF POLITICAL SCIENCE,
New Haven, Conn., July 18, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I have read with sympathetic interest S. 2148 and the commentary on it and on S. 921, which you sent me on July 10.

The problem is to devise language that will acknowledge the legitimacy, to a degree, of both freedom of information and secrecy of information and yet prevent abuse in either direction. The problem is not novel in nature, for the judicious weighing of competing claims and the translation of the balanced view into statutory language is a recurrent challenge to the legislative art.

S. 921 seems to me to present no difficulties, given the intent to link with it S. 2148. The amendment proposed by S. 921 appears simply to underline the fact that section 22 of title 5 of the United States Code requires that the department head's regulations be "not inconsistent with law"; if S. 2148 succeeds in requiring "freedom of information," then section 22 requires that the departmental regulations not trespass on that freedom.

In S. 2148, the principal problems arise over paragraph (d) as proposed for section 1002 of title 5 of the code:

"(d) PUBLIC RECORDS.—Every agency shall promptly make available to the public, in accordance with a published rule stating where and how such records may be obtained, examined, or copied, all records, files, papers, and documents submitted to and received by the agency. Public records include, but are not limited to, all applications, petitions, pleadings, requests, claims, communications, reports, or other papers and all records and actions by the agency thereon, except as the agency by published rule finds that withholding is required by subsection (f) hereof. Every individual vote and official act of an agency shall be entered of record and made available to the public."

The following seem to me among the considerations you may wish to have in mind in considering this language.

(1) Individual companies furnish data to regulatory and statistical agencies of the Government for compilation of industrywide and economywide reports. Their cooperativeness in furnishing such data depends in part upon assurance that competitors will not be permitted access to the information on an individual company basis. While this may be covered by other legislation and so be excluded from the freedom-of-information requirement by the new subsection (f), it would be appropriate for this to be explained in statements regarding S. 2148.

(2) Individual taxpayers are in much the same situation with respect to their individual income-tax returns. Disclosure may fit S. 2148's category of "unwarranted invasion of personal privacy" as well as come under statutory exemption. Again, explanation of this might be appropriate.

(3) Informers of claimed violations of law, who communicate with regulatory and other law-enforcement agencies, and persons who are asked for confidential estimates of the qualifications of candidates for Government employment, will cooperate, I should suppose, only with reasonable assurance that their communications will not be open to the public save where their communications are themselves to be used as evidence in a legal proceeding or in support of imposition of administrative sanctions.

(4) Communications received by one agency from another agency of the executive branch, including from the President and members of his staff, appear to be made publicly available from the phrases, "all records, files, papers, and documents submitted to and received by the agency" and "requests, * * * communications, reports, or other papers * * *." I assume that, whatever may be the appropriate rule regarding the availability of these communications for use in congressional inquiries and judicial proceedings, it is not the intent of S. 2148 to open current communications of this type to the merely curious member of the public.

These considerations may all be taken into account by the fact that section 3 is a portion of the Administrative Procedure Act and so to be interpreted in the light of the concerns of that act, and as well by the fact that subsection (f) on exceptions blankets in the nondisclosure provisions of other statutes. To clarify the freedom-of-information bill so as to avoid arousing false expectations as well as false alarms, it would seem useful for the subcommittee to provide a statement analyzing in what posture S. 2148 would actually leave the matter of disclosure and nondisclosure of information.

As a member of the scholarly community I am eager to reduce barriers to research on the governmental process. As a citizen I admire a goldfish-bowl policy in the conduct of public affairs. In both capacities, then, I am bound to support efforts to overcome undue secretiveness. Yet as a student of public administration and a sometime practitioner of it, I am aware of the need for a degree of administrative privacy in the early, creative stages of the identification and appraisal of alternative solutions to problems confronting an administrative agency. Because S. 2148 seems designed to increase access by scholars and other citizens to records without destroying the degree of administrative privacy that is in the public interest I hope that the subcommittee, after perfecting the bill in a few particulars, will succeed in obtaining its favorable consideration by the Senate.

Sincerely yours,

JAMES W. FESLER,
Cowles Professor of Government.

CONNECTICUT EDITORIAL ASSOCIATION,
December 10, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR: The bills, S. 921 and S. 2148, are vital legislative acts which obviously will enhance the public's access to governmental information. The wall that is being elongated and heightened between the public and its Government will not only consistently reduce the amount of information available but will also permit the continuous growth of an irresponsible bureaucracy which can commit countless errors in policy and administration and develop a government by decree.

Even more serious is the probability of denial of access to information to our elected representatives. It is even now startling to read that such-and-such a committee of the Congress is either denied information, circumvented, or given delayed information, and this latter obtained only after persistent demands on the part of the elected body.

There is little information which need be withheld from any of us. Apparently there is little these days that we do that is much secret, except in the minds of the bureaucracy, and in particular the military. Your bills force greater access to this information.

It is strange how the fight by newspapers, and by our representatives of vision, is interpreted as selfish desire. Newspapers can undoubtedly live without all this fuss, since they depend on advertising for revenue, not governmental information. And I'm sure elected officials can be elected without this freedom of access for the public.

Please be assured that newspapermen everywhere realize the significance of your work.

Sincerely,

JOHN H. GLEASON, *Executive Secretary.*

TAMPA MORNING TRIBUNE,
Tampa, Fla., June 21, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senator,
Washington, D. C.

DEAR SENATOR HENNINGS: Replying to your letter of June 12, this is to give my unqualified endorsement to S. 2148 and S. 921, freedom of information bills which you have introduced in the Congress, and to urge that you and the United States Senate Subcommittee on Constitutional Rights do all in your power to secure adoption of this important legislation in the interests of the free people of the United States.

I am writing this letter as chairman of the national freedom of information committee of Sigma Delta Chi, the professional journalistic fraternity, and I know that I speak for the more than 20,000 publisher, editor and newsman members when I speak out in behalf of these two bills.

The executive branch of Federal Government has so badly abused section 22 and section 1002 of the United States Code that a virtual curtain of secrecy

has been lowered on all actions of Federal Government, including all spending of the American taxpayer's dollar. A number of Washington correspondents have written me that it will be at least 10 years before the American people discover what is taking place in Federal Government today.

The pages of history tell us over and over that wherever and whenever secret government blankets the people's business, the people's freedom always descends into that limbo of forgotten privileges. Free government can exist only so long as the free people are well informed and the constant restraint of public opinion can be exerted on the people's servants. Freedom of information is the life-blood of the people's free government.

If we stand by and permit secret government to expand in America during the next 25 years as it has been permitted to develop during the last 25 years, freedom of the press is certain to be irreparably damaged. And if freedom of the press is irreparably damaged, all other American freedoms also are certain to be irreparably damaged.

Sincerely yours,

V. M. NEWTON, Jr.

THE FLORIDA STATE UNIVERSITY,
SCHOOL OF JOURNALISM,
Tallahassee, June 20, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: Thank you for sending me a copy of S. 2148 and your statement explaining it.

I agree with the purposes of the measure and trust that you will be advised by leaders of Sigma Delta Chi, American Society of Newspaper Editors and other organizations concerning this legislation.

The general subject of freedom of information is one in which I discuss in detail in the new edition of Exploring Journalism published this May by Prentice-Hall. In the current issue of Quill I reported on the status of freedom of information in Florida.

I am sure that leaders of journalism education as well as the members of the American press will be interested deeply in the realization of the goal of this bill.

Sincerely yours,

LAURENCE R. CAMPBELL, Dean.

MACON, GA., June 20, 1957.

Senator THOMAS C. HENNINGS, Jr.,

Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: I have read both of the freedom of information bills (S. 921 and S. 2148) which you introduced in the Congress, and am in agreement with the purposes of the legislation. I believe they would be valuable in breaking the redtape logjam by which bureaucrats sometimes attempt to keep information from the public to which the public is entitled.

I know your colleagues, Georgia's own Senator Richard B. Russell and Senator Herman Talmadge, are just as anxious to give the public access to what is the public's business so long as national security is not thereby endangered. I am passing my views on to them and trust they will join with you in support of these timely measures you have proposed.

Most sincerely,

JOE PARHAM,
Editor, The Macon News.

MACON, GA., June 21, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

Senator from Missouri,

*Senate Office Building,
Washington, D. C.*

DEAR MR. HENNINGS: Please let us enthusiastically endorse your measure now before Congress pertaining to freedom of information. I hope that all United States newspapers will give you full support on your proposal and that it will meet with favorable action in the upper Chamber.

Incidentally, I notice that our Georgia Senator, The Honorable Herman Talmadge, is a member of your Committee on Rules and Administration. I trust that you will have Senator Talmadge's support in your freedom of information effort.

You will be interested in the enclosed tearsheet of the Macon Telegraph editorial page of June 19.

Most sincerely,

BERT STRUBY,
Editor, The Macon Telegraph.

[From the Macon Telegraph, Wednesday, June 19, 1957]

CONGRESS SHOULD INSURE PUBLIC'S RIGHT TO KNOW

The Constitution of the United States forbids enactment of any law abridging freedom of the press, which is, in effect, the public's right to know, but the fundamental law contains no guaranty of free access to the sources of news.

Although legislation in behalf of freer public access to Government information has been widely advocated in general terms, few members of Congress have attempted to draft specific measures or work out detailed provisions to achieve the desired result.

Now Senator Thomas C. Hennings Jr., Missouri Democrat, has introduced a bill that would insure the public's right to know what its Government is doing and at the same time provide the Government with the authority to withhold information vital to the security of the Nation.

Senator Hennings has submitted his legislation after lengthy study of the subject of freedom of information by the Senate Constitutional Rights Committee, which he heads.

The essence of the Hennings bill would tighten those sections of the United States Code under which governmental agencies have sought in many instances in the past to justify their withholdings of information not only from the public, but Congress, too.

During two world wars, American information mediums accepted voluntary censorship and cooperated with Government agencies in protecting military information which might be of aid to the enemy. But with the return of peace, the press has properly demanded, in behalf of the people, the restoration of all privileges temporarily surrendered.

Those privileges have been slow in being returned. On the contrary, there has been a growing trend toward secrecy in governmental affairs.

Editors and publishers cheered an order by President Eisenhower 3 years ago that deprived 28 Federal agencies not engaged in defense activities of classifying information and 17 other agencies were given only limited authority for labeling information top secret.

The optimism of the press was short lived. In less than a year, members of the Eisenhower administration were under fire for reviving old restrictive practices and withholding information that did not appear to fall within the President's order.

The public has fundamental right to know those affairs of government that do not affect security. The Hennings bill will insure that right. We trust the measure will have the vigorous support of Senators Talmadge and Russell of Georgia and all other Members of the Senate who believe in the first amendment of the Constitution.

MACON, GA., July 1, 1957.

Senator THOMAS C. HENNINGS,

Senator from Missouri, Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: You probably will be interested in the enclosed copy of a letter I have received from Senator Herman Talmadge, of Georgia.

I trust that support will be forthcoming for your bill from both of our Georgia Senators.

Most sincerely,

BERT STRUBY,
Editor, The Macon Telegraph.

(The letter referred to follows:)

UNITED STATES SENATE,
June 24, 1957.

Hon. BERT STRUBY,
Editor, the Macon Telegraph, Macon, Ga.

MY DEAR BERT: Thank you for your thoughtfulness in sending me a copy of your letter of June 21, 1957, to Senator Thomas C. Hennings, Jr., supporting S. 921 and S. 2148, the freedom of information bills.

Please be assured that I am in full accord with the objectives of these measures and shall always lend my support to full implementation of our constitutional guaranty of freedom of the press and the widest possible exercise, consistent with the requirements of national security, of the right of our people to full information about the actions and activities of their National Government.

While these measures are not before either of my committees, I shall follow them closely and give them my careful attention in the light of the views which I have herein expressed when they come before the Senate.

Call on me whenever I can be of service to you.

With every good wish, I am

Sincerely,

HERMAN.

UNIVERSITY OF IDAHO,
Moscow, June 19, 1957.

Senator THOMAS C. HENNINGS,
United States Senate, Washington, D. C.

SIR: I applaud your action in introducing the freedom-of-information bills, S. 921 and S. 2148, and I hope they become law.

For some years I have felt it necessary as a journalism teacher to combat a growing willingness on the part of journalism students and others to accept uncritically some administrative decisions to withhold information. I see this creeping paralysis as a danger to the democratic process.

Record me as favoring the bills.

Sincerely yours,

GRANVILLE PRICE,
Chairman of Journalism.

THE COMMERCIAL-NEWS,
Danville, Ill., June 18, 1957.

DEAR SENATOR: Thank you for your note of June 12. Deepest thanks for your interest in the people's right to know.

No bill is ever perfect but both of these are a start in the right direction. We are currently hoping that similar legislation will be passed at the State level here.

It shouldn't be needed but it is. I wish you all success.

Sincerely yours,

MARTIN J. GAGIE.

SOUTHERN ILLINOIS UNIVERSITY,
DEPARTMENT OF JOURNALISM,
Carbondale, Ill., June 26, 1957.

Senator THOMAS C. HENNINGS, JR.,
*Chairman, Subcommittee on Constitutional Rights, United States Senate,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: Thank you for sending me a copy of S. 2148, a bill concerning freedom of information introduced recently by you in the United States Senate and now pending before the Senate Constitutional Rights Committee. Thank you also for the statement explaining in detail this copy of the bill as well as those of S. 921.

It seems to me that both of these proposals are well conceived and that adoption would constitute an important step in the direction of eliminating unnecessary barriers to the access to information the public is entitled to have.

My friends among those charged with the responsibility of reporting for the press the activities of the various branches and subdivisions of the Government tell me that the task is complex enough without the gradual buildup of artificial hazards to their pursuit of information.

It seems to me that your proposals will go a long way toward putting in its proper perspective the orderly conduct of governmental affairs and the rights of the people to be informed about such activities.

Yours sincerely,

HOWARD R. LONG, *Chairman.*

UNIVERSITY OF ILLINOIS,
SCHOOL OF JOURNALISM AND COMMUNICATIONS,
Urbana, June 18, 1957.

Senator THOMAS C. HENNINGS, Jr.

*Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I have checked over the copy of S. 2148 as well as the statement you prepared on proposed amendments to title 5, United States Code, section 22, and title 5, United States Code, section 1002.

I am heartily in sympathy with the objectives of the bill and the statement. S. 2148 is a desirable addition to existing legislation. I should, however, point out one problem to be found under (f) (3). This section permits withholding of information which "would be a clearly unwarranted invasion of personal privacy." This is extremely vague phrasing and is likely to receive the same interpretation by agency heads as the original section 1002.

I sincerely hope that a more definite wording for this subsection can be included.

I am very much in favor of the draft of S. 921.

Sincerely yours,

F. S. SIEBERT, *Director.*

ILLINOIS PRESS ASSOCIATION,
December 6, 1957.

Senator THOMAS C. HENNINGS, Jr.

Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you kindly for the copies of the two freedom-of-information bills introduced by you which are now pending before the Senate Constitutional Rights Committee.

In my opinion both are good bills and I sincerely hope you are successful in getting them passed into law at this next session of Congress.

My only criticism, pertinent to both bills, concerns paragraph (f) exemptions (3). It seems to me that the limitation for "unwarranted invasion of personal privacy" provides a convenient loophole for officials. I think this exemption should be eliminated, or more specifically spelled out.

Yours very truly,

ARTHUR E. STRANG, *Secretary-Manager.*

THE INDIANAPOLIS NEWS,
June 18, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for sending me the copies of S. 2148 and S. 921.

The press of the United States should be thankful that it has found someone willing to take specific steps to stop the withholding of information from the public. My lay reading of your proposed changes in the United States Code indicates the changes would be a definite step in a wholesome direction.

As a member of the freedom of information committee of the American Society of Newspaper Editors, I have urged our committee to ask the society to congratulate you on the work you have started. Additionally, the News has commented editorially on your work and will continue to do so.

I am sending a copy of this letter to Senator Jenner, hoping he will support the bills when they come before the Committee on the Judiciary.

Sincerely,

E. S. PULLIAM, *Managing Editor.*

THE NEWS-SENTINEL,
Fort Wayne, Ind., June 22, 1957.

Mr. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

DEAR MR. HENNINGS: Your bill, S. 2148, strikes me as a badly needed bit of legislation to make the public's right to know more operable. It's the people's Government and can only remain such if the people are told what concerns them.

Yours very truly,

CLIFFORD B. WARD, *Editor.*

THE REGISTER AND TRIBUNE,
Des Moines, Iowa, June 19, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

United States Senate, Washington, D. C.

MY DEAR SENATOR: Thank you for the opportunity to express my views regarding S. 2148 and S. 921.

These amendments would be a valuable contribution to open government and a fully informed public. In my opinion the Hennings bills should be promptly passed by Congress.

This year I am president of the Associated Press Managing Editors Association. Every editor with whom I have discussed these bills shares my point of view.

Sincerely,

FRANK EVERLY.

DES MOINES REGISTER AND TRIBUNE,
Des Moines, Iowa, June 18, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: This is in answer to your letter of June 12 regarding the two bills concerning freedom of information which you have introduced in the Senate.

These bills, if enacted, should help materially to stop the growing secrecy in Government agencies. It is to be hoped that Congress will pass both of them soon.

We have printed many editorials on this general subject. I am enclosing one from the Sunday Register, June 16, which comments specifically on your two bills and on your efforts to eliminate secrecy.

Sincerely yours,

KENNETH MACDONALD.

[From the Des Moines Sunday Register, June 16, 1957]

ANTISECRECY LEGISLATION NEEDED

Federal Government officials often have to be prodded to live up to their responsibility of giving the public the information it is entitled to have about the public business. This isn't a characteristic of Federal officials alone: It seems to be a disease that afflicts every level of Government. It is so much easier to avoid embarrassment and trouble by keeping the lid nailed down.

The United States Senate Subcommittee on Constitutional Rights has found many instances of unjustified withholding of information from the public and from Congress in recent months. Senator Thomas C. Hennings, Jr., (Democrat, Missouri) says there is an "increasing tendency" toward secrecy in governmental affairs.

When the Senate subcommittee staff asked Government officials by what authority they could justify refusal to release information, they frequently cited section 2 and section 1002 of title 5 of the United States Code. These

are general housekeeping sections which give Government departments authority to establish regulations for the conduct of their affairs.

Sections 22 and 1002 were not intended to give officials a justification for keeping information secret. Section 22, which was passed in 1789, has to do in part with the custody and use of public records and papers. Section 1002 has to do with the publication of information, rules, opinions, orders, and public records.

"It is ironic," Senator Hennings said, "but the studies of the subcommittee show it to be a fact—that this statute, drawn upon the theory that administrative operations and procedures are public property which the general public is entitled to know, has frequently been invoked by administrative agencies as authority for denying information to the public."

To prevent, or at least limit, abuse of these sections to hide information from the public, Senator Hennings has introduced amendments to each of them. He says these amendments would force Federal officials to seek "proper statutory warrant or presidential directives of indisputable constitutionality" for withholding information.

The amendment to section 22 would read, simply, "This section does not authorize withholding information from the public or limiting the availability of records to the public."

The amendment to section 1002 would rewrite this section to make clear that its purpose is "to provide adequate and effective information for the public." The new section would state that "every agency shall separately state and promptly file for publication" all rules, orders, opinions, records, organizational descriptions, forms, and so on. It would clearly state the few legal exceptions.

These amendments would be a valuable contribution to open government and a fully informed public. They ought to be promptly passed by Congress.

THE SALINA JOURNAL,
Salina, Kans., June 17, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR: Thank you for sending me bill S. 921 and the information on S. 2148.

It seems to me that both are important to the people if their basic right to know about their Government is to be restored.

These bills seem to clarify that right and, at the same time, permit classification of material essential to security.

Sincerely,

WHITLEY AUSTIN, *Editor*.

HOUSEHOLD MAGAZINE,
Topeka, Kans., July 19, 1957.

THOMAS C. HENNINGS, Jr.,
Chairman, Committee on the Judiciary, Subcommittee on Constitutional
Rights, United States Senate, Washington, D. C.

DEAR MR. HENNINGS: Thank you for sending me copies of the two bills concerning freedom of information. My only comment: I fail to see why any honest man would oppose the intent of S. 2148 and S. 921.

Sincerely yours,

JOHN M. CARTER, *Editor*.

THE TOPEKA STATE JOURNAL,
Topeka, Kans., June 25, 1957.

Senator THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: In reply to yours of June 12, I enclose an editorial I wrote in the Topeka State Journal June 17, which is intended to forward your fine efforts in behalf of freer information.

Both of your bills, S. 2148 and S. 921, work hand in hand to correct grave faults in present statutes. I should have mentioned S. 921, specifically, in the

editorial along with mention of S. 2148. Through an oversight, I failed to do so, but I think any person who is for one bill should be for the other, also.

Sincerely yours,

JOSEPH W. LEE,
Editorial Page Editor.

[From the Topeka State Journal, June 17, 1957]

THE EDITORIAL VIEW—ON FOOLING THE PUBLIC

In recent years, more than 1 of every 3 congressional committee meetings has been held behind closed doors. The constituents of committee members could not learn, in this Government by and for the people, how their chosen servants reasoned or voted on bills killed or bills reported out.

The importance of this suppression of information lies in the fact that the real lawmaking today is done in committee, not on the floor of Senate or House.

Yet, the same lawmakers, often, will come home and declare in speeches that an informed electorate is the first requisite of a free and representative government.

Similarly, in the matter of public records, official agencies have built up a veneer of justification for denying citizens, including reporters, access to the written evidence of the manner in which public business has been conducted.

As an illustration, the press had to have a fight with the Agriculture Department to get a look at the names of violators of a subsidy program in one district. Again, a high official wanted to deny public access to ordinary pictures of cities and maps of harbors that have always been available over the counter at the Department of Commerce. In one case, an officer's travel expense in this country was classified "top secret," at his own direction.

One reason such conditions can prevail at the national level is that certain laws have been interpreted by officials to suit themselves. For example, one law, dating from 1789, says that department heads can make regulations on "the custody, use, and preservation" of records. Although this was a mere housekeeping provision, some officials have interpreted it to give them authority to withhold information from the public as they, the officials, saw fit. Again, a Federal statute says that public records shall "be made available to persons properly and directly concerned, *except information held confidential for good cause found.*" [Emphasis ours.] As studies by the Senate Subcommittee on Constitutional Rights found, this provision, which was meant to mark records as public property, "has frequently been invoked by administrative agencies as authority for denying information to the public."

Senator Thomas C. Hennings, Jr., of Missouri, chairman of the Senate subcommittee, has introduced a bill which would tighten the language of Federal statutes and stop the hush-hushing of nonsecurity information. As to the first law mentioned above, Hennings' bill would add the words, "This section does not authorize withholding information from the public or limiting the availability of records to the public." This would return the law to its intended housekeeping function only. In the second instance, the Hennings bill tightens language to cut out loose words and phrases. It makes clear that the law's intent is to insure the release of the maximum amount of information consonant with security.

Some information withheld for security reasons, it has been shown, actually is withheld merely to secure the job of some errant or grafting official. The people have a right and a need to know more than they have been told. The official who falsely or wrongly uses the "secret" stamp to fool the people should be harshly dealt with.

Senator Hennings' bill is S. 2148, and it was referred on May 23 to the Committee on the Judiciary. If you agree with this editorial, mail it to one of your Senators.

THE COURIER-JOURNAL,
THE LOUISVILLE TIMES,
Louisville, Ky., June 21, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

MY DEAR SENATOR: When you ask me what I think of your proposed amendments to title 5, United States Code, sections 22 and 1002, it's like asking me

what I think of the Bill of Rights. I find the latter, in some respects, less than satisfactory, but it is so enormously better than what we had before its ratification as to be almost outside the realm of debate.

I feel that way about the amendments, in both the House and Senate, to the loosely drawn bills which have provided for custody of documents and administrative procedure. They are so much better than the statutes they would replace, I can only pray for passage.

It seems pointless for me to try to analyze the legislation. We all know how much the two acts under scrutiny have been abused because of ambiguity. We know that the Government of today resembles the simple organism that produced these laws little more than Miss Monroe resembles a tadpole.

Our high courts seem to be the only Government agencies ready to bring up to date, in an instant the outgrown rules and processes of the past—and, sometimes, they seem to be hot-rodders by contrast; perhaps they are partly that, in fact. It pleases me to see the legislative bodies facing up to the responsibility of reshaping their instruments for the work of today. And the task of mining public information out of the granite of executive offices is among the most difficult and important in our society.

Personally, I feel grateful for what you are doing, and I'm just about sure every editor feels the same way—not because freedom of information belongs to us, but because we happen to be in the position to see how much it means to a free people.

Sincerely yours,

JAMES S. POPE, *Executive Editor.*

LOUISIANA STATE UNIVERSITY
AND AGRICULTURAL AND MECHANICAL COLLEGE,
Baton Rouge, La., June 21, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: How long did it take—almost 165 years—before a secret nurser discovered that he could suppress information under the house-keeping statute enacted in 1789.

I trust that your colleagues and the men in the House of Representatives will see fit to approve the amendment you have proposed in S. 921.

There's no question but that the public-information section of the old Administrative Procedure Act of 1946 was a challenge to loophole seekers. It seems to me that your proposed amendment effectively plugs all the loopholes by knocking out the loose language which was truly capable of just about any interpretation that anybody might have wanted to put on it.

Secrecy in handling of governmental affairs is doubly dangerous; not only is it invoked to cover up evidence of mismanagement, but, even worse, this invoking of secrecy denies the individual citizen information he needs to have about how his Government is being run.

Responsible citizenship, certainly, cannot thrive when people are told only what someone thinks they ought to know.

Any measure which would take out of the hands of individuals the responsibility for deciding what the people ought to know should bring improved performance on the part of public servants. I speak as one who is now in public service and, also out of experience in covering municipal and State affairs for newspapers.

Only the extraordinary public servant successfully resists the temptation to cover up when he finds that he can cite statutory backing for his failure to pass along unfavorable information to reporters. The amendments proposed in these bills should remove these temptations.

Thank you for your letter and your explanation of the intent of the bills which you have introduced.

What the public doesn't know can hurt it, and hurt it immeasurably, these days, when the tendency is toward secrecy almost for secrecy's sake, or so it seems.

In all sincerity,

F. J. PRICE,
Director, School of Journalism.

WORCESTER TELEGRAM-THE EVENING GAZETTE,
SUNDAY TELEGRAM,
Worcester, Mass., June 24, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR HENNINGS: You suggested that we send you whatever comment appeared on your bill. Here it is, and, if you have anything to add, perhaps in the form of a letter to the editor, please feel free to send it along to us.

Best regards.

LESLIE MOORE.

[From the Evening Gazette, Worcester, Mass., June 24, 1957]

NEW ATTEMPT TO OPEN WASHINGTON DOORS

The hush-hush boys in Washington are getting a run for their money. Representative John E. Moss, of California, and his subcommittee have been battling excessive Government secrecy.

Now Senator Thomas C. Hennings, Jr., of Missouri, has joined the fight. He has introduced a bill to clarify the question of public records.

One Government agency after another has abused its authority in order to withhold facts from the public. It is a dangerous way to run a democracy.

Nobody quarrels with keeping defense details secret. But the secrecy virus has infected just about every department. Take, for example, the Post Office Department rule that records "shall not be furnished" except in the discretion of the Department when a subpoena has been issued. What does the Post Office Department have to hide from the public?

Then there are the Agriculture Department, which holds many records secret, the Commerce Department, the Justice Department ("all records confidential"), and scores of Government agencies. Even where records are available, the common attitude is that this is a matter of courtesy on the department's part and not a matter of public right.

Two sections of law have often been cited by department heads to support their power to keep facts from the public. One was passed in 1789 and simply gives a department head the right to make regulations for his department. It does not authorize him to withhold information.

The second section was adopted in 1946. It was set up on the theory—in the words of a Senate committee—that "administrative operations and procedures are public property which the general public * * * is entitled to know or have the ready means of knowing with definiteness and assurance."

This theory is fundamental to our system of government. Unfortunately, the 1946 law is so loosely worded that department heads have been able to distort its intention. They rely on it to cloak their activities.

Senator Hennings proposes changes in the wording of both the 1789 and the 1946 laws. These would underscore the intent of Congress that as much information as possible be available to the public.

They would make all votes and acts of Government agencies public records unless—

1. They are exempt from disclosure by other laws.
2. They are a matter of national security.
3. They would permit an unwarranted invasion of personal privacy.

This would give the departments plenty of elbow room for necessary secrecy—perhaps too much.

The Hennings bill is a good one and ought to be adopted.

THE HILLSDALE DAILY NEWS,
Hillsdale, Mich., November 27, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR: Permit me to congratulate you and your committee on your efforts to end secrecy in the Federal Government.

I have read S. 2148 and the statement explaining its provisions and those of S. 921. It appears to me these would be effective.

I join thousands of United States newspapermen in wishing them success.

Sincerely,

E. C. HAYHOW.

THE EVENING NEWS,
Sault Ste. Marie, Mich., July 10, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: I think you are on the right track in seeking to clarify present legislation so that information will not be withheld from the public. Difficulty in getting news where national security is not involved is well known by newspapermen. It is a problem in every community and what you accomplish at Washington will help the fight for freedom of information.

I hope you will get constructive help from the American Society of Newspaper Editors.

Thank you for sending me a copy of S. 2148 and other information.

Yours sincerely,

GEORGE A. OSBORN.

MICHIGAN PRESS ASSOCIATION, INC.,
East Lansing, Mich., November 27, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Subcommittee on Constitutional Rights,
United States Senate,
Washington, D. C.

DEAR SIR: Thank you for sending this office material regarding the freedom of information proposals.

You will not be surprised to know that press association secretaries are most interested in such legislative activity, and that newspapers as a group are most concerned with what appears to be a steady increase in the tendency among Government officials to withhold all sorts of information to which the public should properly have access.

This trend is particularly serious at the national level since it seems to set the precedent for local government to adopt the same practice.

It is my hope that the Federal Government can reverse the philosophy at its level and that thinking will filter down and reverse the local tendency to withhold information from the public.

You may be interested in the enclosed clipping which describes some legislation which will probably be proposed in the next session.

Best regards,

ELMER E. WHITE.

[From the Lansing (Mich.) State Journal]

FREEDOM OF PRESS BILL IS PROPOSED

Legislation designed to make State governmental records and information readily available to newspapers is expected to be introduced in the forthcoming session of the legislature.

Impetus to the move has been given by James M. Hare, Secretary of State, who has made a study of laws in other States, and by resolutions adopted last week by the Associated Press managing editors in convention in New Orleans.

In one resolution, the convention urged its members to—

1. Fight governmental secrecy at local, State, and National levels.
2. Know and act upon their legal rights at the local and State level with regard to access to governmental records and governmental meetings.
3. Keep the public informed about activities affecting the people's right to know.

EXAMPLES

4. Stay alert to any efforts by government to increase secrecy and oppose those efforts promptly.

5. Remember always to describe closed meetings as "closed to the public" rather than the misleading "closed to the press."

Another resolution adopted cited several instances of governmental censorship, such as—

1. Department of Defense experts, testifying before the House Government Information Subcommittee, said that "more than a million" Federal employees are classifying security information and that this classification is running at a higher rate today than during World War II.

2. The Army intelligence division declined clearance of a book on the history of the Army intelligence, even though the author offered to limit it to the intelligence operations of Gen. George Washington, based on material discovered in 1921.

HARVARD BAFFLED

3. It took Harvard University 10 years and the help of Congress to persuade 8 Federal agencies and bureaus to agree to declassification of World War II records stored at the university which Harvard couldn't look at, couldn't get declassified, couldn't return to the Government, couldn't give away, and couldn't burn. It cost Harvard \$1,200 a year in storage.

4. The Department of Labor censored statistics on the armed services purchases of peanut butter on the ground that clever enemy officials could deduce from them the number of men in the armed services. At the same time, the Department of Defense was issuing monthly reports on the totals of the armed services personnel.

5. The Pentagon has affixed its "for military use only" classification to official United States weather data. The Soviet Ambassador can telephone the Department of Defense and ask for extension 79355. Whereupon, a recording automatically gives the latest 24-hour weather forecast from nearby Bolling Air Force Base. This automatic recording concludes as follows: "This information is for military use only and dissemination to the public is not authorized."

BILL NOT FILED

6. A mimeographed release of Secretary of Defense Wilson's press conference of April 12, 1955, carried the following notation stamped at the top: "Not for general distribution."

7. The United States Post Office Department denied to the Providence Journal and Bulletin for nearly 6 months information on the fines levied against the New Haven Railroad for slow delivery of mail on the grounds of "public interest." On direct appeal, Postmaster General Summerfield finally released the information.

At the last session of the legislature, Senator Frank D. Beadle (Republican, of St. Clair) indicated his interest in offering legislation to correct unnecessary governmental censorship but in the rush of late legislation his bill was not filed. At that time, he said he undoubtedly would file such a bill in the forthcoming session.

THE ADRIAN TELEGRAM,
Adrian, Mich., April 28, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR HENNINGS: I am writing to you and members of your subcommittee to voice support for bill S. 921.

Enactment of this law would be a long and important step forward in the effort being made to enlighten the public about the affairs of their Government. Now, more than ever before, it is vital that United States citizens know as much as is possible so that they can intelligently support and constructively curb Government activities.

Everyone who has thought about the problem at all agrees that an informed citizenry is the key to a strong democracy. No one argues to the contrary.

However, there are a few who say that a limited amount of secrecy (outside those areas we all agree should be secret) is necessary to good government. This, of course, is balderdash. Besides, as in pregnancy, there is no such thing as a limited amount of secrecy.

Attorney General Rogers clearly demonstrated the dichotomy in executive department thinking when he first supported then damned the bill. His condemnation of the bill was a classic of confused thinking, begging the question, and unenthusiastic support of an untenable position.

I sincerely hope the Subcommittee on Constitutional Rights will approve this measure and win approval for it in the Judiciary Committee.

Sincerely,

CHARLES S. WESLEY,
Assistant Publisher.

[From the Indianapolis News]

LOOPHOLING?

During the recent meeting of newspaper editors in Washington, Senator Thomas C. Hennings somewhat wistfully reported that it would be helpful if it could be learned just how Attorney General William Rogers stands on freedom of information.

A series of contradictory statements and opposing congressional testimony by Mr. Rogers was cited on the matter of amending an old Federal housekeeping law to prevent it being used by Government officials to hide their doings from the public.

Once Mr. Rogers said executive privilege is not related to any statute. A week later he wrote Senator Hennings that the amendment (which has been passed by the House and is being considered in the Senate) is a "recognition" of the "executive privilege." When he appeared before the Senate committee he said he would not oppose the legislation if it were amended to exclude executive privilege. Then, in his letter, he flatly opposed the bill. Then, in another letter, he went halfway back to his position at the hearing.

The point to be made, and which Senator Hennings stated, is this: Even though the freedom-of-information amendment is enacted, there is still the "haunting spectacle of an allegedly unlimited executive privilege advanced by Attorney General Rogers."

If Mr. Rogers is in the business of inventing loopholes, it is a sorry example for a United States Attorney General to be setting.

Congress has a duty to smoke Mr. Rogers out on this proposition and to make certain that Government officials don't continue hiding their activities under another guise.

UNIVERSITY OF MINNESOTA,
Minneapolis, December 10, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*Senate Office Building,
Washington, D. C.*

DEAR SENATOR HENNINGS: I wish to thank you for sending me a copy of S. 2148 and the statement explaining its details and provisions as well as that of S. 921.

I want you to know I am in support of these bills and any others which will increase the peoples' access to news of the Federal Government. Your committee, I believe, is doing valuable work in this area.

We here in the University of Minnesota School of Journalism are very much concerned with the whole problem of freedom of information, and are following the progress of your Subcommittee on Constitutional Rights with a good deal of interest. So, I would appreciate it very much if you would place my name on your mailing list so I can receive future releases and publications of your subcommittee.

With every good wish.
Sincerely,

RALPH D. CASEY,
Director, School of Journalism.

MINNESOTA EDITORIAL ASSOCIATION,
Minneapolis 1, Minn., December 6, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*United States Senate,
Washington, D. C.*

MY DEAR SENATOR: It was remarkably thoughtful of you to send us material on your effort to keep open the many channels of official information. Most certainly the effort has our hearty endorsement and support. My only doubt centers around line 19, page 3 (f) Exceptions: (2) "required to be kept se-

cret"—if there were some way of avoiding the snap judgment of self-important and nonresponsible (nonresponsible in the sense of not being elected by the people, and having a chain of "bosses" among whom it is so easy to lose the buck that is regularly passed) petty officials, the course would be relatively smooth. Yet I realize the vital need of caution along many crucial lines.

Hope you will read two brief enclosures and find them helpful.

Thanks a lot, and cordial good wishes.

RALPH W. KELLER.

Excerpt from an October 1957 letter to Senator Mundt regarding Patent Office wish to bar from practice attorneys who advertise:

"There is something very specific I believe Congress can do to stem the jungle growth of regulations and restrictions and prohibitions with which information and advertising are slowly but very surely being throttled.

"* * * cease to delegate legislative and executive powers to all manner of unknown and irresponsible bureaus, commissions, departments, and agencies. Then by specific withdrawal or wholesale nullification abolish the roadblocks already painstakingly erected in the normal course of news, information, accounting, advertising, etc., and the exercise of other constitutional freedoms * * *."

"BEAUTIFUL UPON THE MOUNTAINS"

Extension of remarks of Hon. Harold C. Hagen of Minnesota, in the House of Representatives, Friday, July 2, 1954

Mr. HAGEN of Minnesota. Mr. Speaker, just recently I had the great privilege and opportunity of listening to an outstanding speech given by Ralph W. Keller, secretary of the Minnesota Editorial Association, Minneapolis, Minn. The speech was given at the banquet at the Shoreham Hotel here in Washington, D. C., on June 22.

Among the distinguished guests were the President of the United States Dwight D. Eisenhower, many Senators and House Members, and other distinguished Federal officials. Also on hand were the hundreds of editors of small weeklies and dailies throughout the United States.

Mr. Keller in a way indicted the newspaper profession and charged it with some failings. However his talk also answered any and all critics of the newspaper profession in a most able and proper manner.

I think it is one of the finest speeches I have ever heard and the great applause given the speaker at conclusion of his speech indicated it was well received by the large audience present. In fact, President Eisenhower himself referred to many points in the speech when he followed Mr. Keller with his own outstanding and excellent remarks.

I think Mr. Keller's speech is so outstanding that I am inserting it in the Congressional Record so that it will have a wider audience. The speech was entitled "Beautiful Upon the Mountains," and it follows:

"In a broadcast message not many weeks ago the President of the United States said, 'In this country public opinion is the most powerful of all forces.'

"The most powerful physical force known to man is nuclear reaction. This force is equally capable of good or ill, depending, of course, upon the intent of its users. Even so with the force of public opinion. Enlightened, informed, it is a powerful force for good. Uninformed or misinformed public opinion can be an equal force for evil—the destructive, devastating force that marches across too many pages of history—a frightful force that many of us here have seen thrice loosed upon a hapless world.

"Only a few days ago the President, in another broadcast, commended the anniversary theme of a great American university: 'Man's right to knowledge and the free use thereof.'

"It is to this universal right to knowledge—the essential need for and value of an informed, enlightened public opinion—that I would for a few minutes direct your thinking. First by talking 'shop' with my esteemed newspaper colleagues, then by talking 'turkey' to our distinguished friends in Government.

"On this same Columbia occasion the President praised the steadfast adherence of one of his illustrious predecessors, Thomas Jefferson, to two fundamental principles of freedom: the need for newspapers to disseminate information, and faith in the assurance of the gentle Galilean that 'Ye shall know the truth, and the truth shall make you free.' It might be noted in passing that neither Con-

gressmen nor editors are given any priority on truth: the promise is to an impersonal and universal 'ye.'

"Now how are we to learn the truth? How can 160 million far-scattered citizens find the truth? How shall we recognize it when we do find it?

"Public opinion can be informed only by having the facts; we gain enlightenment, approach the truth, only by seeing, discussing, comparing, evaluating, all of the facets of every issue, whether that issue be township roads or foreign policy. This process involves every one of the cherished freedoms enumerated in article I of the amendments to the Constitution of the United States: religion, speech, press, assembly, and petition.

"Full and free discussion involves the right to assemble peaceably, to speak freely, and to petition constituted authority, mundane or divine. There we have four of our sacred freedoms in action. But essential to the most effective assembly, speech, and prayer, is information—the right to know that, rests squarely upon and revolves forever about the fifth freedom, a free press.

"It is hardly necessary to define to this august assemblage a free press, yet, since it obviously means many things to many persons, it may not be amiss to reappraise our concepts.

"Free press, first of all, is not a vested right of any publisher, or publishers' organization. It is not the privilege of any individual to take pictures in a courtroom, televise congressional hearings, report mishaps in the armed services, probe individuals and departments of government.

"Free press is, however, the inherent and everlasting right of the people who foot the bill to see these courtroom pictures, hear these official proceedings, learn what happens to our boys in uniform, know what their public servants are doing. Nor is free press only the right—it is the duty of free citizens to be informed about society, commerce, and Government.

"Free press is yet more. It is the right of enfranchised taxpayers to choose the mediums through which we prefer to see and hear and learn: to select our own radio and TV channels, buy our favorite newspapers and magazines, read the books of our choice.

"In these rights and duties of American citizens is America's free press rooted. From them arise sacred obligations and sublime opportunities to perpetually challenge editors and broadcasters and book publishers.

"It follows that those of us who give life and substance to the free press are charged with a grave and solemn responsibility. Let us, then, ladies and gentlemen of the press, consider for a moment how we of the fourth estate are meeting that responsibility.

"How beautiful upon the mountains are the feet of him that bringeth good tidings, that publisheth peace." So spake that wise and fearless Hebrew shepherd, prophet, statesman, Isaiah, the son of Amoz. I think he would have made an influential and inspiring editor, this ancient crusader. Listen to some more of Isaiah's personal paragraphs:

"Therefore my people are gone into captivity, because they have no knowledge.

"Come now, and let us reason together.

"I have not spoken in secret.

"Now go, write it before them in a table, and note it in a book.

"The people that walked in darkness have seen a great light.

"Wisdom and knowledge shall be the stability of thy times."

"Ages ago the feet of the sun god were beautiful upon the mountains bearing warmth, health, and cheer. So, too, the fleet-footed courier who sped homeward the stirring news of faraway victories and discoveries. The public bulletin boards of Babylon, Thebes, and ancient Rome, the bell-ringing criers of medieval towns, were messengers with feet ever beautiful upon the mountains to be-nighted peoples hungering for information.

"All these traditional bearers of tidings but yesterday in the calendar of eternity culminated in the swiftest, most effective messenger yet to serve mankind: That modern phenomenon, that lusty and prolific descendant of Johannes Gutenberg, the newspaper.

"Practically all of the learned professions antedate journalism. Many, I suspect, are wealthier. Yet none of them—and I am not unmindful of the teacher, the preacher, and the lawyer—not one of the professions, possibly not all of them together, exceed in influence the press.

"Now, my colleagues of the fourth estate, dare we be proud of that influence? Is it as great as it could be? Is ours as good an influence as it should be? Does

it reach the young and old, the tolerant and the intolerant, the prejudiced and the unprejudiced, with fair and impartial impact? Nor am I asking only the Star and the Post here in Washington, the New York Times, the St. Paul Dispatch, the Minneapolis Tribune. The question is equally significant to the Canyon City Record, the Rock Rapids Reporter, the Woodhaven Leader. The nature of newspaper influence concerns not only the great national and international media with feet upon earth's high and distant mountains. It is even more vital to those messengers who run the local courses, whose feet are intimately meaningful upon the hills of home.

"Let us ask ourselves frankly and answer honestly, how good is our news coverage? Of course we record the storms, the weddings, the accidents. But are we telling our readers about the earnest helpful sermons in our local churches, the inspirational talks at Lions and Kiwanis meetings, recent additions at the library, new trend-marking developments in local agricultural and marketing practices? Do we permit careless headlines to mislead hasty readers? Are we guilty of inaccurate leads that give a wrong impression of the facts in a story? Do we ever permit the advertising columns to interfere with complete and accurate news reporting?

"And what about news pictures? Are we doing with camera, plate, and imagination what television and facsimile will take away from us if we limp along in the comfortable rut of tradition and smug self-satisfaction? Improved modern techniques impose upon the press the self-same obligation that devolves upon teacher and preacher, doctor and architect, to keep abreast of the times in their respective fields. Let us not hobble our courier with indifference or false economy.

"Is the influence of our newspaper helped or hindered by our typography? Are our typefaces, format, makeup attractive? Is our presswork any better than the blurred images we sometimes ridicule on the infant TV? I wonder how long it has been since any of us made any specific effort to improve the physical appearance of our product—and thereby enhance its influence.

"We hear recurring charges of 'a one-party press.' Yet the only issue on which our 10,000 weekly and daily newspapers have ever been found anywhere near at one is neither party politics, farm prices, nor postal rates. Our one common objective is more advertising.

"So let us look into the influence of our advertising columns. Which is our higher aim, to sell goods for our advertisers or space in our newspaper? To bring plenty to our readers, or to our own bank account? Have we done all we can, or anything at all, to make our advertisements more neat, readable, appealing? How hard do we work to make the messages of our advertisers interesting, informative, credible? How carefully do we screen the users of our space for honesty and reliability? Can our readers patronize our advertisers with the same confident assurance with which they call on the family physician, or sit down in their church pews Sunday and midweek?

"Nor should we overlook legal advertising: public notice, stepchild of greed and waif of expediency. We are wont to set legals in the smallest hairlined face on the premises, make them up like gerrymandered precincts, hide them away like Captain Kidd's gold—then clamor for more at higher rates.

"How often do we attend or adequately cover town, village, utility, school, county, welfare meetings, at which taxes are levied and public funds expended? Most of us are likely addicted to the practice revealed in recent Texas and Minnesota surveys, 'If they won't pay for publishing the minutes, to heck with the meeting.' Which is hardly a persuasive approach to public officials from whom we ask a freer flow of information and advertising.

"Newspapers worry quite a bit about help, too. Yet the record is pretty clear that we treat the human factor about as cavalierly as legal notices. I wonder what any one of you may have done recently to make any member of your staff glad that he works for you. What do we do to imbue our employees with genuine, sincere, deep-rooted pride in their profession? How long since an eager school kid walked into your plant, as I did into Frank Wilder's out in western North Dakota many years ago, and said with reverent awe, 'I'd like to be a newspaperman. Can you give me a job?' A long time I'll wager. And I'll further wager that you blame today's kids, the times, your contemporaries, perhaps even the Government—everything but the real hitch, the unattractiveness of your own shop and your own product.

"Still measuring the length of our strides upon the mountains of public opinion—the degree of enlightenment we afford 'the people who walk in darkness,' let us take a close look at our editorial pages—or at the sorry grave of lost lead-

ership where the editorials ought to be. Are you among the mute majority who lack the time, the white space, the mental discipline and moral fortitude to evolve and pursue an editorial policy? This lazy indifference, this cowardly preference for the easy unchallenged course, does more to cripple the feet of newspapers upon the mountains of influence than all the malicious missiles our worst critics ever hurled. Think what we could do for farm, home, and highway safety. Mourn with me over our dereliction in the currently appalling epidemic of parental delinquency and juvenile vandalism.

"You are afraid to be wrong? Then you are too timid to run a good newspaper. You have an unpopular viewpoint? So have the preachers, but the churches haven't been closed. You might win but few issues? The object of editorials is not to win arguments, but to stimulate and perpetuate the discussion of which democracy is born and on which it is nourished.

"Nor is our influence strengthened by submitting to the soul-searing pressure to put even more paid lineage before more and still more paid subscribers. Too many of us confuse mere bulk with reader interest, size with influence. Quantity is so much easier of achievement than quality.

"Now, while our newspaper friends with characteristic optimism appraise and approve each his own operation, attributing to his contemporaries all the shortcomings we've noted, let us turn to our guests. Having glimpsed a few of the problems, obligations, and aspirations of the free press, let us now attempt a quick appraisal of public and official attitudes toward the struggle of the press to stay free, and to fulfill its mission to a free people.

"We first encounter the disturbing fact that, no matter how perfect our newspapers, they cannot always tread the high places shod only with good news.

"News is a relative term, rarely absolute good or unequivocal bad. That the thermometer has gone to 18 would be awfully good news after a day or two at 35 below, but awfully bad news to a chap with several vines of ripe tomatoes in the backyard. The bad news that Uncle Hezekiah has been gathered to his fathers is sometimes mitigated by the extent of those possessions uncle was unable to take with him.

"No matter how many times we've heard it, no report is really news until we have the complete, accurate, corroborating printed details to read for ourselves and refer back to as we wish, which satisfying personal scrutiny, incidentally, is why it seems unlikely that radio and TV will supplant the newspaper as a news medium.

"Now what do the newspapers do about all this?

"They print it as they find it, the good and the bad, the uplifting and the depressing, many things many readers don't like, some things the editor himself doesn't like.

"In striving to completely and accurately record today's turbulent passing parade, we newspaper people are alarmed at the implications of Indochina, Guatemala, Geneva; uneasy at the perpetual threat of the Kremlin; sometimes dubious about the goings-on on Capitol Hill. We find ourselves at a loss to reconcile public doles with our traditional concept of independent enterprise in both trade and agriculture. We contemplate in mild astonishment a paternal Government punishing with equal severity and enthusiasm, on the one hand violators of the price-fixing Fair Trade Act, and, on the other, violators of the anti-price-fixing antitrust laws.

"We wonder at the complacent inconsistencies of Government at all levels continually bespeaking newspaper support of countless so-called good causes, while persistently withholding all manner of significant information in every field of public activity, from drainage ditches and school salaries to atomic development and international commitments. We marvel at the wry military psychology which insists upon shielding our people, who in one generation have faced the casualty lists of three major wars, from the devastating news that some of our boys sometimes fall short of selective service physical requirements.

"But what we newspaper people really find difficult to accept, and impossible to understand, are those governmental vagaries which confront us, on the one hand, with constantly climbing costs, and on the other with multiplying restrictions on our earning power.

"Statute and departmental directive subject us to ever-rising wage levels, ever more liberal fringe benefits, increasingly difficult apprenticeship requirements, and the inflated prices of artificial shortages, while steadily mounting

mail distribution rates help finance our Post Office competition as envelope printers and bill peddlers.

"Then these wounds are salted by meddlesome governmental units persisting in efforts to curtail statutory public notice of all kinds—by banks, school districts, welfare boards, and most other money-spending public agencies. Curtailments which not only impair newspaper revenue but impinge heavily upon the right of taxpayers to full and frequent accounting.

"Finally, the salt is cruelly rubbed in by State and Federal lawmakers who insist upon laying on advertising the clammy hand of regulation.

"The first amendment is riddled by continuing efforts to bolster tottering codes of professional ethics, obliterate price tags, and placate highly vocal minorities of visionary reformers with State and Federal laws restricting, regulating, and even prohibiting many forms of advertising.

"Only a few evenings ago the President of the United States reminded a radio audience that 'the founders of the Republic feared only misguided efforts to suppress ideas.'

"How many misguided lawmakers would suppress the idea of free markets and open competition; would abrogate the right of free American citizens to use their own God-given intelligence, make their own character-forming decisions?

"Is the judgment of our people so unsound, have public fiscal policies so warped our sense of values, that we can't be trusted to study and compare price schedules for ocular examinations and eyeglasses? Has our moral fiber grown so flaccid that we must not be exposed to printed pictures of beverages and tobacco products—commercial items legitimately manufactured under Government license, produced and distributed by wage earning, taxpaying, voting citizens, openly displayed in business buildings on public thoroughfares, and subjected to enormous taxes in support of our schools, hospitals, and public works?

"This protective zeal would even deny us the privilege of judging for ourselves the validity of interest rates promised by taxpaying financial institutions duly licensed and regularly examined by that same Government which we presumably blind and impotent voters create and maintain.

"These rampant regulators would rob numberless honest business men and women of the humble right to cry their wares in the open market places of the Nation. Continuing efforts to legislate professional monopolies and give statutory protection to secret price cartels seem, to us who work under constant antimonopoly surveillance and in the midst of the open display of competitive prices, strangely incompatible with our antitrust laws and the principles of free competition on which our mighty economy is based.

"This whole restrictive philosophy is diametrically opposed to the recent declaration by our Chief Executive that 'wherever man's right to knowledge and the use thereof is restricted, man's freedom in the same measure disappears.' Man's right to know is no less basic and essential in the market place than in governmental council chambers. Any theory or doctrine to the contrary is doubly dangerous to a free press and a free people. First, because legislative restriction on any type or form of legitimate advertising discourages the full and free employment of this potent stimulant of commerce and prosperity. Second, because legislative control of newspaper policy and revenue in one instance portends eventual control of all policies and all revenues, and the inevitable demise of a free press.

"Nor is advertising actually unrestricted. The public, however careless or credulous, is not at the mercy of unscrupulous charlatans. High standards and rigid codes have been set up by the honest professions, by numberless better business bureaus and trade associations, by our own newspaper organizations. Practically every State has fraudulent-advertising statutes, fully endorsed and carefully observed by the newspapers. And overall, with watchful eye on advertisers and mediums alike, stand the Federal Trade Commission and the Federal Communications Commission.

"May we not then accept the fact that newspapers, whatever their virtues and their imperfections, are not the architects but only the faithful mirrors of our times? Mirrors in which we see reflected all the touches of elegance and perfection, all the faults and foibles, that make the human race what it is—the human race.

"We may not like what we see. But that does not impugn the mirror. Nor absolve the editor from keeping it clean and polished and sharply focused. Public aversion to the bitter truth does not justify dilution or distortion in any

word, phrase, or degree. Yet for stanch refusal to omit, color, or distort, newspapers are criticized, maligned, subjected to public castigation and official regulation.

"Some of us have faced a completely impersonal, wholly relentless mirror the morning after—have stood aghast at the sagging folds of a stubby chin, drawn lips, and sallow cheeks, the eye bags packed for a long journey and the eyes too tired to follow. But do we turn out the light and break the mirror? Would that help? Of course it wouldn't, and we don't do any such silly thing. Matter-of-factly we set about repairing the damage, using that same uncompromising mirror to check the results and measure our progress.

"So the inevitable question must be asked, Do the newspapers have to uncover and write and reflect in word and picture all of the manifold phases of the kaleidoscopic life forever unfolding about us—the sordid as well as the stimulating, the jaded with the jubilant?

"Well, suppose you had a magic mirror, a selective reflector. On those gruesome mornings—after this timid inoffensive little mirror would be wholly oblivious to the growth of your beard and the bulge of your eyes. You would take a smug look, and sally forth. But your appearance would not be improved.

"Such innocuous unrevealing mirrors have, from time to time, been turned upon county contracts and school-board finances, State funds and Federal procurement practices—upon the Commodity Credit Corporation and the Federal Housing Administration. But nobody learned much. Selective reflection failed to reveal the whiskers of irregularity until the beard of calamity had grown.

"How much better a complete and accurate look the first time. Irregularity does not bear inspection. Corruption does not flourish in the bright light of publicity. Nor is there authority for assuming that half-truths will make us even half free. Or that our economy can exist half slave and half free, any more than could our Nation.

"Obviously, a selective mirror is as bad as no mirror. Vain as we are, male and female, I doubt that we look in the mirror so much to see what is right about us as to assure ourselves that nothing is wrong. So with our printed mirrors of life. We can't hope to see only good reflected until we live only good. And we must see to improve.

"When a vain or faint-hearted public loses the courage to face up to an accurate reflection of the life we lead; or, far worse, if our badgered and misunderstood writer and commentators ever lose the courage and the integrity to keep the mirrors free and impersonal, truthful and accurate in merciless detail, then indeed must freedom falter and civilization pause. Unshaven progress will sprout the beard of inertia, incentive grow pallid, the smooth coiffure of culture be tousled and disheveled.

"No more than individuals can be at their best without mirrors can freedom survive without a free press.

"American freedoms have brought forth a mighty system of free enterprise, nurtured on open competition and unfettered advertising. A system that feeds, clothes, and arms our own and many other peoples on a fabulous scale. A system built not alone on vast material resources, nor solely on superior knowhow.

"One other mighty tool we have, practically unknown anywhere else in the world—almost wholly exclusive to these United States. With all of its faults, problems, and handicaps, we still have our vigorous, ubiquitous, grassrooted free press. Time forbids a technical survey of the numerous features wherein our newspaper structure differs from that of every other nation. One instance will suffice: Had our courageous and intrepid Argentine neighbor, the ill-fated daily newspaper *La Prensa*, been supported in its preeminence by several thousand smaller daily and weekly buttresses, it would not have been so prominent and vulnerable a target—indeed, might well have withstood the assault of autocracy. If any one of you, my friends, is ever tempted to exalt some of our own journalistic giants and underrate our hometown weeklies, just remember that the big ones rise impregnable from a firm, loyal, and steadfast base of many small ones.

"In this farflung free press lies the secret of American vigor. Thousands of free and independent newspapers constitute the Samson locks of our national strength. Let them be shorn by official decree or public apathy and America's might, like Samson's is gone.

"The advertising columns of our newspapers stoke the roaring fires of mass production, grease the far-stretched routes of distribution, and lead the American people to ever new heights of living.

"The news columns, with their folksy personals and social notes, have made us friends and neighbors from coast to coast and from border to border.

"Whatever their shortcomings and imperfections, our newspapers have made the feet of America, upon the cold forbidding mountains of fear, bold with a deep-rooted mutual understanding. They have made the feet of our people, upon the dark mountains of intolerance and suspicion, firm with a steadfast mutual confidence.

"Informed, enlightened, and inspired by a free press, mankind will yet walk with feet unfettered and beautiful upon the mountains of eternal peace."

WASHINGTON UNIVERSITY,
St. Louis, July 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR MR. HENNINGS: I regret that I was out of town when your letter regarding S. 2148 was received.

I fully endorse the provisions of this bill and wish you Godspeed in promoting its passage. We can't have a democracy without an informed electorate, and we can't have an informed electorate if the news media are denied access to pertinent information.

You and your committee deserve a world of credit for this work—more credit, probably, than you will ever get.

Very truly yours,

JAMES N. MCCLURE,
Associate Professor of English in Charge of Journalism.

THE CONSTITUTION-TRIBUNE,
Chillicothe, Mo., January 13, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: This concerns your efforts to further freedom of information which, I am sure, will meet with the approval of newspapermen everywhere.

I have read S. 2148, the statement explaining its provisions and purposes, and the information regarding S. 921.

The trend, it seems to me, is in the wrong direction as far as the public's right to know is concerned. More and more, matters of public concern are being withheld.

The two bills you have introduced, in my opinion, are steps in the right direction to halt the trend and to afford the American people the privilege of being well informed on governmental matters.

I am certain all newspaper people feel as I do. You are to be congratulated for your efforts.

Sincerely,

CHARLES E. WATKINS,
President, Missouri Associated Dailies.

THE UNIVERSITY OF NEBRASKA,
SCHOOL OF JOURNALISM,
Lincoln, Nebr., April 18, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
*United States Senate,
Washington, D. C.*

DEAR SENATOR HENNINGS: I will be honored to have my views on S. 921 and S. 2148 included in the record. Probably never in the history of mankind has the need for an informed public been so great. Public ignorance and apathy present dangers to this country as grave as the Russian missile. It is public opinion that ultimately charts the Nation's course; that opinion can be no sounder than the information upon which it's based.

Respectfully yours,

WILLIAM E. HALL, *Director.*

THE UNIVERSITY OF NEBRASKA,
SCHOOL OF JOURNALISM,
Lincoln, Nebr., July 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: I have read and reread the information you sent me pertaining to S. 2148 and S. 921 and feel that your committee has done a commendable job in identifying legal loopholes permitting suppression of governmental information.

Equally commendable are your two proposed bills to plug the loopholes. I sincerely hope they win approval.

We all are aware that neither of these two bills nor any number will automatically halt the suppression of news by nervous administrators. These bills would, however, smoke them out from behind loosely worded statutes and force them to justify news suppression on specific grounds. This assumes the press would take full advantage of the provisions of the proposed bills in pressing for information heretofore denied on arbitrary grounds.

The two bills represent another step forward in the neverending freedom of information battle.

Sincerely yours,

WILLIAM E. HALL, *Director.*

RUTGERS UNIVERSITY,
SCHOOL OF JOURNALISM,
New Brunswick, N. J., June 19, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I feel that both S. 921 and S. 2148 concerning availability of Government information deserve favorable consideration at the hands of the Congress.

The language of the two amendments would serve clear notice on administrative officials that it is the intention of the Members of the Congress that the citizens should have access and examination rights with respect to all aspects of the public housekeeping except those that come within the purview of national security and/or the right of privacy.

Since the working members of the mass media do most of the actual examination of public records for the citizens I should imagine that they will give both amendments strong attention and support.

I was particularly interested in the forceful definitions of public records contained in subsections (C) and (D) of S. 2148. During recent months I have been serving on a committee of the New Jersey Press Association that is charged with the responsibility of suggesting a State statute defining public records and the task has not been easy.

I appreciate your thoughtfulness in forwarding the material about the two amendments and I hope both obtain eventual approval of the Congress.

Sincerely yours,

FREDERIC E. MERWIN, *Director.*

P. S.—I am taking the liberty of enclosing a copy of Public Records in New Jersey which was published by the Press Research Service of the School of Journalism.

[Study No. 9, Press Research Service, Rutgers School of Journalism]

PUBLIC RECORDS IN NEW JERSEY—OLD AND NEW PROBLEMS AFFECTING ACCESS

(By James R. Young)

AN INTRODUCTORY STATEMENT

The question of the right or privilege of access to public records and proceedings is fundamental in the operation of the machinery of government. The citizen must know how well or how poorly the public housekeeping is being conducted if he is to properly exercise his constitutional rights as a member of a democratic society.

From Colonial days to the present, the press has served as the chief inspector of public records and proceedings in discharging its responsibility to provide the flow of intelligence necessary for the maintenance of an informed citizenry. Inspection is a task which the average citizen cannot undertake except in very special circumstances.

What the legislative and judicial branches, particularly on the State level, have said about public records and the right of access by the public goes to the very core of the problem of the reporting of public affairs. Negative actions and attitudes on the part of officers of government concerning access provide the motivation for the current freedom-of-information campaigns of various press groups.

While engaged in the compilation of a list of New Jersey laws affecting publication enacted since 1938, James R. Young (formerly assistant professor of journalism at Rutgers and now the holder of a comparable appointment at West Virginia) encountered the Destruction of Public Records Law passed by the State Assembly in 1953.

Examination of the law prompted Professor Young to widen the scope of his study and set forth the entire picture of the present status of public records in New Jersey from a standpoint of public access. This led to (1) a general analysis of the statutory and common law situation affecting public records, and (2) a detailed digest of 67 State statutes which contain varying provisions concerning right of access.

Professor Young divided 50 of the 67 statutes into two major categories: (1) Records which are both "public records" and "open to inspection," and (2) Records which are designated as "open to inspection" only. The remaining 17 laws received separate classifications because of their terminology. The listing is believed to be the first ever made of New Jersey public-records laws.

With the digest as a framework, Professor Young then undertook a searching examination of the singular position New Jersey occupies with respect to an overall statutory definition of public records. Both laws enacted thus far by the Assembly have been of "negative" import in that they have defined public records solely as a means of guiding affected public officials in the destruction of public records.

The first law, enacted in 1924 and known in recent years as Revised Statutes 47: 3-1, contained a definition of public records both limited and vague. This law was repealed by the 1953 "Destruction of Public Records Law" and Professor Young subjects the sections of this measure to exhaustive analysis and sharp criticism. He concludes by urging the press of the state to act now to obtain a better statutory definition of public records.

The conclusions are entirely those of Professor Young. There will be disagreement with certain of his criticisms and fears. It is hoped, however, that there will be wide acceptance of the belief that the study constitutes a long overdue examination of a basic problem in the reporting of news about New Jersey government.

A word of thanks is due the Rutgers University Research Council and the New Jersey Press Association which provided the financial assistance needed to permit preparation and publication of the study.

FREDERIC E. MERWIN,
Director, Rutgers School of Journalism.

Publishers and journalists in New Jersey, newly awakened to the problems affecting access to public records in this state, should become familiar with the provisions of a recent law which may alter these problems.

The "Destruction of Public Records Law of 1953," approved September 18, 1953, repeals the former definition of public records contained in Revised Statutes 47: 3-1, which frequently functioned as a judicial guide in access cases and was a convenient, if incomplete, reference source for newsmen seeking the answer to the question, "which records are open to inspection and which are not?" (The old law was passed in 1924.)

The 1953 law establishes a definition which is at once more inclusive and more restrictive—more inclusive in that it covers not only the customary written or printed records but more modern varieties as well; more restrictive in that it is limited in its applicability to the statute in which it is contained and, hence, will not likely be as serviceable to either the judiciary or to newsmen as was its predecessor.

Furthermore, the phraseology of the act is so indefinite, and the kind and degree of authority which it vests in both the Bureau of Archives and History and the State Records Committee, in the State Department of Education, are so ill charted, so sweeping and unqualified, that it might constitute a clear and present danger to the continued existence of an informed citizenry and free press.¹

The law has not had this effect as yet, but it contains the seed which might in due course germinate as the flower of news suppression. Whether or not this actually happens may well hinge on whether or not the measure can be interpreted as abolishing the present common law status with regard to the inspection of public records and setting up, in lieu thereof, a form of bureaucratic supervision and regulation over such records.

The least one might hope for is that the matter of interpretation will be presented to the courts; a settlement of the main issue, one way or the other, is unlikely until that is done.

The issue is such an important one for state journalists that, despite the risk of oversimplification, it may be well to express it in simple question form: Has the common law status with regard to the right to inspect public records been changed and, if so, how or to what extent? The question must be studied; it should receive prompt consideration.

A review of the "official" standing of public records in New Jersey may be helpful in focusing attention on potential danger spots in the 1953 act. This standing, however, is somewhat involved and requires a rather substantial amount of explanation.

For years representatives of the news media have hunted in disputed territory (records which have not yet been determined either to be or not to be "public records") for fair game (information essential to public enlightenment and public action).

That this situation is at least tolerable is indicated by the fact that there have been few cases in which newspapers, as such, have brought suit to compel the granting of access to particular records. In any event, the situation results from New Jersey's common-law status with regard to the right of inspection.

The common-law rulings governing public records and access to the same are supplemented by provisions contained in some 67 known statutes. (It is possible that a few others may exist which have not yet been isolated because they have eluded indexing in the annual volumes of enacted laws.) These statutes classify certain specific records and documents as "public records" and/or "records open to public inspection."

A fundamental point to be remembered is that, while a statute always takes precedence over a common-law ruling, the value of a statute for the purpose of clarifying particular rights may be negligible unless those rights and duties are spelled out in clear and unmistakable terms. When a law is cloudy on a matter such as the right of inspection, when there is even the slightest cause for questioning the intended meaning of the provision governing this right, the effect is virtually the same as if the statute were nonexistent. At least it is as far as journalists are concerned. For this issue must be carried to the courts for a solution, with all of the attendant expense and effort which the obtaining of a judicial interpretation ordinarily involves.

There is one clear but unimportant exception in which, although the right of inspection is not specified by a statutory provision, there can be little doubt that it does in fact exist. Grand jury lists and petit jury lists for each county, as approved, are defined as "public records" but are not designated by law as records open to inspection. Since, however, the law does require that one copy of each list, for the county concerned, be posted in a conspicuous place in the office of the county clerk (R. S. 2: 88-3), the effect is almost the same as if the right of inspection were embodied in the statute.

It would hardly be possible to prevent a reporter from examining these "conspicuously posted" lists. Nor is it likely that any public official would attempt to do so, even out of spite. A county clerk might refuse to cooperate to the extent of refusing to make available to reporters typed copies of the lists, forcing upon them the arduous task of copying names from the posted lists in long-

¹ Roger McDonogh, director, Division of State Library, maintains that all state officials charged with administering the 1953 Act are fully aware of their responsibility to both the general public and those groups, including the press, holding a special interest in public records. He is convinced that proper administration of the Act will allay many of the fears raised by Professor Young.

hand, but this is extremely unlikely. County clerks are elected officials; a universal requisite for those seeking reelection or election to a higher office is cooperation with the press. The inadequacy of the statute, in this case, does not present a problem.

In a second situation the right of inspection, not specifically guaranteed, apparently was intended to be. R. S. 18: 4-5 states that "the school records of the county for the use of the county and State departments of public instruction, the United States Bureau of Education and the United States Commissioner of Education, shall be kept in (the county superintendent of schools') office, which shall be kept open to the public as are other county offices." While there would seem to be little purpose in singling out the county superintendent's office as one which is "open to the public" unless the right of inspecting the school records kept there were also conferred upon the public, nevertheless, the language admittedly is subject to varying construction. Hence, the meaning and intention of the section must be determined by the courts.

And there is yet a third case in which the right of inspection apparently exists but is not specified. This one has to do with records of the location of real estate to be purchased or condemned by the county park commission for a public park or place, together with surveys and maps of such locations, in any county having a population of more than 200,000 inhabitants and in which the five commissioners are appointed by the judge of the Superior Court assigned as presiding judge in or over the courts of the county, if any such judge is so assigned, or by the judge of the Superior Court assigned to the Law Division of the court in the county. (R. S. 40: 37-102).

These records are not open to public inspection until the commission has taken proceedings to condemn the real estate or any right or interest therein, and hence, inferentially, are open to public inspection after such action has been taken. (R. S. 40: 37-102).

WHAT 67 STATE STATUTES REVEAL

The breakdown of the 67 state statutes is as follows: There are 14 which provide that the records mentioned therein are both public records and records open to inspection; 36 do not place the records concerned in the "public records" category but do affirm the right of inspection; 12 state that the records referred to are "public records" but they are silent about inspection; 2 can be inferentially construed as classifying the records mentioned as "public records" without, however, opening them to either the citizen or the taxpayer, and 2 (see R. S. 18: 4-5 and R. S. 40: 37-102, cited above) inferentially grant inspection without saying whether the records involved are "public" or not.

The remaining law has to do with newspapers filed in the offices of county clerks, which are not designated "public records" but are specified to be open to inspection by the inhabitants of the county in which the clerk officiates, during office hours. By law, the clerk of each county is required to subscribe to at least one, and not more than two, newspapers printed and published in the county in which he officiates. (R. S. 40: 38-20).

Not all of these statutes are of benefit to the newsman. The 50 laws in the first two categories definitely guarantee the right of access; 16 of the remaining 17 (R. S. 40: 38-20 is excluded on the ground that newspapers are not in reality or by legal stipulation "public records") might well be considered as nonexistent, for in any dispute arising over right of access to records named therein the issue could only be resolved by a common-law ruling.

A digest of the 50 "Guaranteed Access" statutes is presented below. In examining it there are three points that should be kept in mind:

1. Although all of the provisions cited are still valid and operative, the original "recordkeepers" or "recordmakers" in any instance have been succeeded or replaced by others. Therefore it behooves one to examine closely the parenthetical inserts. For example, in R. S. 2: 29-58 concerning certain court records, (a) the phrase "clerk of the Superior Court" must be substituted for "clerk of the Supreme Court"; and (b) "Chancery Division of the Superior Court or a judge of the Superior Court assigned to the Chancery Division" must be substituted for "Courts of Chancery."

2. The fact that there are 50 such statutory provisions does not mean that there are 50 different kinds of records which are open to inspection. There is some slight duplication in the statutes, and certainly there are many records, not presently designated by statute as "open to inspection," which should be.

3. Many of the records whose status is thus clarified by statute normally do not contain a great amount of newsworthy information. For example, the records opened by R. S. 21:3-6 (duplicate copies of applications and permits to hold public displays of fireworks), will seldom yield more than enough information for a two-sentence paragraph on page 28 of a five-section newspaper edition.

The conditions given above restrict somewhat the collective usefulness of existing statutes prescribing the right of inspection. Even so, some good provisions—good in the sense that the records named therein contain vital, important information—can be found along with the other kind.

The main purpose in listing these laws is an informative one, in line with the theory that an incomplete checklist may better serve the journalist than none at all. However, a secondary value may accrue, if such a listing assists leaders in the "news industry" in arriving at decisions as to whether the number of "Guaranteed Access" laws needs to be increased and, if so, which records need to be included under the protection such laws afford.

Here, then is the list of records (with statutory sources cited) which by law are open to inspection in New Jersey:

CLASS I—RECORDS TERMED BOTH "PUBLIC RECORDS" AND "RECORDS OPEN TO INSPECTION"

1. The book in which are recorded, by the clerk of the Superior Court, statements or abstracts of judgments on orders of the Probate Division of the County Court, certified by the county clerk or surrogate. (C. 2: 1b-30; see P. L. 1498, c. 365, s. 39).

2. The book, kept by the county clerk or register of deeds and mortgages, in which are recorded notices of *lis pendens* filed with the clerk or register. (R. S. 2: 26-33).

3. Dockets kept by each *clerk of a Circuit Court and Court of Common Pleas* ("county clerk of the county"), in which are entered all final judgments rendered in either of such courts for the payment of any debt, damages, costs or other sum of money and official statements concerning the judgments made; dockets, kept by the *clerk of the Supreme Court* ("clerk of the Superior Court"), containing the transcript of judgments transmitted to him by each *clerk of a Circuit Court and Court of Common Pleas* ("county clerk of the county"). (R. S. 2: 27-282).

4. The book in which are recorded, by the *clerk of the Supreme Court* ("clerk of the Superior Court"), abstracts or statements of decrees of *Courts of Chancery* ("Chancery Division of the Superior Court or a judge of the Superior Court assigned to the Chancery Division") which, when fulfilling certain legal requirements, may constitute liens upon or bind real estate. (R. S. 2: 20-58).

5. Dockets kept by the *clerk of each Court of Common Pleas* ("county clerk of each county"), and the *clerk of the Supreme Court* ("clerk of the Superior Court"), containing a record of judgments entered, and the indexes thereto. (R. S. 2: 32-192).

6. Dockets kept by the *clerk of each Court of Common Pleas* ("county clerk of each county"), containing statements of judgments entered in Small Cause Courts and notes of amounts due on such judgments, and the indexes thereto. (R. S. 2: 33-105). (Small Cause Courts, which were courts held by justices of the peace, were abolished by P. L. 1948, c. 264, s. 37. Section 28 of the same law vests in each Municipal Court, and the magistrate or magistrates thereof, all the functions, powers, duties, and jurisdiction in civil and criminal cases previously exercised by any justice of the peace.)²

7. Records filed in the office of a district board of adjustment, established by the State Soil Conservation Committee, consisting of a record of all the board's proceedings, of all documents filed with it, and of all orders entered. (R. S. 4: 24-31. The State Soil Conservation Committee and all of its functions, powers, and duties were transferred to the Division of Planning and Development of the Department of Conservation and Economic Development by P. L. 1948, c. 448, s. 17. The committee continues to have all of the powers and to exercise all of the functions and duties vested in or imposed upon it by law.)

8. Records of the State Civil Service Commission which by law must be kept for the State Classified Service, including specifically: (a) Records of rules and regulations adopted or amended, after public hearing, in accordance with

² Substitution of the parenthetical phrase for the italicized words immediately preceding in 3, 4, 5, and 6 above is authorized by P. L. 1948, c. 375.

the duties imposed upon the commission by law; (b) records of the classification of positions established by the commission in accordance with the duties imposed upon it by law; (c) records of standards established for testing qualifications and measuring service; (d) records of tests held and employment and reemployment lists established; (e) records of the certifications of eligible candidates to appointing authorities; (f) records of provisional and temporary appointments; (g) records of hearings and investigations of the commission; (h) records of all other official acts of the commission or the chief examiner and secretary. (R. S. 11: 6-3. Responsibility for the maintenance of these records is vested in the chief examiner and secretary of the commission by law.)

9. Records of all the proceedings of the Board of Commerce and Navigation, together with all maps, plans, and specifications on file in the board's office. (R. S. 12: 2-15. The functions, powers and duties, records and property of the Board of Commerce and Navigation were transferred to the Division of Navigation in the State Department of Conservation by P. L. 1945, c. 22, s. 29. The functions, powers and duties of the State Department of Conservation and of each of the divisions therein, in turn, were transferred to the Department of Conservation and Economic Development by P. L. 1498, c. 448, s. 6.)

10. Annual debt statements of counties and municipalities. (R. S. 40: 1-75, as amended by P. L. 1947, c. 110, ss. 7, 9. The law requires such annual statements, containing the debt condition of the county or municipality as of the last day of the next preceding fiscal year, with an estimate of the amount of any item which may be indefinite or unascertainable, to be prepared by the chief financial officer of each county and of each municipality and filed, in the case of a county, in the office of the clerk of the board of chosen freeholders, or in the case of a municipality, in the office of its clerk, and in the office of the director of the Division of Local Government in the State Department of Taxation and Finance. The Division of Local Government, with all its functions, powers and duties, was transferred from the State Department of Taxation and Finance to the Department of the Treasury by P. L. 1948, c. 92, s. 20.)

11. The record of the proceedings of the county park commission, together with its maps, plans, documents, and accounts, in all counties in which the five commissioners are appointed by the board of chosen freeholders. (R. S. 40: 37-76).

12. All the necessary books and stationery for the business of the office of register of deeds and mortgages. (R. S. 40: 39).

13. The list containing names and addresses of all licensed real estate brokers and salesmen, licenses suspended or revoked within one year of the date of publication of the list, and other information of public interest, published at least annually by the New Jersey Real Estate Commission. (R. S. 45: 15-22. The New Jersey Real Estate Commission, established by P. L. 1921, c. 141, p. 370, as amended, was made a division in the Department of Banking and Insurance by P. L. 1948, c. 88, s. 4. The orders, rules and regulations made by the commission before it was placed under the jurisdiction of the Department of Banking and Insurance continue with full force and effect.)

14. All findings, decisions and reasons therefor of the State Board of Tax Appeals, including the transcript of testimony, if any. (R. S. 54: 2-16, as amended by P. L. 1941, c. 143, s. 1. The State Board of Tax Appeal was transferred to and constituted the Division of Tax Appeals in the State Department of Taxation and Finance, together with all of its functions, powers and duties, was transferred to and constituted the Division of Tax Appeals in the Department of the Treasury by P. L. 1948, c. 92, s. 26.)

CLASS II—RECORDS DESIGNATED AS "OPEN TO INSPECTION" ONLY

1. The book in which are recorded abstracts of recognizances of bail, kept by the clerk of each court in which an action commenced by a capias ad respondendum is pending. (R. S. 2: 27-94).

2. All notices of intention, filed by each county clerk in a book entitled "Mechanic's Notice of Intention" to perform certain labor or furnish certain materials specified in such a notice. (R. S. 2: 60-114).

3. All stop notices filed in the book, provided by each county clerk, entitled "stop notices." (R. S. 2: 60-121).

4. The book in which are recorded the names of the persons entering into the recognizance, the amount thereof, and the date of its acknowledgment, by the clerk of every court before which any recognizance shall be entered into in

criminal cases; kept in the clerk's office of the county in which such court shall be held. (R. S. 2: 187-211).

5. All recommendations for applicants for office and causes of removal received and filed by the State Civil Service Commission, except recommendations for former employers. (R. S. 11: 1-7).

6. Books containing the record of all the acts, proceedings, surveys, and reports of each port warden. (R. S. 12: 10-2. The following applicable portions of P. L. 1948, c. 448, should be noted: Section 6. All of the functions, powers and duties of . . . the port wardens under and pursuant to the provisions of chapter 10 of Title 12 of the Revised Statutes are hereby transferred to and vested in the Department of Conservation and Economic Development established hereunder. Section 120. Whenever the term "port warden" occurs or any reference is made thereto under and pursuant to the provisions of chapter 10 of Title 12 of the Revised Statutes, the same shall be deemed to mean or refer to the Commissioner of Conservation and Economic Development, designated as the head of the Department of Conservation and Economic Development established hereunder.)

7. The maps, plans, documents, records, and accounts kept by the Board of Commissioners of High Point Park in its office. (R. S. 13: 5-4. The functions, powers and duties, records and property of the Board of Commissioners of High Point Park were transferred to the Division of Forestry, Geology, Parks, and Historic Sites in the State Department of Conservation by P. L. 1945, c. 22, s. 24. All of the functions, powers and duties of the State Department of Conservation and of each of the divisions therein were transferred to the Department of Conservation and Economic Development by P. L. 1948, c. 448, s. 6.)

8. The record of all of the proceedings of the Board of Trustees of the Teachers' Pension and Annuity Fund (retirement system). (R. S. 18: 13-25). The Board of Trustees of the Teachers' Pension and Annuity Fund, and all of its functions, powers, duties, records and property, were transferred to the Division of Budget and Accounting in the Department of the Treasury by P. L. 1948, c. 92, s. 14, and transferred again to the Division of Investment in the Department of the Treasury by P. L. 1950, c. 270, s. 2.)

9. The book containing records of approvals and revocations of authority to grant degrees, delegated by the State Board of Education to private educational institutions. (R. S. 18: 20-9. The statute requires the State Board of Education to keep this book at its office in Trenton.)

10. Duplicate copies, filed with the Bureau of Explosives in the Department of Labor, of both the applications for permits to hold public displays of fireworks and the permits for such displays actually granted by local governing bodies. (R. S. 21: 3-6. All of the functions, powers and duties of the Department of Labor and of its bureaus and divisions were transferred to the Department of Labor and Industry by P. L. 1948, c. 446, s. 6.)

11. The book containing the date of entry, date of discharge, the description, age, birthplace and other information concerning inmates committed, kept by the keeper of every county or municipal jail or other penal or reformatory institution which is supported by public moneys. (R. S. 30: 8-16).

12. The record of each case left with the secretary of the Workmen's Compensation Bureau by the official conducting the hearing. (R. S. 34: 15-59. All of the functions, powers and duties of the Workmen's Compensation Bureau of the Department of Labor, and those exercised or performed by it or any of its officers in the administration of the provisions of chapter fifteen of Title 34 of the Revised Statutes, and the acts amendatory and supplementary thereof, and all of the functions, powers and duties of the director and secretary of the bureau were assigned to and are now performed by the Division of Workmen's Compensation in the Department of Labor and Industry, by P. L. 1948, c. 446, s. 11.)

13. Accounts and records of the sinking fund commissions of municipalities, counties and school districts. (R. S. 40: 3-9, as amended by P. L. 1947, c. 117, ss. 2, 19.)

14. Maps, plans, documents, records and accounts of the county park commission in all counties in which the four commissioners are elected at large in the county. (R. S. 40: 37-32).

15. Maps, plans, documents, records and accounts of the county park commission in any county having a population of more than 200,000 inhabitants and in which the five commissioners are appointed by the *justice of the Supreme Court presiding in the courts of the county* ("judge of the Superior Court assigned as presiding judge is or over the courts of the county," if any such judge is so assigned; otherwise, "judge of the Superior Court assigned to the Law Division

of the court in the county.") (R. S. 40: 37-151. Substitution of parenthetical phrases for the italicized words immediately preceding, is authorized by P. L. 1948, c. 375, s. 1 (i). For exceptions to this section, in a certain circumstance, see R. S. 40: 37-102, previously cited.)

16. Maps, plans, documents, records and accounts of the county park commission in any county having a population of more than 175,000 and less than 200,000 inhabitants and in which the seven commissioners are appointed by the board of chosen freeholders. (R. S. 40: 37-200).

(EDITORIAL NOTE.—Oddly enough, in view of 14, 15, and 16 above, there are no statutory provisions stipulating that any record or records of the county park commission in any county governed by the provisions of R. S. 40: 37-175 to 40: 37-194, inclusive, and having a population in excess of 200,000 inhabitants, in which the five commissioners *may* be appointed by the board of chosen freeholders by resolution passed by the affirmative vote of the whole board, shall be open to public inspection.)

17. Minutes of the proceedings of the County Court or Courts, kept by the county clerk. (R. S. 40: 38-8).

18. Maps, plans, documents, records and accounts of a local industrial commission, consisting of seven members experienced in industry or commerce and being a body corporate, created by the governing body of any municipality in New Jersey. (R. S. 40: 55B-6).

19. Maps, plans, documents, records and accounts of the local industrial commission, consisting of five members each having had 10 years' experience in industry and commerce, and being a corporate body politic, created by the governing body of any city in New Jersey. (R. S. 40: 190-7, as amended by P. L. 1939, c. 236, s. 6).

(EDITORIAL NOTE.—New Jersey has two sets of statutes providing for the creation of local industrial commissions.)

20. Minutes of the meetings of board of commissioners, in all municipalities under the commission form of government, whether regular or special. (R. S. 40: 72-13).

21. Minutes of the meetings of the municipal council, in all municipalities under the municipal council and manager form of government, whether regular or special. (R. S. 40: 81-19).

22. The map of proposed measures to lay out, open, alter, widen, straighten, grade or vacate any public highway or any number of connecting public highways in any township divided into road districts, made for and filed in the office of the public road board. (R. S. 40: 153-14).

23. The record of all the proceedings of the Board of Trustees of the State Employees' Retirement System. (R. S. 43: 14-7, as amended by P. L. 1939, c. 144, P. L. 1942, c. 145, and P. L. 1950, c. 129. The Board of Trustees of the State Employees' Retirement System and all of its functions, powers, duties, records and property, were transferred to the Division of Investment in the Department of the Treasury by P. L. 1950, c. 270, s. 2.)

24. The book for recording the name, date of commitment, age, sex, color, description, physical and mental condition, education, habits, occupations, condition of ancestors and family relations, cause of dependence, birthplace and date of discharge, or death and place of burial, of every person coming into the care of an institution for the poor, and containing such other records as may be prescribed by the State Board of Health and the Bureau of Vital Statistics, kept by the supervisors or superintendent and person in charge of every institution for the poor. (R. S. 44: 1-71).

25. The record of all the proceedings of the New Jersey State Board of Public Accountants, kept by the secretary. (R. S. 45: 2-3. The New Jersey State Board of Public Accountants, and all of its functions, powers and duties, records and property were transferred to the Division of Professional Boards in the Department of Law and Public Safety by P. L. 1948, c. 439, s. 29.)

26. The record of all the proceedings of the New Jersey State Board of Architects, kept by the secretary. (R. S. 45: 3-3, as amended by P. L. 1939, c. 239, s. 1, and P. L. 1950, c. 249, s. 1. The New Jersey State Board of Architects, and all of its functions, powers and duties, records and property were transferred to the Division of Professional Boards in the Department of Law and Public Safety by P. L. 1948, c. 439, s. 29.)

27. The record of the proceedings of the State Department of Health relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration to practice barbering. (R. S. 45: 4-23. The State Board of Barber Examiners, and all of its functions, powers and duties, records and

property, were transferred to the Section of Examination, Licensing and Registration (name changed to the Bureau of Examination and Licensing, by P. L. 1951, c. 42) in the State Department of Health by P. L. 1948, c. 444, s. 4.)

28. All state minutes of the meetings of the State Board of Beauty Culture Control. (R. S. 45: 4A-3, as amended by P. L. 1946, c. 60, s. 2. The State Board of Beauty Culture Control, and all of its functions, powers and duties, records and property, were transferred to the Section of Examination, Licensing and Registration (name changed to the Bureau of Examination and Licensing, by P. L. 1951, c. 42) in the State Department of Health by P. L. 1948, c. 444, s. 4.)

29. The record of all the proceedings of the New Jersey State Board of Optometrists, kept by the secretary. (R. S. 45: 12-4. The New Jersey State Board of Optometrists, and all of its functions, powers and duties, records and property, were transferred to the Division of Professional Boards in the Department of Law and Public Safety by P. L. 1948, c. 439, s. 29.)

30. All records kept in the office of the New Jersey Real Estate Commission. (R. S. 45: 15-8. The New Jersey Real Estate Commission was continued and constituted the Division of the New Jersey Real Estate Commission in the Department of Banking and Insurance by P. L. 1948, c. 88, s. 4. The orders, rules and regulations made by the commission before it was placed under the jurisdiction of the Department of Banking and Insurance continue with full force and effect. See sections 9 and 10 of the 1948 act.)

31. Records of license to practice veterinary medicine, surgery and dentistry, issued by the State Board of Veterinary Medical Examiners. (R. S. 45: 16-5. The State Board of Veterinary Medical Examiners, and all of its functions, powers and duties, records and property, were transferred to the Division of Professional Boards in the Department of Law and Public Safety by P. L. 1948, c. 439, s. 29.)

32. The record of bonds of collection agencies, approved by, and filed with, the secretary of state, with the names, places of residence and places of business of the principals and sureties and the name of the officer before whom the bond was executed or acknowledged. (R. S. 45: 18-4).

33. Books kept by county clerks or other county recording officers, in which are recorded certain types of conveyances and instruments, including specifically any book constituting a record of: (a) Deeds, (b) ancient deeds, (c) releases (from liens or from the effect of any mortgage or judgment), (d) mortgages, (e) assignment of mortgages, (f) discharge of mortgages, (g) chattel mortgages, (h) conditional sales contracts, (i) conditional sales contracts affecting goods attached to realty, (j) deeds of trust or personality (i. e., deeds of personal property to literary, benevolent, religious and charitable institutions), (k) letters or powers of attorney (authorizing the execution and delivery of statements or satisfaction of conditional sales contracts, and including all revocations of such letters or powers of attorney), (l) other deeds and instruments (required by law to be recorded but not expressly directed by law to be recorded in some specifically named book). (R. S. 46: 19-1, as amended by P. L. 1945, c. 275, s. 2. The books enumerated are open to inspection by every person, at proper seasons, and anyone may obtain transcripts of the records mentioned by paying fees established by law.)

34. Records of the county board of taxation in counties having a population of more than 500,000 inhabitants. (R. S. 54: 3-30).

35. Cash books of collectors of general property taxes, containing the date and amount of each payment, a designation of the property on which the tax was paid, the total amount of the tax, and the discount allowed of the interest and penalty charged. (R. S. 54: 4-71).

36. The proper cash book and other records kept by the collector or collecting officer of the municipality to facilitate the correct keeping of records of installment payments for the redemption of a tax sale lien held by a municipality. (R. S. 54: 5-76).

Many additional records are "open"

Statutes are only a part of the "right of inspection" story—and a rather small part at that—in New Jersey.

It has been clearly established that the right of inspection does not extend to all public records, or even to all those which are not "closed" to inspection under specific statutes. Inspection of certain records, mostly those which must be kept secret in the interest of effective law enforcement, is prohibited by law. Inspection of certain others has been prohibited by the courts. But many more records are "open" than the above statutory citations indicate.

One undefined and unregulated category consists of records which are permitted to be inspected through the kindness, wisdom, or tolerance of the custodians thereof. There has been no great stampede for a reform in this matter, but the situation which it presents is certainly not a healthy one for either the press or the people's right to know, to borrow a phrase attributed to Kent Cooper of the Associated Press and employed by Harold L. Cross as the title of his monumental volume on access to public records.³

To explain this situation more precisely, a reporter does not ordinarily encounter interference on the part of the custodians of vital statistics. The keepers of records of births, deaths, and marriages often, though not always, have made these records available. However, there are several instances known to the writer in which officials in charge of birth records refused to permit inspection, or demanded unreasonable proof of "special interest," when the purpose was to ascertain the date of birth of a woman yet living.

What business a newspaper might have in checking up on the age of a society matron or the wife of a politician isn't readily apparent. Whether or not such activity constitutes the legitimate pursuit of "news" is an argument not pertinent to the present discussion. The pertinent point is that the records were arbitrarily withheld by persons having no specific authority to do so.

There is only one provision of law in New Jersey which authorizes, or requires, any custodian of vital statistics to withhold information, and it is applicable in a special circumstance only. The reservation is contained in R. S. 26: 8-40, which reads as follows:

"When a child born out of the bonds of matrimony has been legitimated by the marriage of its natural parents as prescribed by law and there shall be submitted to the state registrar or any local registrar proof of the marriage of the parents, the state registrar and any local registrar of vital statistics shall be authorized to accept from the father and mother of the child a correction or amendment to the original birth record giving the child the father's surname and adding to the record information concerning the father, now required by law upon birth certificates. *After the acceptance of such a correction or amendment, no information regarding the illegitimacy shall be disclosed.*"

There are additionally two sections of law which qualify somewhat extensively the privilege of inspecting records of vital statistics. The first stipulates the circumstances governing inspection, and the second levies a fee in situations where the files and records must be searched. The substance of each follows:

"The State Department (of Health) shall have charge of the registration of births, deaths, and marriages and shall procure the faithful registration of the same in each registration district and in the Bureau of Vital Statistics. The department may promulgate any rule or regulation which it deems necessary for the uniform and thorough enforcement of this section."

"The department may decline permission to examine any record except in the presence of an officer or employee of the department. (P. L. 1941, c. 251, s. 1, amending R. S. 26: 8-23).

"For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents, but not less than ten cents for each year search, said fee to be paid by the applicant." (R. S. 26: 8-64).

But there have been more serious disputes in connection with the "Access by Permission" records than those just described, such as the much publicized incident arising when the Metuchen Board of Health refused to make available names of polio victims in that borough in 1953. Without going into all of the pros and cons of that case, it may be said that actually there was some legal justification for the local board's position, although unquestionably it represented a socially retarded viewpoint. When a dispute of this nature arises, recourse usually must be made to common law.

There may still be a few newspaper people who regard common law as a mystery enshrouded by an enigma. It has its uncertainties, but it is not mysterious. A Prof. C. Willard Heckel of the Rutgers University Law School explains it, "The development of the common law is similar to the creation of a stalactite or a stalagmite. There is the same kind of process in common law, the slow dripping of decision on decision on decision. Much of the law of this state and of any state is not made in the legislative halls * * * but is built up by the day to day decisions of the courts."⁴

³ The People's Right to Know : Legal Access to Public Records and Proceedings, Columbia University Press, New York, 1953.

⁴ C. Willard Heckel, Analysis of New Jersey Laws Relating to Access to Information. Talk presented at Freedom of Information Seminar, jointly conducted by Rutgers University and the New Jersey Press Association at New Brunswick, November 13, 1953.

When a dispute over the right to inspect public records is carried to the courts, the common law machinery operates as effectively as it does in solving other types of legal riddles. Whether the case is tried before one or several judges, the arguments and the decision are based upon precedents established in comparable circumstances, if there are any, perhaps going back beyond colonial times to the courts of the 18th or 17th century in England. More often than not, the content of the particular records involved, the purpose for which they are kept, and past custom with regard to inspection, are taken into consideration when the decision is being weighed.

The "Access by Permission" records were sired by the common law status, in New Jersey, governing access to public records. And, while the former have not elicited noticeable displeasure on the part of the Fourth Estate, dissatisfaction over the latter has long been latent and is being voiced with increasing frequency.

This blaze of discontent, fanned by current concern over infringements upon freedom of information, may grow. In all likelihood, attempts to dismiss or ignore it will stimulate its growth.

Therefore (assuming for the moment that common law still governs the right of inspection), a slight digression may be in order. Certainly it is desirable that the undercurrent of objections, the frequently heard complaints about the supremacy of common law, be recognized. How valid are they? Are they superficial arguments? Should they be viewed with skepticism? Or are they logical and accurate summations meriting serious study?

Common law rule raises problems

Every journalist may decide for himself, but a majority viewpoint must eventually emerge while there is still time for collective action to head off dangerous results. These are the chief disadvantages raised to the rule of common law over inspection rights in recent times:

1. It vests extraordinary power in local and state officials. In effect, these "servants of the people" make the decisions as to whether some or all of "their" records may be inspected by reporters. The judiciary constitutes the only check on such arbitrary actions and, on occasion, state judges have countermaned secrecy orders. Indeed, some jurists seem to possess a very keen recognition of the importance of freedom of information.

On the other hand, some court decisions have been unfavorable to the press claim of freedom of access to public records. The courts have shown a tendency to follow the arguments of officials responsible for the records in question. Some judges have expressed the philosophy that the rights of the individual must inevitably transcend other rights. Other jurists have apparently viewed with alarm the purposes and objectives of the news media in general and the newspapers in particular.

2. The common law rule in New Jersey necessitates proof of "special interest"—a term haphazardly defined at best and subject to differing interpretations by the courts and by the state and local officials. The courts are always concerned with the motive of the person who is seeking access to records. Hence, they have assumed unto themselves the power to prohibit inspection by any citizen whose motive, they feel, is simply idle curiosity.

(Note: When public record are involved, it seems dangerous and prejudicial to democratic procedures to permit the courts to retain the power to determine who has good faith and who has not. Public records are so-called because they have to do with the public's business. They should be open to inspection by anyone, regardless of motive.)

Proof of "special interest" is an almost impossible thing to show in New Jersey because of the odd, if not fantastic, twist given the term in the state courts. In its decision in *Ferry v. Williams* (41 N. J. L. 332), the court rules that "the only one who can compel access to public records is a person who needs the records to bring litigation." Thus proof of "special interest" is construed to mean proof of "intention to maintain or defend an action at law."

The precedent established in this ruling has been upheld in other court decisions. For example, an application by a taxpayer and citizen to examine public records in West New York in order to obtain a detailed account of income received from license fees, police court fines, and other similar sources was refused by the court. (*Ex parte Arnold*, 160 A. 93.) The court said that the applicant had failed to show "such interest in a specific controversy as will enable him to maintain or defend an action for which the public documents will furnish competent evidence or necessary information."

Thus, the right of access is intertwined with the right of litigation. In order to bring suit to compel access to certain records, a person must show that he is in a position to litigate, and intends to do so, on the basis of the information contained in the records. While it is true that "litigation" may mean "public litigation" as well as "private litigation," this does not change the situation appreciably as far as newspaper publishers are concerned. It means that a newspaper may bring such a suit as a representative of a common or public right. But in order to gain access to the records, the newspaper, or its officers, must convince the court that it intends to use the information therein in bringing or defending a law suit.

3. The common law rule can burden a newspaper, magazine, or broadcasting station with unnecessary, and sometimes fruitless, expense. In a dispute over inspection, the media owners have two courses of action available to them (if they decide to push the matter): (a) They may insist upon their rights, hoping through their personal power and prestige to coerce the responsible official concerned to permit access, or (b) they may carry the case to court, praying for relief in the form of a writ of mandamus. Such court cases are nearly always costly and do not always resolve the issue in the public interest.

4. The common law rule may and often does create confusion. Journalists on occasion find it impossible to obtain an accurate listing of those records they have a legal right to inspect and those records which they are not legally entitled to inspect. Such confusion constitutes an impediment to complete and accurate news coverage.

Statutory definition of public records

The feeling that common law leaves much to be desired, where access to records is concerned, is a natural one. At the very least, it is frustrating not to have a definite dividing line between records which may be inspected and records which may not be inspected. But this disadvantage may be more apparent than real. There have been gains under common law—in fact for some 178 years it has worked out rather favorably from the viewpoint of the state press.

Those who are critical of common law as a means for solving access disputes would do well to consider whether a change would really be an improvement. A change can be for the worse as well as for the better. A change which transferred the power to grant access to public records from judicial authorities to appointive officials in the executive branch of the government who are not directly subject to the pressure of public opinion, could well be a change for the worse. There is some possibility that P. L. 1953, c. 410, already has done just that.

Journalists in New Jersey need to understand the significance of a statutory definition of "public records." Unless one is aware of this significance, a comparison of the old and new definitions can serve no useful purpose. Consequently, an aside or two may be warranted at this point.

A statutory definition of public records has a value only in the realm where common law operates. As stated earlier, a statutory provision defining certain records as "public records" is of little benefit to the newsmen unless the provision also specifies that the records are open to public inspection.

Consider, for example, the tax lists kept in the offices of the county boards of taxation. These lists are the corrected, revised, and completed duplicates of assessments upon real and personal property, certified by the county board to be a true record of the taxes assessed. They are legally designated "public records" but are not specified to be open to public inspection. (R. S. 54:4-55.) Thus, the law places them in the "public records" category but not in the "Guaranteed Access" category.

Whether or not any citizen has a right to inspect these records is a question which only a common law ruling can settle. However, a statutory definition of "public records" is often very helpful in a common law situation.

The definition enables a judge to determine whether the records requested to be "opened" pass the basic test; whether they meet the qualifications set forth in the definition and, hence, belong in the "public" (as opposed to the "nonpublic") category. The definition also gives the judge an opportunity to consider the very important point of legislative intent.

The example of the tax lists may throw light on the common law situation. They are by law "public records." But suppose that they were not so classified. The statutory definition would then be consulted to decide whether the tax lists fall in the "public" or "nonpublic" category. The tax lists obviously come

within the current (1953) definition, as they are papers or documents "or any copy thereof which has been made or is required by law to be received for filing, indexing, or reproducing by any officer, commission, agency or authority of the state or of any political subdivision thereof."

There is no definite assurance that, once the point is settled in the affirmative (once it is established that a particular record is in fact a public record), the record will be opened to inspection. On the other hand, the evidence that a particular record qualifies as a "public record" often is effective in persuading judges to open that record to inspection. Therein lies the real significance of a statutory definition.

Again the tax lists serve as a handy illustration. It is quite conceivable that the argument that these records are legally and unquestionably "public records," records containing information in which the public has an interest, would bear greater weight with a judge than would, say, precedents in which tax records were closed because a "special interest" could not be shown or because the information was not sought for the purpose of maintaining or defending a legal action.

This is merely speculation, based upon what would appear to be logical reasoning. But it is indicative of the kind of legal reasoning which ought to prevail but has not as yet been manifested in court opinions.

Prior to the passage of the "Destruction of Public Records Law (1953)," the authoritative definition of "public records," in fact the only definition contained in New Jersey Statutes, was that provided in R. S. 47: 3-1. For journalists, the chief limitation of the definition, as already mentioned, was that it did not include a statement to the effect that "all records falling in the above classification shall be open to public inspection during regular office hours, except when required for use by the custodians thereof in fulfilling duties imposed upon them by law."

There were other limitations, however, as an examination of the third paragraph of the statute (R. S. 47: 3-1) will show:

"In construing the provisions of this section and other laws appertaining thereto the words 'public record' shall, unless a contrary intention clearly appears, mean any written or printed book, document or paper, map or plan, which is the property of the state or of any county or municipality or part thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the state or of a county or municipality has received or is required to receive for filing or recording."

A careful reading of the passage will reveal two additional limitations, which are:

1. The fact that it covered only written or printed records. With the passage of time, and with the increasing tendency to preserve records on film, this problem might eventually have required a new interpretation by the courts had the statute not been repealed.

2. The fact that it covered only those records of the state, county, municipality, "or part thereof" which were by law required to be kept. Thus eliminated are certain reports, surveys and recommendations of special committees, commissions, and so on.

But despite its limitations, the definition frequently served as a judicial guide in cases wherein classification of records and access to records were issues. It applied to "this section and other laws appertaining thereto" and hence became a criterion in the formulation of common law rulings.

THE 1953 DEFINITION OF PUBLIC RECORDS APPROVED BY THE NEW JERSEY ASSEMBLY

With the repeal of R. S. 47:3-1 (by P. L. 1953, c. 410, s. 17), the degree of legal recognition accorded to public records has become vastly more clouded than it was before.

The definition of public records given in section 2 of the 1953 repealing act is as follows:

"As used in this act, except where the context indicates otherwise, the words 'public records' mean any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, sound-recording or similar device, or any copy thereof which has been made or is required by law to be received for filing, indexing, or reproduction by any officer, commission, agency or authority of the state or any political subdivision thereof, including subordinate boards thereof, or that has been received by any such officer, commission, agency or authority of the state or any political subdivision thereof, including subordinate boards-

thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained therein."

Superficially, the definition appears to have merit, but through the sin of omission it may strike a powerful blow against freedom of information in New Jersey.

To deal with first things first, the new definition surmounts the two minor limitations of the old one: It includes as "public records" those kept by methods unknown when the earlier law was enacted—as the words "photograph," "microfilm," and "sound recording or similar device" clearly indicate. Furthermore, it is not limited to records required by law to be kept; it covers records "made or required by law to be received for filing, indexing, or reproducing by any officer," etc., or records "received by any such officer . . . in connection with the transaction of public business . . .".

There the advantages end. The repealing act does contain a new and more inclusive definition, but the definition is applicable only "as used in this act, except where the context indicates otherwise." The important phrase, "and other laws appertaining thereto" unfortunately has been omitted.

How will this affect common-law situations in which the right of inspection is at issue? Does it mean that judges no longer have a criterion, that they are no longer to be bound by a legal definition in deciding whether a record is "public" or "nonpublic"? And most important of all, does it by implication give to the judiciary the power to render subjective judgments in access disputes, judgments in no way directed or restricted by statutory stipulations?

If the new definition can be construed as doing these things, then its potential danger is unlimited. The rapport between Press and Bar does not appear to be the happiest imaginable. The tendency of some higher court judges to regard newspapers and newsmen as an evil, and as not an especially necessary one that, has in a few instances been harmful to the free flow of information. Once the possibilities of the now-governing definition are explored, it appears likely that future decisions will "close" a number of records now thought to be, but not declared to be, "open".

The 1953 act can be expected to have a profound effect on future cases involving the right to inspect public records. Certain phrases employed in sections 4, 5, 6, 7, and 12 are vague and ominous. Whether or not they constitute real threats to press freedom will depend upon the construction given them by the courts. But since there is an even chance that they do contain such threats, it would probably profit news media executives to anticipate an unfavorable turn of events, that is a narrow or reactionary court interpretation, and take steps to head it off. An examination of the wording of these sections may, therefore, have some merit.

Section 4 reads as follows:

"The bureau (where used in this act, 'bureau' refers to the Bureau of Archives and History in the Department of Education) may from time to time establish specific classifications and categories for various types of the said 'public records' and, in giving its consent as provided herein, may do so in a general and continuing manner according to the said classification and categories."

The Bureau of Archives and History, thus is given the power to "establish specific classifications and categories for various types of the said 'public records'." Just how much power has the bureau been given? Has the power to decide which records as "public" and which are "nonpublic" been transferred from the judiciary to the bureau? If so, common-law status loses all strength; it is in effect abolished. As to the result we can only hazard a guess, but it might be expected that an agency of the executive branch of government would be more arbitrary in its rulings than the courts have been.

And what about the phrase, "in giving its (the bureau's) consent"? Consent to what? Does the phrase mean (1) "consent to inspect public records," or is it limited to (2) "consent (on the part of the custodians) to destroy, sell or otherwise dispose of any public record, archives or printed public documents" (the language used in section 3) upon approval by the bureau? The latter is probably the meaning intended by the legislature, but "consent" could be given the former meaning as well—in which case the press might find itself at the mercy of bureaucratic whims and could be as effectively throttled as it would be if operating under a licensing system. The qualifier, "as provided herein," does not limit the meaning of "consent" substantially, because the language of other sections is just as ambiguous as is the language of section 4.

Section 5 reads as follows:

"The bureau, in cooperation with the several state departments, commissions and agencies, shall make a study of the kind and character of public records in their control or custody and shall prepare proposed schedules for submission to the State Records Committee established by section six hereof for its approval and advise the said several departments, commissions and agencies of all applicable operative schedules."

Here is further evidence that the power or control over state records, vested in the bureau, is more unlimited than may have been intended. The power to determine "the kind and character of public records in their control or custody" implies that the custodians, that is the state departments, commissions and agencies, have the power of determining which of "their" records shall be classified as "public" and which shall be classified as "nonpublic." While the definition given in section 2 would govern such decisions to a certain extent, the departments, commissions and agencies are not compelled by law to base their decisions solely on the definition. Construed thusly, section 5 well might cause journalists to feel concern.

But it is the word "schedule," a word not defined in the act and a word virtually defying interpretation, which may emerge as the biggest bone of contention in this section. The "proposed schedules" to be prepared "for submission to the States Records Committee" might consist of general lists of records classified as "public" or "nonpublic"—a situation bad enough in itself. Do the italicized words bestow upon the State Records Committee any power to decide which public records shall be kept by which state departments, commissions and agencies?

Phrase defies comprehension

The phrase "all applicable operative schedules" is another bit of legal jargon that defies comprehension, and even the meaning of "state" in "state departments, commissions and agencies" is overcast. Is the reference to only those departments, commissions and agencies operating as components of the executive branch of the state government, or does it mean all departments, commissions and agencies within the state (thus including those created by counties, municipalities and combinations or parts of the same) ?

The first paragraph of section 6 reads as follows:

"No such schedule shall be operative unless approved by the State Records Committee which is hereby established in the State Department of Education and which shall consist of the State Treasurer, the Attorney-General, the State Auditor, the Director of the Division of Local Government in the Department of the Treasury, and the head of the Bureau of Archives and History in the Department of Education. Each member of the committee may designate in writing a representative to act in his place on said committee."

Again the troublesome word "schedule" appears. One might conclude that the State Records Committee was established as a sort of super-judicial authority with power to make the final decisions on the classification of records as "public" or "non-public," on which records must be kept by which officials, and as to which of the records kept shall be open to inspection and when—an impressive bundle of powers indeed. If they have in fact been vested in the committee, then it now outranks all courts of appeal.

The fact that committee members are permitted to designate representatives to serve in their place would seem to facilitate buck-passing. It would seem to mitigate the committee's responsibility for its actions and enable it to defer decisive action in access disputes indefinitely.

The second paragraph of section 6 reads as follows:

"The State Records Committee shall have the powers and duties prescribed for it herein and shall make and promulgate such regulations, not inconsistent with law, as may be necessary to adequately effectuate such powers and duties."

While certain of these "powers and duties" are described in specific terms, others are only vaguely suggested. Consequently, there is cause for grave concern about the power to make "such regulations . . . as may be necessary to adequately effectuate such powers and duties." Where is the line of demarcation? How is it to be determined whether such "regulations" are "necessary" and whether they "adequately effectuate" or actually appropriate more "powers and duties"? The qualifying phrase "not inconsistent with law" affords some

protection, but only if "law" includes common law rulings as well as statutory law.

Section 7 reads as follows:

"Whenever any such schedule is approved by the committee, a copy thereof shall be filed with the state department, commission or agency involved and with the State Auditor, and the original approval shall be retained by the Bureau of Archives and History in the Department of Education. Thereupon, such schedule shall remain in force and effect and may be acted upon by the said department, commission or agency until superseded by a subsequent duly approved schedule."

In view of the constructions suggested above, this section appears to strengthen the possibility that the Bureau of Archives and History, and the State Records Committee have been given a rather sweeping jurisdiction over public records. If any control whatever has been vested in these agencies, then apparently their word is the final one: "Such schedule shall remain in force and effect . . . until superseded by a subsequent duly approved schedule." One might take these phrases to mean that, if the State Records Committee can draw up lists of public records which shall be kept by departments, agencies and commissions, and if it can say which of those records may be inspected and by whom and when, then the lists devised are effective until changed by the committee and they can be changed only by the committee.

The first paragraph of section 12 reads as follows:

"The Bureau of Archives and History in the Department of Education, with the approval of the State Records Committee established by section six hereof, shall formulate standards and procedures for the photographing, microphotographing and microfilming of public records and for the preservation, examination and use of such records, including the indexing and arrangement thereof, for convenient reference purposes."

Herein lies a greater challenge to common law status governing the right of inspection than is contained in any of the foregoing sections: "The Bureau of Archives and History . . . shall formulate standards and procedures . . . for the . . . examination and use of such records . . . for convenient reference purposes." Examination and use of such records by the custodians and their agents, by the public (including representatives of the news media), or by both? The act does not say.

Nor does it say for whose "convenient reference purposes." It seems quite logical, therefore, to interpret this paragraph as meaning that the bureau is empowered to set the standards governing the inspection of any public record by any person for any reason whatever, and to specify what shall be convenient times, places and circumstances.

Since so much of the day's news either comes from or is inspired by the information contained in public records, a governor with a strong penchant for personal power might find that all he would need to do to render the press servile would be to staff the bureau with persons dedicated to his advancement.

The second paragraph of section 12 is not nearly so controversial, but it does contain a few pertinent phrases:

"Whenever any officer, commission, agency or authority of the state or of any political subdivision thereof, shall have photographed or microfilmed all or any part of the public records, kept or required by law to be received and indexed in such manner as to conform with the standards and procedures, and such photographs, microphotographs or microfilms have been placed in conveniently accessible files and provision shall have been made for the preservation, examination and use of the same in conformity with the said standards and procedures, the original records from which the photographs, microphotographs or microfilms have been made, or any part thereof, may be destroyed or the records therein otherwise effectively obliterated; provided, the said bureau shall first have given its written consent to such destruction or other disposition."

This in effect says that records which are photographed, microphotographed or microfilmed are to be placed in conveniently accessible files and that provision is to be made for their examination and use. The only difficulty is in deciding when and for whom the files are to be "conveniently accessible." Again, the bureau is authorized to establish standards and procedures for the examination and use of certain public records, and again it is not clear for whose examination and use such standards and procedures are to be established.

That P. L. 1953, c. 410, has some serious shortcomings should be obvious to all who study the measure. But it should be equally clear that no department head

or employee of any department, commission or agency in the executive branch of the state government is responsible for these shortcomings. The press has no quarrel with the State Department of Education, its Bureau of Archives and History, or the State Records Committee.

The deficiencies of the 1953 act, as respect both the statutory definition and the supplementary provisions cited, may be summed up as follows:

1. Inasmuch as the purpose in establishing a definition of "public records" was not to make it clear what governmental information the public is entitled to have, no cognizance of this right is included.

Paradoxically, the measure is at once unduly restrictive, obscure, and careless in specifying the kind and degree of authority vested in or delegated to the Bureau of Archives and History in the Department of Education.

While giving broad powers to the State Records Committee, it does not place responsibility upon the committee for the exercise of such powers; nor does it provide that recourse from the decisions of the committee may be had under equity or common law.

2. The definition does not guarantee the right of inspection, either to any citizen or to any qualified newsman. In fact it says nothing at all about the right of access to public records and documents.

3. The law is so steeped in legal gobbledegook that few can fathom its meaning sufficiently to determine whether there have been important omissions—i. e., records not included that should be.

These are serious faults. They should not go unchallenged. The deficiencies of the act can and should be corrected through legislation.

What legal procedure might afford the best remedy? Although there appears to be sufficient ground for challenging the validity of the 1953 law, this in itself might not produce desirable results, even if efforts to have the entire act invalidated were successful. The confusion resulting from the absence of *any* definition to consult in access matters would, likely, outweigh the present confusion.

It would seem that a more fruitful expenditure of effort would be work directed at the passage of an *amendment* to section 2 of the act. There will, of course, be varying viewpoints on the form that such an amendment should take, as is always the case when reasonable men with worthy motives attempt to resolve the conflicting interests of society, the law, and public officials with their own predominantly unselfish interests.

Therefore, it is improbable that there will be unanimous agreement with the proposals, presented below, for amending section 2. The proposals most worthy of consideration are those which would (1) substitute a more simple and more inclusive definition of "public records" for the existing one, and (2) provide that all records so classified henceforth would be open to inspection.

These proposed changes would remedy the deficiencies of P. L. 1953, c. 410. They should be taken under advisement, debated, improved, and, finally, accepted or rejected by state journalists.

1. The amendment should take recognition of the fact that there can be no greater protection of the public interest and welfare than a State statute specifying that the records kept or received by all administrative, legislative and judicial officers of the State shall be open to public inspection.

2. The amendment should enumerate the few records whose confidential status is to be preserved at all times because of the unique nature of the information they contain. For example, certain police reports required for the apprehension of criminals or suspected criminals, juvenile court records, and documents admitted as evidence in divorce trials which are of such a nature as to impair public morals.

3. The amendment should define as "public records" all other records kept or received, whether kept or received on a voluntary basis or because required by law, by all other legislative, administrative and judicial officers and by official and temporary agents, of either the State or any legally constituted authority within the State.

4. The amendment should specify that certain records may be withheld from inspection for limited periods of time to enable their custodians to perform duties required by law.

5. The amendment should specify that henceforth "nonconfidential" public records are to be open to inspection by any citizen for whatever purpose he may have in making such inspection and without the necessity of any proof of "special interest" on his part, during regular office hours.

NEW MEXICO PRESS ASSOCIATION,
Carlsbad, N. Mex., November 27, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I feel strongly that the people of the United States are very much in accord with the provisions and purposes of S. 921 and S. 2148, bills concerning freedom of information which are now pending before the Senate Constitutional Rights Committee.

It is my belief that such legislation should be enacted to give the Congress and the public ready access to public records that should be open to the public.

Sincerely yours,

JACK SITTON, *Executive Secretary.*

NEW YORK HERALD TRIBUNE,
New York, July 12, 1957.

Hon. THOMAS C. HENNINGS,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Mr. Reid has asked me to consider and answer your letter of June 12, concerning the two bills on freedom of information which you have introduced.

It is our opinion that these bills would promote a better understanding of the operations of government by the public and would facilitate the task of the press in this respect. We therefore hope that they will be adopted.

Thank you for your courtesy in addressing us, as well as your public spirit in pressing for a sound public information policy in the executive and regulatory agencies of government.

Sincerely,

HARRY E. BAEHR,
Chief Editorial Writer.

NEW YORK HERALD TRIBUNE,
New York, December 9, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*United States Senate, Committee on the Judiciary, Subcommittee on
Constitutional Rights, Washington, D. C.*

DEAR SENATOR HENNINGS: Many thanks for sending me your bill, S. 2148.

Certainly, freedom of the press should be jealously guarded. However, the military have a tremendous problem and I think that the recent tests in Florida highlight this completely. Military security and propaganda are now dictating certain requirements which necessarily conflict with freedom of the press and the right to know.

Basically the problem is one of editorial responsibility. Even with the most stringent laws there will be newspapers wishing to capitalize upon the news for the purposes of sensationalism rather than of public education.

I do not think that we ever will find the complete answer on this problem in the form of legislation.

Sincerely yours,

SYLVAN M. BARNET, Jr., *Syndicate Director.*

HARPER'S MAGAZINE,
New York, N. Y., July 19, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*Senate Office Building,
Washington, D. C.*

DEAR SENATOR HENNINGS: We appreciate your taking the trouble to consult us about the matter you mentioned in your letter of July 16.

I feel that the kind of legislation you are introducing (S. 2148 and S. 921) is urgently needed, and is in fact long overdue. Over the last 20 years, as a Washington correspondent for the Associated Press, magazine writer, and magazine editor, I have watched a steady and alarming contraction of the channels of information between the Government and the public. This process has gone on

regardless of the party in power, and was, of course, given a considerable impetus by World War II and the subsequent cold war. The impulse of a government official to withhold information which might be embarrassing to him or his agency is perfectly understandable, and is never likely to be checked unless Congress decides to take the kind of action you propose. Unless this trend is reversed, the dangers to democratic government, which you pointed out so effectively in your statement, are beyond dispute.

Sincerely,

JOHN FISCHER.

THE AMERICAN LEGION MAGAZINE,
New York, N. Y., July 22, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for calling on us for comments concerning your bill S. 2148. Our operation is such that we have never run up against a problem of clearing material or getting it approved by Government agencies. For that reason I don't think it would be in order for us to offer any criticism concerning the way things are done.

Sincerely yours,

JOSEPH C. KEELEY.

BUFFALO COURIER EXPRESS,
July 12, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: This is in response to your recent communication with reference to S. 2148.

I am enclosing a clipping of an editorial we published in connection with the bill.

My appreciation to you for your interest in this matter of a freer flow of information to the public. We newspapers try diligently to keep the public informed, but we surely need the assistance of men such as yourself in keeping sources of vital information available.

Sincerely,

CY KING.

P. S.—I am asking our Washington bureau chief, Lucian Warren, to make sure Senators Ives and Lehman of New York know of our attitude toward your bill.

[From the Buffalo Courier Express, July 7, 1957]

LETTING AMERICANS KNOW WHAT GOVERNMENT IS DOING

The Senate Subcommittee on Constitutional Rights has been investigating what it terms a misinterpretation of laws and regulations by departments and agencies of the Government which deny to the public and Congress information to which they are entitled.

Sen. Thomas C. Hennings Jr., chairman of this subcommittee, has noted that in recent years there has been an increasing tendency in this country toward secrecy in the conduct of Government affairs. So pronounced has this trend become that the subcommittee has been making a detailed study of the extent to which restrictions on freedom of information may be infringing the constitutional rights of the people. It plans to continue this study during the coming year.

Since departments and agencies which have been asked to show authority for the withholding of such information frequently have cited two sections of the United States Code, Senator Hennings has introduced in the Senate two amendments to these sections, which he says were not intended to authorize many of the limitations on the availability of information for which they have been cited.

The effect of these amendments, he said, should be to force Federal officials to seek proper statutory warrant or Presidential directives of indisputable constitutionality for their decisions to keep information from the public.

One of these original sections gives agency officials wide latitude in interpreting or applying them because some of its terms and phrases are vague and

undefined. These include any function requiring secrecy in the public interest, any matter relating solely to the internal management of an agency, anything to be held confidential for good cause and matters of official record.

The Hennings bills would liberalize this procedure by forcing all agencies to file promptly for publication in the Federal Register and the Code of Federal Regulations rules relating to the availability of information to the public and requiring them to file promptly its orders and opinions, in accordance with published rules, or make them available to the public, stating how and where they may be obtained, copied or examined. The clincher is this: "No order or opinion shall be valid or effective until it has been published or made available for public inspection."

Exceptions include subject matter specifically exempt from disclosure by statute, required to be kept secret in the protection of the national security, or of such a nature that disclosure would be a clearly unwarranted invasion of personal privacy.

These exceptions reverse the customary trend on the part of Government agencies. Thus the Hennings bills make clear what may and what may not be published in the future. Passage of the bills would be a boon to the public and to Congress, and would give back to Americans their constitutional rights of access to Government information.

BUFFALO EVENING NEWS,
June 22, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR HENNINGS: Thank you very much for your thoughtfulness in sending us a copy of S. 2148 concerning freedom of information. We are glad to have this to study and consider in connection with the various angles of this problem.

Thank you a great deal for your helpful interest. If we develop any thoughts which we think will be of assistance to you, we shall be glad to write further.

Sincerely yours,

A. H. KIRCHHOFER.

REDBOOK MAGAZINE,
New York, N. Y., July 26, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: Thank you for sending the material on your bill on freedom of information and your request for comments.

Redbook has, for a number of years, been conducting an editorial campaign urging freedom of information in all areas, particularly in government. I'm enclosing a copy of an article that we published in July 1954 which pretty well details our attitude on what kind of government information should be made available to the public.

Sincerely,

ROBERT STEIN, *Managing Editor.*

[From the Redbook magazine, July 1954]

REDBOOK REPORTS ON CENSORSHIP

Beware of government by secrecy. In a continuing crusade against the closed door, Redbook finds that many officials are still shutting you out.

(By Allan Keller)

The people of Waukesha, Wis., always thought their local government was a small—but real—unit of democracy. Then the city council began holding its meetings in secret. A newspaper reporter faced one of the aldermen one night at the end of a session from which the public had been barred.

"Why do you meet behind closed doors when you are dealing with the public's business?" the reporter asked.

The alderman didn't mind answering at all.

"If you quoted what we said," he replied, "it would make us sound like damned fools."

The truth of the matter is that too many government boards and agencies are running our affairs, handling our money, even shaping our futures, with this same arrogant disregard for our rights as citizens.

In another town, a young couple whose son had just attended school for the first time discussed the boy's reactions.

"What did Johnny think of it?" the father asked.

His wife said the boy had come home full of enthusiasm and excitement.

"You know, Jane, with a son in school now, we ought to take an active part in educational affairs," said the young man. "I see there's talk of a new school. Guess I'll go to the next meeting of the board of education."

The next Monday evening, he attended the regular session of the local board. He listened to the schedule of future meetings, heard discussion of items on the agenda, and returned home convinced that such meetings were extraordinarily boring.

"Nothing much happened of any importance," he told his wife.

The next morning he read in the newspaper that the board of education had recommended the construction of a \$480,000 school building.

"How can that be true?" he asked in amazement. "I didn't hear a word about a new school."

Of course he hadn't. The vote had been taken at a closed session following the open public meeting.

He had been denied his right to speak up by the device of "executive session," so common today with the school boards of thousands of American communities. He had come face to face with government censorship, which was robbing him of his right to know what his representatives were doing with his child's future and his tax dollars.

You wouldn't think the Federal Government would conspire to protect wrongdoers who endanger the health and lives of honest citizens, but it does.

All over the country, agents of the Alcohol Tax unit prowl about checking upon saloons, bars and liquor stores to see that Uncle Sam gets his full cut of the tax on liquor. When they find a bartender or merchant guilty of chiseling, they haul him into court and fine him.

In recent years there has been an upswing in the number of cases involving men who cheat the government—and you—by diluting liquor with water or, worse yet, selling homemade or bootleg whisky in bottles carrying reputable labels. The honest citizen buying a drink at a bar has no sure way of knowing whether the glass is filled with properly distilled spirits or with poisonous substitutes which the bartender has poured into a bottle when the unwary customer wasn't looking.

In one Midwest area alone, the government won cases against 9,000 of these violators. Yet because of censorship imposed by officials of the Treasury Department, government agents refused to make public the names of the crooked saloonkeepers or night-club operators.

To make matters worse, the government permitted thousands of the men who were guilty of cheating, and perhaps endangering the health of their customers, to make compromise payments to avoid prosecution. Some of these adjustment payments were as low as \$10—a sum that could be made up by the sale of two or three more bottles of rotgut.

North, South, East, and West, the story is the same.

More and more it is apparent that small town, big city, state, and national governments all hide behind the cloak of censorship when they can get away with it, which is often. In some places it's getting so the silken curtain of silence resembles the oppressive restrictions imposed on the people of Russia by their masters in the Kremlin.

Don't make the mistake of thinking we are talking about government agencies or officials that handle the A-bomb, new jet planes, guided missiles, electronic defenses or other secret weapons. We are talking about the agencies and the men working with our courts, schools, farm programs and other matters of deep personal interest and concern to every citizen—and of no interest at all to Russian spies.

New York State politicians, for example, despite the urging of responsible civic groups, prominent citizens and newspapermen, for many years have prevented the keeping of any permanent record of what goes on in the senate and assembly.

Congress prints its proceedings in the Congressional Record, but New York legislators, strangely reluctant to let the public view their work, hide behind a screen of secrecy.

Americans thought they fought the Revolutionary War to free themselves from the oppression of the divine right of kings. Out in Arizona there must be people who don't agree.

A former Governor in that State ousted the land commissioner, then refused to make public the report that led him to take that action. For 3 years a Tucson newspaper, the Arizona Daily Star, battled—at its own expense—through low, middle and high courts to force the Governor to release the documents.

When the case reached the highest tribunal in the State, the Arizona attorney general contended that the Governor had "the same rights as the King of England." Nevertheless, the court ruled that the report be made public.

The fight for freedom of information goes on day after day, year after year.

But some of the newspapers that battle most lustily for the right to know what our Government is doing have made the mistake of demanding a type of information which weakens their fight. They have sought to learn the contents of little black books that figure in smutty divorce cases, and they have argued for the right to obtain testimony involving sex crimes and minors.

Redbook is not interested in this sort of material. Although, at times, a newspaper is justified in demanding important facts about even a lurid case (when the court, for questionable reasons, attempts to shield a person or cover up a situation), this magazine believes it unwise to fight the battle against censorship on such boggy ground. There are many more advantageous locations in which to resist the censors.

This is no criticism of the press at large. If it were not for newspapers and magazines, a tight lid probably would have been clamped on almost all important Government information long before this. The urge to do just that is unbelievably strong—a recurring temptation even to conscientious public officials.

One Federal agency banned statistics on how much peanut butter the Government was buying for the armed services. The agency explained that a Russian statistician could figure out how many soldiers we have—a number which another Federal agency tells the public almost every day.

Bernard Baruch evaluated so-called security regulations with blunt honesty:

"All this talk about Government secrets is a lot of hokum," he told a congressional committee. "Foreign agents know more about American military matters than our own people do."

But public officials are immune to this kind of criticism. They try, at the slightest whim, to keep the truth from the people who pay their salaries. Westchester County, N. Y., Park Police tried to stop a news photographer from taking pictures of deep chuckholes in a public highway. Memphis police forbade newspapers from photographing automobile accidents, and Simsbury, Conn., cops did the same.

An Army camp commander in Kentucky refused to give out information about the disciplining of six Wacs who got into a hair-pulling fracas. He said, "It dealt with military security."

If a general can withhold news of this type—not involving true security at all—another general may try to hush up your son's illness, or some less honest officer might refuse to say why he was short thousands of dollars in gasoline allotments or why there was thievery in the PX.

Any American who wants some control over his government must stay eternally alert. He must take note of officials who hold closed meetings of boards, councils, committees or other agencies not dealing with national security. He must demand an explanation when these officials withhold information, records, tabulations showing how individual members vote. He should force all legislative bodies to keep open records, so that his representatives can't later alter or expunge statements.

It is a sorry picture, yet all is not bleak. There are signs, here and there that many public officials believe the public should be informed about public business.

Even when prison rioting was at its worst in Michigan, the authorities did nothing to prevent full coverage of the revolts.

The most harmonious tone to emanate from the silent world of state secrecy was struck by Gov. John Davis Lodge of Connecticut when he opened up the hearings on the State budget. For the first time in that State's history, press and public attended these vital sessions. Governor Lodge acted on his own

initiative, without any prodding. It was a lonely but hopeful sign in an era when leaders—even elected leaders—believe the people should not have the truth.

COLUMBIA UNIVERSITY,
GRADUATE SCHOOL OF JOURNALISM,
New York, N. Y., August 1, 1957.

Senator THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I thank you for including me among those to whom you sent a copy of your S. 2148 and accompanying statement.

I have seen this problem both from the standpoint of a working correspondent and editor and from the standpoint of an Assistant Secretary of State. I commend you enthusiastically for what you are seeking to do.

I cannot pretend to comment on the bill from a technical and legal standpoint. I certainly can and do commend your proposals in broad outline because they seem to me to promise to (1) compel the agencies to state publicly in the Federal Register the information rules under which they are operating; (2) put the agency on the spot if it goes beyond its own publicly announced rules; and (3) clearly eliminate certain misuses of existing law.

Best of luck to you in your very worthwhile effort.

Sincerely yours,

EDWARD W. BARRETT, Dean.

SYRACUSE UNIVERSITY,
SCHOOL OF JOURNALISM,
Syracuse, N. Y., July 3, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: Your bill, S. 2148, which would attempt to remove some of the barriers to public information, is a step in the right direction. I endorse it wholeheartedly.

The proposed amendment to title 5, United States Code, section 22 (S. 921) has also been needed for years. This, too, has my warm endorsement.

The disease of secret government or governmental secrecy has long concerned me, and while I am happy about the bills, I am not at all sure that they will do any more than mitigate the effects of the disease. They will not cure it, nor strike at its causes.

I suspect that you and the other members of the committee have given serious consideration to the causes, but I wonder whether you have explored the kind of training given to aspiring public administrators.

A student study conducted here on a very tentative basis suggests that schools and colleges of public administration may need to place more emphasis upon the informational responsibilities of public administrators. The study also suggests that law schools, which train a great many of the young men and young women who go into public administration, fail to give the necessary emphasis to the information function, and in fact, tend to stress the confidentiality of the law and its practice, whether conducted privately or for government.

This study can hardly be given any weight, but it has prompted us to schedule a proper survey of the training given young aspiring administrators in the field of public information.

When we finish it, I shall be glad to send you a copy, if you wish, although, at the moment, the finishing date appears to be a year or more away.

Sincerely,

W. C. CLARK, Dean.

LONG ISLAND UNIVERSITY,
Brooklyn, N. Y., June 17, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Committee on the Judiciary, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I appreciate your sending the bill concerning freedom of information.

I would suggest that you send an additional copy to Mr. Sam Day, managing editor of the New York Journal-American, who is a fellow member of the New York State Society of Newspaper Editors committee on freedom of information.

I subscribe to your views in attempting to clarify the present obscurity in the rules governing access to information, and I trust that your efforts will accomplish the desired results.

Sincerely yours,

THEODORE E. KRUGLAK,
Chairman, Journalism Department.

NEW YORK UNIVERSITY,
New York, N. Y., July 17, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: I am in general agreement with the purposes of S. 2148, the text of which you sent me with your letter of July 10. However, I am not sure the bill would achieve the desired purpose, primarily because of the wording of the text in lines 19-24 inclusive. This portion of the bill is not sufficiently specific to avoid the problem which it is designed to correct, i. e., the need for a clear interpretation.

It seems to me that under our doctrine of the separation of powers, what is really needed is a clear statement that no officer of the Government may refuse information to the Congress without the explicit approval of the President. Such a concept would place the responsibility for withholding of information where it belongs.

Respectfully yours,

WALDO CHAMBERLIN,
Professor of Government.

EAST BOOTHBAY, MAINE, July 20, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

*United States Senate,
Washington, D. C.*

MY DEAR SENATOR: This is in reply to your letter of June 12 which requested my views concerning bills (S. 921 and S. 2148) which respectively provide for amendments of sections 22 and 1002 of title 5, United States Code. More prompt response has been prevented by my absence, including travel to San Francisco to attend the convention of the American Society of Newspaper Editors.

I enclose copy of my statement of November 26, 1955, to the House Government Information Subcommittee. (This appears in the record of the subcommittee's hearings at pages 67-76, part I, panel discussion with editors, et al.) It states my views concerning the two statutes cited and concerning the need for their amendment at pages 8-10 re section 22, and at pages 10-13 re section 1002.

As to both bills

So far as their overall purpose and intended effect are concerned (according to my understanding thereof) I agree with and endorse the views of Mr. J. S. Pope stated in his letter to you of June 21. With him I say: "They (the bills) are so much better than the statutes they would replace, I can only pray for passage."

As to S. 921

While this is not exactly the amendment I have advocated, I favor its enactment. I have no doubt that it is constitutional, that it accords with and would carry into effect that which must have been the intent of Congress in passing the law originally and should be the intent of Congress now, that in wide areas of Government action it would substitute due process of law and objective judicial discretion for the unbounded, subjective official discretion which now prevail and that its enactment is in the public interest.

As to S. 2148

Insofar as this bill defines the term "public records" and provides for making them available for public inspection except as "specifically exempt from disclosure by statute," I favor its enactment for the same reasons stated in the preceding paragraph.

However, it is still my view that the only exceptions to the right of the people to know of the actions of their Government should be those sanctioned by law—

the Constitution, acts of Congress and court decisions—and that in the particular instances as they arise the question whether there is or is not a right to inspect should be the subject of judicial rather than official determination.

I fear that the words "agency * * * finds" (subsec. (d)) control all the exceptions in subsec. (f) and leave the determination of the questions just stated to official discretion, thus precluding, or at the least, strictly limiting judicial review.

As to exception (2): Inasmuch as the Administrative Procedure Act applies to all, or substantially all, executive departments and agencies, it appears that the bill extends authority to "classify" or otherwise withhold on national security grounds to many departments and agencies which do not have such authority now under the Constitution, acts of Congress or Executive orders.

As to exception (3): While I recognize the laudable aspects of the thinking which produced this phraseology, my view is that it sets up a wide area of secrecy which neither the courts nor Congress has hitherto sanctioned in general terms. It is susceptible of being used to "cover in" with legal sanction much information of Government action which has been covered up without specific sanction. In a number of specific instances Congress has found occasion to legislate in this area; and my view is that if additional instances appear they should be dealt with not by the agencies on the strength of a broad general grant of authority but by the Congress itself by making them—to adopt the language of the first exception—"specifically exempt from disclosure by statute."

Very respectfully yours,

HAROLD L. CROSS.

STATEMENT BY HAROLD L. CROSS, NOVEMBER 26, 1955

This statement is made in response to the subcommittee staff's suggestion that I file for the record of the hearings any comments I wish to make on suggested new statutes or amendments to existing statutes concerning access by the public, including the press, to public records and proceedings of the executive departments and administrative agencies.

It is made in my individual capacity as a citizen, lawyer, and author of the book, *The People's Right to Know—Legal Access to Public Records and Proceedings*. It has not been approved by, and is not to be taken as representing the views of, or as binding upon, the American Society of Newspaper Editors (for which I am freedom of information counsel) or of any other client of myself or my law firm, Messrs. Brown, Cross & Hamilton, 154 Nassau Street, New York, N. Y.

Inasmuch as further subcommittee hearings are contemplated, this statement is of interim or tentative nature and, accordingly, is subject to amendment or enlargement following the conclusion of the hearings. It is made in the light of the following premises and circumstances:

"The people, in our American democracy, have a constitutional right to factual information concerning the plans, policies, and actions of their government. The burden of proof as to the need for withholding this information should, by every basic American principle, rest upon the agency or official who has determined to hold back the facts * * *. I think the recent statement of principles, made last month at the National Editorial Association convention in Chicago, clearly points up the problem. The NEA freedom of information committee stated: 'The right of the people to know is basic to the preservation of our freedom and fundamental to our American way of life. The infringement of this right, whether by government or by groups or by individuals, no matter in what measure it may begin, will lead to tyranny and to the death of liberty.'"¹

This constitutional right arises from the basic nature of our Government and of the Constitution and from the provisions of the 1st, 5th, 9th, and 14th amendments.² "It was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guaranty with the rights of the people peaceably to assemble and petition for the redress of grievances."³ "It goes to the heart of the natural right of the members of an organized society,

¹ Congressman John E. Moss, subcommittee chairman, transcript of hearing, November 8, 1955.

² Cross, Harold L., *The People's Right to Know—Legal Access to Public Records and Proceedings*, Columbia University Press, New York, N. Y., 1953, especially pp. 124-132; Parks, Wallace, Basic Legal Memorandum for November 7-11 Hearings of Subcommittee, especially pp. 1-8.

³ Thomas v. Collins, 323 U. S. 516, 530 (1944).

united for their common good, to impart and acquire information about their common interests."⁴ "A people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or tragedy or both."⁵ "The aim of the historic struggle for a free press was to establish and preserve the right of the English people to full information in respect to the doings or misdoings of their government. That is the tradition behind the first amendment."⁶

Freedom of information in the form of access to public records and proceedings is a constituent part—is indeed the very foundation stone of freedom of speech and of the press under our 1st amendment, is one of the basic liberties safeguarded under our 5th amendment, is a right retained by the people pursuant to the 9th amendment and must receive due process under the 14th amendment.⁷

The history of the struggle for freedom of speech and of the press as an overriding principle of democracy vested in every man bars any notion that the men of 1791 intended to provide for freedom to disseminate information of Government activities but at the same time to allow Government to deny freedom to obtain such information. Our forebears' purpose was to prevent "any action of government" by means whereof it might prevent free and general discussion. They intended the inclusion of a right of access without which the freedom to print could be fettered into futility.⁸

"Freedom of the press," though shared by, is not confined to newspapers and periodicals or news mediums or to those who own or control printing presses. The term "press" in its historical connotation comprehends every sort of publication which affords a vehicle of information and opinion.⁹ Similarly, freedom of speech, though shared by, is not confined to persons who happen to own or control auditoriums or public address systems. These rights are vested in all persons, in each of us. The remedial legislation here suggested is advocated in behalf of the people, not of any news mediums alone.

Nevertheless, while newspapers and their makers have no special rights or privileges, it is the fact that their continuously exercised functions create in them an interest and concern in and understanding of any abridgment of the freedom of information referred to which are not shared so continuously or acutely by most individual citizens. "One of the demands of a democratic society is that the public should know what goes on in the courts by being told by the press what happens there, to the end that the public may judge whether our system of criminal justice is fair and right."¹⁰ A vigorous and dauntless press is a chief source feeding the flow of democratic expression and controversy which maintains the institutions of a free society * * *. By interpreting to the citizen the policies of his government and vigilantly scrutinizing the official conduct of those who administer the state, an independent press stimulates free discussion and focuses public opinion on issues and officials as a potent check on arbitrary action or abuse.¹¹ "To allow the press to be fettered is to fetter ourselves."¹²

Information brought to light in the subcommittee hearings from November 7 to 11, 1955 and in the "replies from Federal agencies to questionnaire submitted by the Special Subcommittee on Government Information of the Committee on Government Operations" demonstrates the need for legislation by Congress to implement these rights, to abate their abridgment. "The power of government over the sources of information tends to grow. Hence the misuse of the power by government becomes a more and more serious danger * * *. What is significant is the enormous recent expansion of the subjects which officials are seeking to hide from publication until they give the signal."¹³ It is the fair consensus of Washington press correspondents that abuses of the power in Federal agencies to suppress information were never so rampant as now, that

⁴ *Grosjean v. American Press Co. et al.*, 297 U. S. 233 (1936).

⁵ James Madison, quoted p. 63, Laswell, *National Security and Individual Freedom*, McGraw-Hill, New York, N. Y., 1950.

⁶ See note 4, at p. 247, Justice Douglas.

⁷ See note 2.

⁸ See notes 2 and 4.

⁹ *Terminiello v. City of Chicago*, 337 U. S. 1, annotation in 93 L. Ed. 1131, at p. 1153.

¹⁰ *State of Maryland v. Baltimore Radio Show, Inc. et al.*, 338 U. S. 912, 920, Justice Frankfurter on denial of certiorari.

¹¹ *Times-Picayune Pub. Co. v. U. S.*, 345 U. S. 594 (1953).

¹² See note 4.

¹³ Chafee, Zechariah, Jr., *Government and Mass Communications*, vol. I (Chicago University Press, 1947), pp. 12-13. In the same quotation Professor Chafee said: "Military information was always guarded from the enemy, and bureaucrats have often invoked public safety as a protection from criticism."

this widespread abuse of power is exercised in the great majority of instances on matters having nothing whatever to do with national security and that these abuses have curtailed the power of Congress and the press to be of service to the people and have advanced to the point where the civil liberties of the people are threatened."¹⁴ "Congressman William L. Dawson, the distinguished chairman of the House Committee on Government Operations, yesterday pointed out that if the present trend toward secrecy in the Federal executive agencies is not stopped, we will pay, and pay dearly, for the enforced ignorance of the American people."¹⁵

The nature of the necessary remedial legislation by Congress is conditioned by the nature and extent of the abuses and the nature of the law as at presently declared under the color whereof the secrecy is sought to be justified. The prime need is substantial reduction of the very widespread area wherein a subjective, judicially unreviewable official discretion prevails whereunder disclosure of information is a matter of grace, indulgence, or unrestrained discretion and Congress, public and press are reduced to the status of silent men and suppliants for the favor of their public servants; and the substitution therefor of an objective judicial discretion whereunder denials of freedom of information may be tested by due process of law.

The state of the law as presently declared is not what it should be in the interest of the people's rights to know or as it would be were it to be challenged on proper constitutional grounds or were Congress to exercise its lawmaking powers or were the courts freed to determine, as matters of law and justice, whether the nature of the information withheld lawfully comes within the scope of the privilege invoked against its disclosure to Congress, people, press, or litigant.

The state of the law is that, in the absence of general or specific acts of Congress creating a clear enforceable right to inspect—and such acts relatively are not numerous—there is no right in people or press or Congress itself to inspect any Federal nonjudicial record. The results are that in wide areas of the dynamically expanded governmental activity those seeking information are denied due process of law, Federal public business has ceased to be the public's business except as officialdom is disposed to be gracious and the right of inspection has become the relatively rare exception in dramatic contradistinction from state and municipal levels where the right of inspection is the relatively general rule by statute and common law.¹⁶ The kind of records that, by virtue of law, lie open in glass bowls in State and municipal offices are very frequently indeed and for no sufficient reason whisked behind curtains of secrecy in Federal offices.¹⁷

This state of the law is due, very largely, though not wholly, to three factors, which are—

First. Legislation by Congress consisting of two acts of general application which sanction denial of information either in express terms or by language so loose, vague and destitute of standards as to give full sweep to the exercise of official grace and discretion. These are 5 U. S. C. A. 22 and 5 U. S. C. A. 1001-1011: The Administrative Procedure Act.¹⁸

Second. The fact that Congress in so many areas has not legislated at all, thus leaving this vast expanse of governmental activities—most of them in no way related to national security—wide open to executive occupation.¹⁹

Third. A series of Executive orders, directives and letters signed by the President or by his authority. These include particularly Executive Order 10450, Executive Order 10501, directive of March 13, 1948, and letter of May 17, 1954, and memorandum.²⁰ Increditable as it may seem, one of these, letter of August 5, 1948, purports, and is cited to have the effect, to bar certain information from Congress on the strength of statements made by President Truman at his press conference of that date.

It will be found upon analysis of these documents that they derive much of such legal effect as they may eventually be determined to have from legislation

¹⁴ Raymond, Allen. Report to American Civil Liberties Union, October 24, 1955, p. 65.

¹⁵ Transcript of subcommittee hearing, November 8, 1955.

¹⁶ Cross, Harold L., transcript of subcommittee hearing, November 7, 1955, see also note 2.

¹⁷ Ibid. See note 2, especially statutes and city charter provisions cited in appendix 3, pp. 337 et seq., and compare with 5 U. S. C. A. 22 and 5 U. S. C. A. 1001-1011. For a specific example see contrast between Federal Power Commission and New York public-service law cited in said book at pp. 243-244.

¹⁸ See note 2 and analysis of each of these statutes therein, chs. XV and XVI.

¹⁹ See note 16.

²⁰ See replies to subcommittee questionnaire, pp. 532-552.

enacted by Congress and article II, section 3, of the Constitution which provides in part that the President "shall take care that the laws be faithfully executed." It is noteworthy, first, that these documents relate in large part to matters of national security which, however great their importance, constitute only a part of the enormous volume of governmental activities and, second, that a very large part of all the precedents cited to support them related to matters in respect of which Congress has passed no laws.

For the sake of completeness, other factors contributing to the state of the law as appears on its face should be noted. The first is a series of specific acts of Congress which attach secrecy to, or otherwise restrict, freedom of information concerning particularly designated records.²¹ The second is a series of specific acts of Congress which attach a public character to a variety of specific types of information.²² While the first mentioned acts are susceptible of diminution and clarifying amendments and the second type should be greatly enlarged, this legislation constitutes decisive evidence that whenever Congress found need of justification for secrecy of records or for removing secrecy from records it, as the lawmaking power, had no hesitation in taking action and no difficulty in finding language appropriate to its intention. It used no such language in title 5 United States Code Annotated, section 22, or in some parts of title 5 United States Code Annotated, sections 1001-1011, though executive departments and administrative agencies have interpreted them as sanctioning the withholding of practically all information the officials do not see fit to disclose.^{23a}

The third factor of this type is legislation by Congress on what may be called a departmental or agencywide basis. It will serve no useful purpose here to attempt exhaustive citations of these statutes. Many of them are cited in the Federal agencies' replies to the subcommittee's questionnaire. One example is title 49 United States Code Annotated, section 19a (e), Transportation, Interstate Commerce Commission, which gives the Commission a power construed in effect to create a full discretion that "puts an end to the claim to examine the data on the naked ground that they are public documents."²³ Another is title 12 United States Code Annotated, section 248 (1), which, by empowering the Board of Governors of the Federal Reserve System to "make all rules and regulations necessary" to perform its statutory duties, is claimed to sanction secrecy for a wide variety of official information and even to justify a regulation so majestic that it bars information "whether or not a matter of official record within the meaning of the Administrative Procedure Act."²⁴ Other examples range through the alphabet in the replies from Agriculture to weather control.

A set of "legal doctrines" which this writer stated at the November 7, 1955, hearing of the subcommittee and are stated and analyzed in his book.²⁵ These consist quite largely of official positions taken by the Attorney General, derive much of such validity as they may have from the absence of legislation by Congress and their relation to considerations of national security and of Presidential "head of state" power, and rest quite largely on assertion of official opinion rather than judicial sanction.²⁶

Avenues of approach by remedial legislation are both numerous and open to long distance travel before meeting constitutional roadblocks. The United States Supreme Court has pointed out: "The founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power, and the hopes for freedom that lay behind their choice."²⁷ In approaching remedial legislation it must be borne in mind continuously that (1) the withholding by officialdom from the people of factual information concerning the plans, policies, and actions of their Government flows largely insofar as such secrecy has legal sanction, from (a) existing legislation by Congress and (b) the absence of legislation; (2) that secrecy is practiced largely, though not wholly, by means of regulations and administrative determinations setting up a sub-

²¹ See note 2, pp. 231-234.

²² Ibid., pp. 235-236.

^{23a} Ibid., pp. 214, 226, 228.

²⁴ U. S. ex rel. St. Louis Southwestern R. Co. v. Interstate Commerce Commission, 264 U. S. 64, 44 S. Ct. 294, 68 L. Ed. 565 (1924).

²⁵ See note 2, p. 245; 12 Code of Federal Regulations, 1949 edition, pt. 261.

²⁶ See note 2, ch. XIV.

²⁷ Ibid.

²⁷ Ibid., p. 247; and Steel Seizure case cited.

jective, official discretion flowing from legislative language which is loose, vague, and destitute of standards or from congressional silence; (3) in the presence of official discretion there is no enforceable legal right—no due process of law, no judicial determination of the justice of the secrecy—inasmuch as the courts will not review the exercise of such discretion or substitute judicial discretion therefore by issuance of remedial process such as mandamus, prohibition, or mandatory injunction and (4) legislation which removes official discretion does not ipso facto create an absolute right but brings into operation, for the protection of the public interest, the exercise of an objective judicial discretion.

The avenues of approach include these:

Amendment of existing statutes, including especially title 5, United States Code Annotated, section 22, title 5, United States Code Annotated, sections 1001-1011, and the departmental legislation referred to in the second paragraph on page 6 above.

Repeal of some of the existing statutes attaching secrecy to, or otherwise restricting freedom of information concerning particularly designated records.²⁸

New legislation opening to Congress, public and press existing records to be particularly designated—this by way of enlargement of the types of existing records now in that status.²⁹

New legislation opening to Congress, public and press records which will come into existence under legislation now pending or hereafter proposed.

Amendment of some existing statutes, repeal of others and new legislation so as to provide for congressional, public and press access to public proceedings.

And, in addition, of transcendent importance, new legislation concerning congressional power to extract from executive departments and administrative agencies information pertinent to its lawmaking power. This writer has no special competence in this field and, aside from expressing a profound conviction that Congress has "the right to know" and a deep concern over current abridgments of that right, refrains from specific suggestions.

1. AMENDMENT OF EXISTING STATUTES (5 U. S. C. A. 22)

This provides³⁰ that the "head of each department is authorized to prescribe regulations, not inconsistent with law, for * * * the custody, use, and preservation of the records, papers and property appertaining to it."

Held constitutional, this housekeeping statute, destitute as it is of all vestige of definitions and standards, has been tortured (as it is susceptible of being), with some judicial sanction it must be admitted, into sanction for nonuse by the people whose servants these departments are of the records and papers evidencing governmental action and for a claim of official discretion against disclosure and inspection so all-encompassing that it may fairly be said that there is no hope of obtaining inspection of a public record not specifically opened by Congress except through "the courtesy of the Government."³¹ Whatever may be the extent of the grace extended to Congress, public, and press and of the information "handed out" in pursuance thereof, this statute and the mass of regulations thereunder, so far as the matter of right is concerned, make a mockery of that "free examination of public characters and measures and of free communication thereon" which James Madison declared was a "right" and "the only effective guardian of every other right."³² Its application abridges the right of the people to that "full information in respect to the doings and misdoings of their Government" which is "the tradition behind the first amendment."³³

Though utterly silent about denial of access and withholding of information, it is cited again and again in the replies to the subcommittee's questionnaire as sanctioning regulations for denial and withholding at subjective, judicially unreviewable, official discretion. Authority to regulate "use" is not the power to deny access. Congress cannot be presumed to have intended a result which it could not have accomplished constitutionally. It may not be held to have done by silence that which it could not have done by express interdiction.

"It can hardly be contended that it would be within the constitutional power of the legislature to enact that the statutes and opinions should not be made

²⁸ See note 2, pp. 231-234.

²⁹ See note 2, pp. 235-236.

³⁰ See note 2, p. 215.

³¹ See note 2, chs. XV and XVII.

³² Six Writings of James Madison 398 (1906).

³³ *Grosjean v. American Press Co. et al.*, 297 U. S. 233, 247 (1936).

known to the public. It is its duty to provide for promulgating them. While it has the power to pass reasonable and wholesome laws regulating the mode of promulgating them, so as to secure accuracy and give authority to them, we are not called upon to consider what is the extent or limitation of this power; because we are satisfied that it was not the intention of the legislature in the statute upon which the respondent relies to limit the previously existing right of the citizen to have free access to the opinions."³⁴

The department heads, to be sure, are under some restraint in that regulations must not be palpably "inconsistent with law" but a veritable cave of the winds is left for the veering of official discretion by the fact that Congress has made so little law—in relation to the vastness of the National Government—for regulations to be inconsistent with. In one motion Congress may curb the secrecy under regulation and limit the regulatory power itself.

In amendatory legislation Congress should, of course, leave intact the authority conferred by this statute on executive department heads to make reasonable and wholesome regulations for the safekeeping, care, and businesslike use and availability for inspection of records and papers. Indeed, in view of the language used in the statute itself as well as in the Constitution, this must have been the original intention of title 5, United States Code Annotated, section 22. Congress now, however, should by use of appropriate language prohibit regulations which in terms, purport, or effect deny access by Congress, public, and press to public records and proceedings except as such denial is expressly authorized by law.

2. THE ADMINISTRATIVE PROCEDURE ACT (5 U. S. C. A. 1001-1011)

Multiplication of Federal administrative agencies and expansion of their functions to include adjudications which have serious impact on private rights has been one of the dramatic legal developments of the past half-century.³⁵ Nearly every phase of our lives and business is affected in some way, directly or indirectly, visibly or invisibly, to a greater or lesser degree by a maze of Federal administrative regulations.³⁶ This act was represented to the Senate as a "bill of rights for hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government."³⁷ Its high purpose was to serve as a safeguard against this administrative tyranny.³⁸ It was unanimously adopted. Its chief aims were to change the practice of having a single person or agency serve as both prosecutor and judge, to introduce greater uniformity in administrative procedure, and to regularize public information for the benefit of parties to proceedings and their attorneys concerning the matters of which it speaks.³⁹

To whatever extent it was intended as a "public records" act for the benefit of the people of the United States whose lives and business were affected by this legal development by way of right to know of the doings and misdoings of this maze of their Government the act is an abject failure. It is cited again and again as sanctioning denial of information. As the American Law Section of the Library of Congress has pointed out⁴⁰ and as becomes obvious on perusal of the voluminous regulations it is alleged to have sired, the "several qualifications in that act have enabled agencies to assert the power to withhold practically all the information they do not see fit to disclose."

Section 1002, at the threshold and without definitions or standards, sanctions secrecy for records involving "any function of the United States requiring secrecy in the public interest" (which is not limited, it will be noted, to national security) and those involving "any matter relating solely to the internal management of any agency" and those held confidential for good cause found. "Public interest" has always had a way of becoming identified with the interest of whomsoever is making the determination. It is always possible to make some argument for secrecy and any argument is quite likely to seem plausible to one entrusted with the power to shut the door and thus avoid exposure, criticism, embarrassment, or just being pestered. There are reasons, of course, why an agency

³⁴ *Nash v. Lathrop*, 142 Mass. 29, 6 N. E. 559 (1886). This leading case has been cited with approval many times. It may scarcely be contended that secrecy in the Federal bureaucracy would be less dangerous.

³⁵ *Wong Yang Sung v. McGrath*, 339 U. S. 33, 70 S. Ct. 445, 94 L. Ed. 616 (1950).

³⁶ 37 American Bar Association Journal 641. September 1951.

³⁷ S. Doc. No. 248, 79th Cong., 2d sess. (1946), 298, Senator McCarran.

³⁸ See note 36.

³⁹ *Ibid.*

⁴⁰ See note 2, p. 228.

should have authority to manage itself internally but there is no good reason why in this Government of the people, by the people, and for the people the management, internal or otherwise, of their agencies should be made none of their business except as grace is the deciding emotion.

All that the act opens to "public inspection" is "final opinions or orders in the adjudication of cases * * * and all rules" which have passed the barriers of secrecy of national interest, internal management, and confidentiality, whatever those three terms may respectively mean and in whose interest for whose protection, or at whose behest they are applied.

Except as otherwise required by statute and for information held confidential for good cause, whatever that means, "matters of official record" shall be made available to "persons properly and directly concerned." This may mean parties to the proceedings and their attorneys alone; and these may have interests, as happens in administrative proceedings as well as in judicial proceedings, hostile to the rights and interests of the people. Or it may possibly mean, in addition, someone such as a newspaper reporter who can demonstrate to the agency officials a direct interest that is proper. But the difference in phraseology indicates that "matters of official record," as distinguished from some final orders, opinions, and rules, are not in any case available as of right to a citizen of the United States who is merely a member of the general public.

Even a claim to a privilege against disclosure akin to that which this act purports expressly to sanction has been judicially denounced as contrary to public policy.

"Moreover we regard the recognition of such a sweeping privilege against any disclosure of the internal operations of the executive departments of the Government as contrary to a sound public policy * * *. It is but a small step to assert a privilege against any disclosure of records merely because they might prove embarrassing to Government officers. Indeed it requires no great flight of imagination to realize that if the Government's contentions in these cases were affirmed the privilege against disclosure might gradually be enlarged by executive determinations until, as in the case in some nations today, it embraced the whole range of governmental activities."⁴¹

Men who were around when the Nation was born and the Constitution was adopted were of these views:

Patrick Henry: "* * * to cover with the veil of secrecy the common routine of business is an abomination in the eyes of every intelligent man and every friend of his country."⁴²

James Madison: "Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prolog to a farce or tragedy, or perhaps both."⁴³

"* * * the right of freely examining public characters and measures, and of free communication thereon, is the only effectual guardian of every other right. * * *"⁴⁴

Edward Livingston: "No nation ever yet found any inconvenience from too close an inspection into the conduct of its officers, but many have been brought to ruin, and reduced to slavery, by suffering gradual imposition and abuses, which were imperceptible, only because the means of publicity had not been secured."⁴⁵

The time is ripe for a return to these philosophies. It is for Congress, which has the power and the duty power gives, to implement the right of the citizen to examine freely the management of his business by his servants.

Congress should repeal all three of the qualifications stated, should abolish all discriminations whatever they may mean between the "public" and persons "properly and directly concerned" and make all public records and all public proceedings subject to public inspection and attendance except as otherwise provided by law.

3. DEPARTMENTAL LEGISLATION ; SECOND PARAGRAPH, PAGE 6, SUPRA

The departmental legislation here referred to is that occupying a middle ground between statutes of general application (such as 5 U. S. C. A. 22 and 5 U. S. C. A. 1001-1011) and the two series of acts of Congress of specific application to par-

⁴¹ *Reynolds v. U.S.*, 192 F. 2d 987, 995 (3d Cir. 1951).

⁴² See note 2, p. 129, and authority cited.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

ticularly designated records. Its common characteristic is that it is applicable to the records and proceedings of a particular department or agency.

Examples are numerous. They cover the waterfront of the Potomac alphabet-wise from Agriculture (where their offspring include such "unclassifiable classifications" as "administratively confidential"), by way of the Federal Power Commission and the Interstate Commerce Commission, to Weather Control's Advisory Committee. I direct attention to some samples in the replies to the subcommittee questionnaire.

Agriculture (Commodity Exchange Act, sec. 8): As stated in the replies, gives the Secretary authority to make such investigations as he deems necessary and to publish at his discretion the results (p. 7).

Evidence of the conduct of the people's servants, for whose compensation they are mulcted by taxation, is available only to authorized personnel from other Federal agencies (p. 7).

Federal Power Commission: Note the restriction applicable to records and files of the Commission and compare with New York's Public Service Law which provides: "All proceedings of the commission and all documents and records in its possession shall be public records."⁴⁵

Interstate Commerce Commission (49 U. S. C. A. 19a (e)): Gives unlimited power to order records and data withheld from public inspection. Such an order puts an end to a claim to examine these as public documents. Some discrimination in favor of litigants may survive.⁴⁶

Advisory Committee on Weather Control (Public Law 256, 83d Cong., 1st sess., sec. 9 (d) (4)): Information deemed confidential for purposes of national security "or other reasons or with reference to which request for confidential treatment is made by the person or agency furnishing such information shall not be published or disclosed unless the committee determines that the withholding thereof is contrary to the purposes" of the act. The threat of a heavy fine for willful violation is brandished.

This sets up a discretion as far afloat in the wild blue yonder as any of the weather elements the committee is concerned with. The committee "consciously withholds" information if its release would mean violating the law or "would prejudice the value and authenticity of our final report to the President." The reply indicates a high-minded view of its functions. The public interest might well be served best if before conclusions are frozen in the final report their value and authenticity were continuously subject to examination and challenge by the people of the United States.

Congress should enact amendatory legislation to put an end to the claim, whether sound or unsound, that, by reason of its laws granting undefined dispositions destitute of standards, that "the Government can shut off an appropriate judicial demand for such papers."⁴⁷ It has been judicially stated very recently that: "If, because no one has a standing in court to attack some action of the Executive or of Congress, that action is entirely removed from public scrutiny and press criticism, the end of a free society as we know it would soon be at hand."⁴⁸ The fact is that secrecy is abridging scrutiny. Congress should enact legislation restoring the people's standing in court to attack it.

When Congress shall have legislated to these ends and in the light thereof it will become necessary to amend a number of statutes which are based on existing legislation. Included in this category are a number of provisions of the Criminal Code.

AS TO THE EXECUTIVE ORDERS, DIRECTIVES, ETC.

It would be unfruitful, as well as impracticable, at this stage to speculate in the abstract on the extent of Presidential power to deny to the Congress and the people information in the possession of Federal departments and agencies and to do so in such manner as to prevent the application of due process of law. The same may be said of such speculation concerning the legal validity of the Presidential communications referred to.

Some things in the premises are clear. The people of the United States retained certain rights, and the enumeration in the Constitution of certain rights shall not be construed to deny or disparage those retained by the people.⁴⁹ The

⁴⁵ See note 2, pp. 243-244; New York Public Service Law, sec. 16.

⁴⁶ See note 23.

⁴⁷ *Touhy v. Ragen*, 340 U. S. 462, 71 S. Ct. 416, 95 L. Ed. 417 (1951), Frankfurter, J., concurring.

⁴⁸ *O'Neal v. Cowles Magazines, Inc. et al.*, 225 F. 2d 43 (D. C., July 1955).

⁴⁹ United States Constitution, ninth amendment.

powers of the President and Congress alike are derived from the Constitution and each is under, and not above that grant of power. The "unqualified prohibitions laid down by the framers (of the Bill of Rights) were intended to give to the liberty of the press, as to other liberties, the broadest scope that could be countenanced in an orderly society"; and the first amendment "must be taken as a command of the broadest scope that could be countenanced in an orderly society."⁵⁰ Accordingly any President, whatever the extent of his power and however removed it may be from judicial scrutiny, is bound to approach its exercise with profound circumspection and in deep humility. There is no reasonable likelihood that the power will be exercised in vast areas of the National Government where information in the possession of Federal departments and agencies is now being denied to Congress and the people under color of law and even without that protective coloration. The true extent of Presidential power has never been determined in the kind of government to which we have entrusted our all—a government of laws and not of men.

Other things, to say the least of it, seem clear. Never before in our national history has Presidential power been asserted in terms so all-embracing. Never before has the asserted extent of such power been so challenged by men elected to high office in the Government by the people, by men whose concern for a government of laws and for national security and for the public interest is as high as the highest, by men whose legal learning, experience, and competence may scarcely be looked upon as inferior to that of the Attorneys General upon whose zeal of advocacy Presidents have relied.

"The founders of this Nation entrusted the lawmaking power to the Congress alone in both good times and bad times."⁵¹ "The lesson of the case, if it has been a lesson, is that escape from Presidential autocracy today is to be sought along the legislative route rather than that of judicial review."⁵² Most of the instances in which this Presidential power was exercised occurred where Congress had made no law.⁵³ The Department of Justice has cited the fact that "passage of no law by Congress" argued persuasively for the possession of such a Presidential power.⁵⁴ Congress is the primary source of relief. The power of Congress, if it will but act, is ample to legislate freedom of information for itself, the public and the press. Its powers, like those of the President are not unlimited. But they are extensive. They are largely unused. Their possession is pregnant with responsibilities and duties.

In the American democracy the right—and the need—for public scrutiny and public criticism transcends all, for: "**** we cannot agree that imperviousness of an Executive act to judicial review raises it above public criticism and protects those who procured or induced it from disclosure of, and comment upon their activities. If, because no one has a standing in court to attack some action of the Executive or of Congress, that action is entirely removed from public scrutiny and press criticism, the end of a free society as we know it would soon be at hand."⁵⁵

NEW LEGISLATION

1. As to existing records

The replies to the subcommittee's questionnaire and the statements and testimony during the November 7-10, 1955, hearings indicate the need for new legislation applicable to records now in existence and to proceedings sanctioned under existing legislation. It is reasonably to be anticipated that hearings hereafter to be conducted will add form, direction, and impetus to such need. To avoid incomplete and inadequate discussion and unnecessary repetition, this writer refrains from detailed suggestions here.

2. As to records under future legislation

The replies and the hearings as well as other experience and evidence show that protection of freedom of information for Congress, public, and press must be considered a continuous legislative project.

Accordingly, to safeguard these fundamental rights, the American Newspaper Publishers Association, continuing in cooperation with the American Society of Newspaper Editors in research initiated by the society, regularly checks and fol-

⁵⁰ *Bridges v. California*, 314 U. S. 252 (1941).

⁵¹ *Youngstown Co. v. Sawyer*, 343 U. S. 579 (1952).

⁵² *Ibid.*

⁵³ See note 2, pp. 205-206; replies to subcommittee questionnaire, pp. 546-552.

⁵⁴ See note 2, p. 246.

⁵⁵ See note 48.

lows up Senate and House bills which are susceptible of preventing, or do not make adequate provision for, public access to hearings, proceedings, reports, records, and other matters as to which the public should have an implemented right to know.

For illustrative purposes two examples are given.

Bill H. R. 3335, Representative Thompson, Texas. Would create Interoceanic Canals Commission to take evidence and hold hearings, study and report plans and proposals to increase capacity and efficiency of Panama Canal, etc. Referred to House Merchant Marine Committee. No hearings scheduled. Makes no provision for public hearings, etc. ANPA and ASNE urge that hearings and testimony be made available to public.

Bill H. R. 3493, Representative Young, Nevada. Provides for Federal allotments to States for elementary and secondary schools. Referred to House Labor Committee. No hearings scheduled. Congressman Young has drafted "public information" amendment.

If requested so to do, the undersigned undertakes to keep this Subcommittee informed of action taken in this program.

The undersigned asks leave to supplement this statement in the light of subsequent hearings.

Respectfully submitted.

HAROLD L. CROSS.

EAST BOOTHBAY, MAINE, April 22, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: Inasmuch as we have been away from home for several weeks your letter of April 14 has just come to my attention.

Your letter says that unless I have some objection the letter I sent last year concerning my views on S. 921 (to amend 5 U. S. C. 22) and S. 2148 (to amend 5 U. S. C. 1002) will be published as part of the record. I have no objection whatever.

Your letter also says the Subcommittee on Constitutional Rights will welcome any additional comments I wish to make. I have these additional comments (S. 2148):

1. Subsection f provides in part: "The provisions of this section shall not require disclosure of subject matter which is * * * (2) required to be kept secret in the protection of national security * * *." My view is that this should be amended to read: "* * * in the interests of national defense." Such a change was made by Executive Order 10501 which superseded Executive Order 10290. The term "security" is susceptible of a very broad interpretation. As I recall it, the record of the House Government Information Subcommittee shows it has been used to provide secrecy for information far beyond that thought necessary by either President Truman or President Eisenhower. In this connection it should be noted that title 5, United States Code, section 1002, applies to many more agencies and functions than the Executive orders cited and, unlike them, provides no standards for "classification" or machinery for declassification."

2. There should be included a specific and affirmative provision for judicial review of administrative action withholding information or records. Among the reasons why this is so is the fact that in decisions of the Federal courts, unlike those of most State courts, there is no body of law concerning the definition of public records subject to inspection or declaration of rights to inspect such records or the procedure for enforcement of such rights.

Respectfully,

HAROLD L. CROSS.

WINTHROP, STIMSON, PUTNAM & ROBERTS,
New York, N. Y., July 17, 1957

Hon. THOMAS C. HENNINGS, Jr.,
Subcommittee on Constitutional Rights, Committee of the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: This will acknowledge receipt of your letter of July 16, 1957, with attached copy of S. 2148.

It is indeed difficult to attain what President Eisenhower described as "the proper balance between the need to protect information important to the defense

of the United States and the need for citizens of this democracy to know what their Government is doing." I question whether it can be done by statute, as the problem is really one of proper administration.

In the report of the special committee of the Association of the Bar of the City of New York on the Federal loyalty-security program, one of our chief recommendations was to create a new office in the Executive Office of the President, to be called the Director of Personnel and Information Security, and one of our recommendations was that this Director "should continuously review and, after consultation with the agencies involved, make recommendations to the President concerning the standards and criteria and methods to be used in the classification of information and in its declassification when secrecy is no longer important to the interests of national security. These recommendations, when approved by the President, would be binding upon the departments and agencies concerned."

I think if Congress would appoint such a Director and give him duties as outlined above, it would go a long way towards solving the problem.

Sincerely yours,

GEORGE ROBERTS.

THE CATHEDRAL CHURCH OF ST. JOHN THE DIVINE,
Cathedral Heights, New York, N. Y., August 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

MY DEAR SENATOR HENNINGS: Thanks so much for sending me a copy of S. 2148 concerning freedom of information. I have read your statement and also the draft of the bill, and I wish to say that I believe that it is a very constructive step indeed, and it has long been needed. I wish you and the subcommittee well in the promotion of this important measure.

With kindest regards.

Sincerely yours,

JAMES A. PIKE, *Dean.*

THE ITHACA JOURNAL,
Ithaca, N. Y., December 9, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: You have asked the New York State Associated Press Association for an opinion on your bill, S. 2148, to amend title 5, United States Code, section 1002, the public information section of the Administrative Procedure Act enacted June 11, 1946.

This request was made to Mr. Leonard Gorman, managing editor of the Syracuse Post-Standard, a past president of the association. It came to me through Mr. Gilbert P. Smith, managing editor of the Utica Daily Press, the association's current president. Mr. Smith recently appointed me to represent the association on a steering committee organized by newspaper groups in New York State to direct right-to-know activities.

I have before me a copy of S. 2148. It is an effective amendment, eliminating the controversial reference to "secrecy in the public interest," and spelling out the obligation of all Federal agencies to make information and records available to the public.

The New York State Associated Press Association is always intensely interested in any effort which will broaden and make complete the public's right to know the facts about its Government.

I hope that you will press for the adoption of this amendment, as well as for the amendment to title 5, United States Code, section 22, embodied in your bill, S. 921. To this so-called housekeeping statute, the addition of the sentence, "This section does not authorize withholding information from the public or limiting the availability of records to the public," is vital to the public's right to know.

Sincerely yours,

WILLIAM J. WATERS, *Editor.*

NORTH DAKOTA PRESS ASSOCIATION,
ADVERTISING AGENCY DIVISION,
Langdon, N. Dak., December 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights, Senate Office Building,
Washington, D. C.

HONORABLE SIR AND DEAR SENATOR HENNINGS: I am satisfied that your proposed S. 2148 and S. 921 will go a long way toward returning an important part of the Government of the United States to Government by law, rather than Government by persons, into which rut we have slipped in so many instances, including in this matter of public information.

Frankly, I carefully read S. 2148 and your very excellent personal statement with the aim of approving, rather than of criticizing, correcting, or revising, and I certainly do approve the amendments which you propose.

Now, it is essential that I make it plain that my wholehearted approval is only that of an individual newspaperman. Your communication came addressed to me as secretary of the North Dakota Press Association. I retired from that position in April 1957, and the secretary now is F. J. Froeschle, publisher of the Ransom County Gazette, Lisbon, N. Dak. I am forwarding your letter, statement, and copy of S. 2148 to him.

Further, your mailing addressed to Frank Hornstein, president of NDPA, Langdon, N. Dak., landed in my mail; mostly because I am the only person in this comparatively small town who ever receives North Dakota Press Association mail. Mr. Hornstein never resided in Langdon, and he has not been president of NDPA since the last annual election in April 1957. I am forwarding that mailing to the now president, Orion Cole, publisher of the Hatton Free Press, Hatton, N. Dak.

I hope that you will get supporting statements from these two NDPA officers.

May I add North Dakota, at the early 1957 session of its State legislature, passed freedom of information laws. These laws were introduced and passed entirely through the efforts of North Dakota newspapermen. I say "newspapermen" rather than North Dakota Press Association for a specific reason, which I believe I can explain briefly.

The North Dakota Press Association has spent considerable time discussing freedom of information, has had an active committee on the subject, and has passed resolutions which have been forwarded, more than once, to State officials and North Dakota's congressional delegation.

However, the active handling of the freedom of information matter in North Dakota has been spearheaded by the North Dakota Professional Chapter of Sigma Delta Chi, national professional journalism fraternity. John D. Paulson, editor of the Fargo Forum and Moorhead Daily News, a two-city daily and North Dakota's largest newspaper, at Fargo, N. Dak., has been the leading figure throughout the successful handling of the freedom of information matter in our State, partly as president for a year of the North Dakota Chapter of SDX, but before and after that tenure as chairman of an SDX committee and dedicated worker.

There is nothing unusual or irregular in the prominence of the North Dakota Professional Chapter of Sigma Delta Chi in the freedom of information work, rather than the North Dakota Press Association. The membership of the two organizations is practically the same. They both include practically every practicing newspaperman in their separate membership lists. However, while NDPA also includes a certain number of so-called "supply men and peddlers" the SDX chapter does not include such, but does include radio, magazine, and public relations workers, of which NDPA includes very few as associate members. The two organizations, SDX and NDPA, hold their annual meetings on successive days, with the same persons attending both meetings.

There is no rule or agreement covering a division of interests, but it is a fact that NDPA is predominately a trade association and SDX is a professional group, and in North Dakota they do, to a great extent, divide their efforts and dedicate their principal efforts accordingly, always with the feeling that one is working for the other, and always in perfect unanimity.

May I suggest that you add Mr. Paulson to your mailing list in connection with the matter under discussion? I know that you will get his devoted attention and his diligent cooperation if need for that would develop. I believe that contact

with Mr. Paulson would give you the best continuing contact in our State in connection with this matter, because it is entirely possible that the officers of the North Dakota Press Association will again be changed in April, with the old officers reluctant to continue acting in any capacity after the successors are installed. On the other hand, I know that all North Dakotans concerned will be satisfied to have Mr. Paulson representing them in this contact, because he is their "Mr. Freedom of Information."

With personal best wishes.

Respectfully yours,

EDWARD J. FRANTA, Director.

THE UNIVERSITY OF NORTH CAROLINA,
SCHOOL OF JOURNALISM,
Chapel Hill, June 18, 1957.

THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: As dean of the University of North Carolina School of Journalism, as president of the Association for Education in Journalism which has 725 members teaching journalism in 4-year colleges and universities, as a former newspaperman, and as a citizen deeply concerned over the trend of secrecy in government at all levels, I strongly favor the enactment of Senate bill 2148 and of Senate bill 921.

Legislation which will halt the practice of secrecy in government which has recently spread rapidly not only through Federal offices but through governmental offices on the State, county, and city levels is urgently needed if the citizens are to be informed of the activities of their servants, the elected and appointed officials of the governmental units.

Sincerely yours,

NORVAL NEIL LUXON, Dean.

THE CINCINNATI ENQUIRER,
December 10, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

*United States Senate, Senate Office Building,
Washington, D. C.*

DEAR MR. HENNINGS: Thank you for your letter of November 20 and a copy of S. 2148 and your detailed statement on proposed amendments to title 5, United States Code, part 22, and title 5, United States Code, part 1002.

The changes you propose are definitely in the interest of greater freedom of information while at the same time safeguarding the national security.

Business and industry have learned that the difference between what a message was intended to convey and what it actually conveys often is very great, so it is not surprising that you have found that a statute meant by Congress to insure that the public would receive adequate information has been drawn upon to invoke authority for denying information.

The changes you propose undertake not only to set out clearly the procedures to be followed but also to convey that it is the intent of Congress that the public has a right to know about the business of the public. That this intent be conveyed is very important.

Your proposed penalty clause—that no rule, order, opinion or public record is effective unless the procedures for making it known to the public are followed—should make the proposed changes effective if adopted.

Sincerely,

ROGER H. FERGER,
President and Publisher.

CLEVELAND PLAIN DEALER,
Cleveland, Ohio, June 24, 1957.

Mr. THOMAS C. HENNINGS, Jr.,

United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you so much for sending me information about S. 2148.

I enclose for your information an editorial which we printed several days ago on this subject.

Sincerely yours,

WRIGHT BRYAN, *Editor.*

[From the Plain Dealer, Cleveland, Ohio, June 21, 1957]

BUREAUCRATIC SECRECY

You would hardly think this possible, but two laws relating to the filing of public documents and the procedures to be followed by Government agencies have been interpreted by the bureaucrats in Washington as authorizing them to withhold information from the public.

So reports Senator Thomas C. Hennings, Democrat, of Missouri, head of a Subcommittee on Constitutional Rights which has been making a detailed study "of the extent to which restrictions on freedom of information may be infringing the constitutional rights of the people."

Those who have sought to withhold information have given as their excuse laws which Hennings maintains, "were in no way intended to authorize many of the limitations on the availability of information for which they have been cited."

One law, enacted in 1789, is "merely a housekeeping statute" which says nothing about authority to withhold information from the public. Hennings has introduced a bill which would make this clear by adding the sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

Another law, enacted in 1946, is the public information section of the Administrative Procedure Act, which is sometimes misinterpreted because "some of its terms and phrases are vague and undefined, giving agency officials wide latitude in interpreting and applying them."

Hennings would make it clear beyond any doubt that "the basic purpose of the section is to insure the dissemination of the maximum amount of information reasonably possible."

His proposals should be adopted.

OHIO WESLEYAN UNIVERSITY,
DEPARTMENT OF JOURNALISM,
Delaware, Ohio. June 24, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I would regard enactment of S. 921 and S. 2148 as two excellent remedial actions in an area of greatest need. As a private citizen, as an educator in the field of journalism, and as a sometimes newspaperman, I particularly appreciate the language of S. 921 to amend section 22 of title 5 of the United States Code.

It is a clearly stated reminder to Government officials that they are servants of the people, rather than mere rulers.

I also like S. 2148's proposal to limit secrecy excuses to "protection of the national security" rather than the vague excuse of "in the public interest." And one can at least hope for reasonable interpretations of "clearly unwarranted invasion of personal privacy," whereas there was less hope with "**** good cause to be held confidential." Enforcement of "(e) Effect of Failure To Publish" should have a salutary effect on attempts to get back to the kind of public Government on which this Nation was founded.

A recent Purdue University survey of high-school student opinion revealed a frightening belief in totalitarian-style withholding of information. I am increasingly disturbed by college student attitudes toward freedom of information—they "couldn't care less ****." I am very much afraid that, relatively speaking, we are in greater danger of throwing away this fundamental protection of a democratic people than at any time since the civil war era.

Therefore, I am deeply interested in your committee's efforts. This could well be one of those rare moments in history when the governing have the opportunity to lead the governed to greater freedom. In this age of the Welker

Act and last weekend's recommendations by the Commission on Government Security, your proposals are indeed refreshing and encouraging.

Yours very truly,

VERNE E. EDWARDS, Jr., *Chairman.*

THE OHIO STATE UNIVERSITY,
SCHOOL OF JOURNALISM,
Columbus, July 3, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

MY DEAR SENATOR HENNINGS: We received earlier the copy of S. 2148 and your statement on proposed amendments to title 5, United States Code, section 22, and title 5, United States Code, section 1002. A later mail brought your covering letter of June 12.

I have read S. 2148 as well as the statement with some care. As one who has been for years interested professionally in freedom of information in this country, your efforts to strengthen and protect freedom of information at the Federal level are commendable and deserve support and early success.

The only point I would make would be to raise a question under "(f) Exceptions": "(2) required to be kept secret in the protection of the national security * * *." This wording does not indicate who or what, or under what circumstances something is "required to be kept secret." Is there any way by which this can be clarified or spelled out? It could, conceivably, be required by some other law or by Executive order or by some regulation of a Government agency itself.

Very sincerely,

JAMES E. POLLARD, *Director.*

THE UNIVERSITY OF NORTH CAROLINA,
SCHOOL OF LAW,
Chapel Hill, July 26, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*United States Senator from Missouri,
Senate Office Building, Washington, D. C.*

MY DEAR SENATOR: I have for reply your request for my views on S. 2148. Although the letterhead is that of the University of North Carolina, my response is of course made as a member of my home faculty, Ohio State.

As is so often the case, the problem here is not agreement upon principle but adequacy of legislative expression. At least I take it there is near unanimity on the proposition that information as to agency regulations, rules, and internal procedures should be as readily available to the public as is at all consistent with national security, effective agency operation, and protection of the privacy of individuals. However, I am not sufficiently conversant with the detailed experience under the information section of FAPA to be able to judge the nature and degree of its inadequacy, although I am familiar with the existence of considerable dissatisfaction with it. Because of this, I do not feel competent to attempt a considered judgment of your proposed revision except to express approval of your reordering of emphasis which states first the general rule of public availability of agency information and only then enumerates the exceptions.

I venture this suggestion, which has doubtless long since come to your mind and received action; that is, that final judgment on the wording of S. 2148 should be made in the light of the full debate on the American Bar Association's proposed revisions of the entire act. It would seem wise, in view of likely congressional review of all of FAPA's sections, to tie consideration of this section to the larger issue. The interrelations, both of agency operation and of sections of the act, seem to me to dictate such a course.

With respect, I remain,

Very sincerely yours,

FRANK R. STRONG.

CLEVELAND PLAIN DEALER,
Cleveland, Ohio, December 3, 1957

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: The copy of the proposed legislation dealing with freedom of information, which your subcommittee is now considering and which you sent to Mr. Gordon Strong, president of the Ohio Newspaper Association, has been passed along to me as chairman of the Freedom of Information Committee of the ONA. You asked for some comment on the matter.

We are delighted that you are moving in this direction, and hope that legislation to accomplish the purposes you have stated, will be enacted in the next term of Congress. It is all too clear that misinterpretation of departmental rules in the Federal Government has encouraged certain administrative officials to withhold public records, regulations and interpretations from the newspapers, radio, and TV; and that spelling out clearly the statement that such officials do not have the right to withhold this will clarify the matter greatly. We believe there is altogether too much suppression of such information—not for security reasons, but simply because of the mistaken view that Federal officials have the right to withhold certain information if in their opinion it may promote a controversy, or embarrass the officials.

We further believe that there is a tendency among military departments to put secret labels on far too much material which is in no sense really secret. This device is also often used to cover up departmental embarrassment.

Action by Congress on this matter would do a great deal to clear up the present foggy situation and permit the agencies of communication to get, without a pitched battle, information to which the taxpayers are clearly entitled.

Yours sincerely,

PHILIP W. PORTER,
Sunday and Feature Editor.

THE UNIVERSITY OF OKLAHOMA,
SCHOOL OF JOURNALISM,
Norman, Okla., July 15, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: I am grateful for your letter with the accompanying copy of Senate bill No. 2148 and your statements regarding the proposed amendments.

Your bill appears to be a vast improvement over section 3 of chapter 324, section 1002, as now on the books. Particularly, its defining of "public records" should force agencies to notify the public where such may be obtained, and require agencies to make individual votes and official acts a matter of public record.

I believe the passage of such an amended act would be in the public interest and certainly should be helpful to the press.

Cordially yours,

FAYETTE COPELAND, *Director.*

UNIVERSITY OF OREGON,
SCHOOL OF JOURNALISM,
Eugene, Oregon., June 19, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: I have received from your office a copy of S. 2148, together with your statement on the proposed amendments, to title 5, United States Code, section 22, and title 5, United States Code, section 1002 (the former amendment being S. 921, I believe), and your letter of June 12 inviting comment on this proposed legislation.

The subject holds my deepest interest, and I am greatly encouraged by the intelligent approach to the problem which has thus far been shown by you and your committee. The stifling of public information at the nation's No. 1 fountainhead—the national capital—is a matter of the gravest significance. Having

studied the matter as you have, I'm sure you know that this is no new thing, but I'm also certain you'll agree that the situation has become much worse since World War II.

There is evidence at every hand—at National, State, and even local levels of government—that there are many, many men holding public office who consider themselves to be judge and jury in determining what information pertaining to their offices shall be made public, and to what extent and with what interpretation. In this attitude they reveal themselves, in my judgment, to be lacking in the fundamental belief which underlies our system of government, namely, that the basic decisions in government must be made by the governed. It follows that the governed cannot make these decisions if they are denied full and honest information of public affairs.

Getting down to your proposals, I am particularly impressed with the potential good effects of the proposed amendment to title 5, United States Code, section 22. The sentence which you propose to add would be quite effective, I believe, in putting a stop to the ridiculous distortion of the original intent of this venerable housekeeping section which, as you say, is now being indulged in by some agency heads.

With respect to S. 2148, I shall have to confess that I am not sufficiently familiar with the detailed operation of the rules and regulations under 60th Statutes at Large, page 238 to feel very well qualified to express an opinion. I can say that I like the intent of your amendments as I am able to interpret them, but whether they would solve the problem or not is more than I can tell.

At the risk of sounding somewhat cynical, I have to say that I'm rather skeptical of the ability of any law or regulation to provide the perfect solution. So long as men in public office are determined to conceal or distort the essential facts about that part of the public's business which happens to be in their charge, they will find ways to circumvent the meaning and spirit of any legislation that can be drafted, I fear. There must be a deep change in attitude—in philosophy, if you will—among such men before the barriers can be pulled down.

This is not to discount the worth of your proposed amendments, nor to write them off as ineffective gestures. I believe that for the Congress to speak forthrightly on this question, by means of adopting these amendments, would have a most salutary effect in serving notice that the trend toward secrecy in Government has gone far enough.

You and your committee are to be thanked and congratulated for your excellent work. I wish you success.

Sincerely,

CHARLES T. DUNCAN, *Dean.*

THE EVENING AND SUNDAY BULLETIN,
Philadelphia, Pa., July 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for sending copies of S. 2148 and S. 921.

I think both bills are excellent and I believe that their passage would be a big step forward in making it possible for the public to obtain proper information about the functioning of our Government.

Sincerely yours,

WALTER LISTER, *Managing Editor.*

DUQUESNE UNIVERSITY,
Pittsburgh, Pa., June 24, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee of the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: Pardon my delay to your letter of June 12. I have been away from my desk on vacation.

I would be most happy to submit the following as my personal views on S. 2148 and S. 921.

Regarding title 5, United States Code, this is a much-needed measure to set at rest once-for-all the misconceived and inapplicable interpretation which has been previously given to the bill, which it is now proposed to amend. This amendment would seem adequately to insure that only "housekeeping rights" be interpreted to mean just that in the future and not "withholding" rights.

Regarding title 5, United States Code, 1002, section 1 find this amendment, lofty in purpose and designed to meet at least some of the principal arguments for withholding information from Congress and the public via mediums, not entirely adequate. Because there is still inherent in it the vast, assumed power, which agency and bureau heads take unto themselves by virtue of the two principal exceptions this time written into the law. The exceptions noted as "Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency * * *."

With so much executive power delegated to agency heads and bureau functionaries, and so long or as long as the President's Executive order about the rights and authority to classify information stands, then I submit that Government (especially executive department) employees who subscribe to the philosophy "what they don't know won't hurt them" will find some way to twist a situation into a light "requiring secrecy" or "relating solely to the internal management of an agency."

Thank you for the opportunity to express my opinion. I would be most interested to hear of the work of your committee from time to time.

Sincerely,

CORNELIUS S. McCARTHY,
Coordinator, Department of Journalism.

SOUTH DAKOTA STATE COLLEGE
OF AGRICULTURE AND MECHANIC ARTS,
Brookings, S. Dak., June 17, 1957.

SENATOR THOMAS C. HENNINGS, Jr.,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: The bills of your committee (S. 2148 and S. 921) to reinforce the peoples' right to know about the activities of their Government are certainly necessary and vital to the protection of freedom of the press.

The function of the press in a free society is to act as a watchdog on public institutions. Unless the press has the right to gain access to the Government, this function is crippled. The result is a weakening of the democratic process.

Although I am no lawyer, it seems to me that the bills as worded by your committee should clear up the ambiguity in the present law and make it abundantly clear that no governmental unit has a right to withhold information because it may be embarrassing to them, or because it puts the spotlight of public opinion on inefficiency.

Sincerely yours,

J. K. HVISTENDAHL,
Acting Head of Journalism Department.

FARM AND RANCH,
November 27, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR HENNINGS: I believe your bills concerning freedom of information comprise an important and necessary step in protecting the public from bureaucracy. I do not know whether your bills are the best bills that can be written, but I believe it is imperative that bills of this nature be passed. Government has become so huge and complex that the people need all the help they can get which will enable them to understand and comprehend what the government is doing to and for them.

Sincerely,

THOMAS J. ANDERSON,
Editor and Publisher.

JOHNSON CITY PRESS-CHRONICLE,
Johnson City, Tenn., December 5, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: In keeping with the information contained in my previous letter to you (December 2, 1957), I would like to place the Press-Chronicle, and the publisher and editor, George W. Kelly, as approving your bills. To us, they appear adequate to close the present loopholes and we heartily endorse and favor these bills.

If you think it would be advisable for us to write your colleagues Senator Gore and Senator Kefauver, we would be most happy to do so.

Thanking you for the opportunity of placing our opinion on the record, we remain,

Respectfully,

CARL A. JONES, *Publisher.*
 GEORGE W. KELLY, *Editor.*

NASHVILLE BANNER,
Nashville, Tenn., July 5, 1957.

Hon. THOMAS C. HENNINGS,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR HENNINGS: Pursuant to your recent letter and the receipt of S. 2148, accompanied by your statement on proposed amendments to title 5, United States Code, section 22, and title 5, United States Code, section 1002, I have read all of this with a great deal of interest.

As a newspaperman of 45 years experience and as a Naval Reserve officer who bucked the top brass before Pearl Harbor, in persuading the late Frank Knox, then Secretary of the Navy, that the Office of Public Information, which I had been directed by the Secretary to establish, should be taken out from under the jurisdiction of the over-security-minded Office of Naval Intelligence, I have watched the efforts of the services and most Government departments to "keep their fingers on their numbers" in matters of information to which the public is entitled and for whose withholding the lame and fake excuse of "security" is usually given.

The American taxpayer is entitled to know what goes on inside his various branches of Government, from the Federal to the local level, and I am hopeful that your proposed amendments will be adopted to remove from the area of doubt much public information which is now being withheld by the bureaucrats in and out of Washington.

Of course, no patriotic newspaperman with intelligence would want to publish anything which would in the slightest degree jeopardize our national security. It's time the great bulk of public information were removed from the possible phony classified categories upon which so many have relied to keep it from the light of day.

Sincerely yours,

JAMES G. STAHLMAN,
President and Publisher.

BEAUMONT, TEX., June 26, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR: Thank you for sending me a copy of your measure pertaining to freedom of information.

I think it is an excellent bill and will go far to enable the public to obtain information, now denied them, as to what goes on in government.

We are giving editorial support to this measure, and if you think of any further specific aid we can render, please let us know.

Sincerely,

ROBERT W. AKERS,
Editor in Chief, Enterprise and Journal.

THE DALLAS MORNING NEWS,
Dallas, Tex., July 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: May I acknowledge receipt both of your letter of June 12 and, under separate cover, of your statement in connection with proposed amendments to title 5, United States Code, section 22 and title 5, United States Code, section 1002, specifically concerning the making available to the public of information. You asked our comments on it.

I have studied very carefully your proposed changes and am of the opinion that, in the form in which the bill is presented, you have taken every precaution to make possible the proper dissemination of information.

In all frankness, I doubt if anybody could make a 100 percent proof law since necessarily certain information must be excluded. And I strongly suspect that you will always find agile minds and alert hands capable of turning any statute to the cause of secrecy, if so desired by certain people.

If your proposed changes weather the two Houses, I feel sure you have gone as far as anyone possibly could officially to make the law workable and effective.

Sincerely,

WILLIAM B. RUGGLES,
Editor, editorial page.

P. S.—Our executive editor comments that your plan will make it easier for the reporters to prevent suppression of Government information.

W. B. R.

TEXAS TECHNOLOGICAL COLLEGE,
Lubbock, Tex., July 10, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for your recent letter and for copies of the proposed amendments.

I'm sure that I share the opinion of the bulk of college journalism professors in looking with anxiety on the unnecessary fettering of the press which has been evident for a decade now.

Too much zeal in classifying information and the closing of heretofore open news sources will inevitably result in damage to the fabric of democratic government. The fourth estate must remain in its historic framework if the people are to have the type of information on which to base an intelligent opinion and vote.

We in the college journalistic field are in full support of your efforts.

Very truly yours,

W. E. GARETS,
Head, Journalism Department.

THE UNIVERSITY OF TEXAS,
SCHOOL OF JOURNALISM,
Austin, June 20, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I have read your statement on Senate bills No. 2148 and No. 921. The recommendations contained in those bills seem moderate to me and, if there are valid objections to your proposals, I do not detect them. I think you are recommending legislation for which there is a need, and at the same time you have been careful to propose protection for our Federal departments that have information which should not be divulged.

Action by Congress on this important matter would set a fine example for our States. My latest information indicates that a number of our States have reacted favorably to the campaign for the right of the public to have full information about their government; however, more States need to pass such legislation.

I am a person of moderate thinking, and I am not alarmed about our present situation. I think the American public is well informed about governmental activities. As you well know, however, the basic law of our land, where there is no specific legislation in the statute books, does not give newspapermen the full legal right to demand certain information to which the public is entitled.

There are many reasons to explain the reticence of governmental employees in divulging certain information to newspapermen. I present a number of these reasons in one of the courses which I teach. I recognize the fact that it is sometimes the fault of the individual newspaperman that he does not get cooperation from governmental news sources. I am convinced, though, that many governmental employees will not give out information because they think their superiors would disapprove the publication of this information. It seems to me, therefore, that Federal legislation would be beneficial in calling the attention of governmental workers to their duty in helping to keep the public informed about the Government.

We had a ludicrous experience with a postal official in Austin last year. One of our student reporters went to the post office to get a little story about repainting mailboxes in the city of Austin. The postal official to whom the student was sent stated that he could not divulge that information. Of course that is an extreme situation, and I recognize the fact that there is nothing particularly important about the repainting of mailboxes. But it did seem to me that the postal official who refused information about that little project had a wrong understanding of his position in our society.

I commend you for proposing the new legislation concerning freedom of information. I hope you are successful in having this proposed legislation approved. I am just a little proud of you, too, because you are from my old home State, to which I have many sentimental ties. I was raised in Kahoka, I graduated from the University of Missouri, and I edited a newspaper in Macon.

Sincerely yours,

PAUL J. THOMPSON, *Director.*

TEXAS DAILY NEWSPAPER ASSOCIATION,
Houston, Tex., December 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United State Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you very much for sending us a copy of your bill concerning freedom of information.

I have referred both the copy of Senate bill 2148 and your comments on Senate bill 921 to one of our editors for study and comment.

I will pass these on to you just as soon as I get them.

Warmest regards.

Cordially,

JOHN H. MURPHY.

TIMES-WORLD CORP.,
Roanoke, Va., June 17, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I appreciate the opportunity to express a word of commendation for your efforts in behalf of broadening freedom of information in the Federal Government. The public first and the press second are indebted to you and others who are championing this cause.

I have reviewed the contents of S. 2148 and S. 921 and find them both to be excellent pieces of legislation. I sincerely believe their adoption to be a needed first step toward providing reader access to information which rightfully belongs to the people of this country.

I shall be watching with keen interest the outcome of your attempts to secure support for this legislation.

Very truly yours,

BARTON W. MORRIS, Jr.,
Executive Editor.

VIRGINIA PRESS ASSOCIATION, INC.,
Richmond, December 3, 1957.

Mr. THOMAS C. HENNINGS, Jr.,

Chairman, Committee on the Judiciary, Subcommittee on Constitutional Rights, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for your letter of November 27 enclosing a copy of a bill S. 2148 and the statement explaining the provisions and purposes of this legislation.

I am turning this over to Mr. Barton W. Morris, Jr., executive editor of the Times-World Corp., Roanoke, Va., who is chairman of our State Freedom of Information Committee.

I am sure that Mr. Morris will be interested in your legislation and will bring this before our committee for its consideration.

Sincerely yours,

E. O. MEYER, *Secretary Manager.*

WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, INC.,
Seattle, December 4, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

United States Senate, Washington, D. C.

DEAR SIR: I have read with interest your proposed bills which would clarify the matter of public information as it relates to various governmental subdivisions.

I heartily endorse your bills and I am sure that all of the newspaper publishers in our State will back me up with their support.

It is my belief that you are on the right track and these bills should do much to clarify this matter of public information. It seems as though all of these various governmental subdivisions and commissions get the idea that they are kings unto themselves. Your bill would do a great deal to bring these people into line and be of great service to the entire country.

Thank you for sending this information along; and, if there is anything we can do to assist you in promoting these bills, we should be happy to do so.

Yours sincerely,

C. B. LAFROMBOISE, *Manager.*

CONGRESSIONAL QUARTERLY,
Washington, D. C., December 10, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Senate Office Building,
Washington, D. C.*

DEAR SENATOR HENNINGS: Thank you for sending me copies of S. 2148 and S. 921 which are pending before your Subcommittee on Constitutional Rights and the accompanying explanatory statement.

In adopting the statutes proposed to be amended Congress was entering a new field of legislation: in the first setting up the machinery of the new Federal Government; in the second attempting to bring order into the new field of administrative law.

Obviously the first had nothing to do with either publishing or withholding information. Since it has been interpreted as sanctioning withholding of information, it would be well to state that it does no such thing. The drafters of the Administrative Procedure Act seem, in section 1002, to have allowed unintended loopholes. The proposed amendment would carry out the purpose of the section as stated in the Senate Judiciary Committee's 1946 report.

Prompt enactment of both bills seems to me to be desirable and necessary in the public interest.

Sincerely,

RICHARD M. BOECKEL,
Editor, Editorial Research Reports.

THE WASHINGTON POST AND TIMES HERALD,
Washington, D. C., June 28, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Committee on the Judiciary, Subcommittee on Constitutional
Rights, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: Your letter addressed to Mr. Meyer has come to me because of his absence from the city. On his behalf and on mine, I think I can say that we favor the legislation about which you write.

It certainly is necessary to make it clear that title 5, United States Code, section 22, was not intended by Congress, and is not to be regarded as any broad authorization, for the withholding of information and the concealment of records.

The need for some formal record statutes has long been recognized and your S. 2148, in our opinion, is a constructive effort in this direction. Experience under it may disclose the need for appropriate methods by which an individual may enforce the right of access, but the dimensions of this need may disclose themselves better under experience with the legislation. In any case this is an improvement over the Administrative Act as it is written.

Sincerely yours,

J. R. WIGGINS, *Executive Editor.*

JUNE 25, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

*Committee on the Judiciary,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: I am greatly pleased to be given an opportunity to comment on S. 921 and S. 2148 which have just reached me here at my summer vacation spot with your letter of June 12. You and your colleagues are to be praised for taking an important step to preserve the integrities of representative government. I have no opinion that the many encroachments recently made upon the principle that the public business is the people's business have been deliberate steps toward bureaucracy or political dictatorship. I feel rather that they result merely from a combination of circumstances. As Justice Sutherland said many years ago concerning infringements upon some of our basic liberties, no one makes open war upon popularly accepted rights and concepts, and the danger is never a single big danger. The danger is that many successive small, almost unnoticed, and seemingly justifiable infringements eat away at the old accepted concepts. This of course is what has happened in a century and a half to the law of 1789, and more rapidly to the law of 1946. Legislation of the character of your S. 921 and S. 2148 is therefore badly needed.

This is the people's government and the people should have the right to know what their Government is doing. This principle was clearly stated in Thomas Jefferson's famous letter to Edward Carrington in a phrase not so frequently quoted as another in the same letter. Jefferson was a strong advocate and vigorous practitioner of that modern political philosophy on which our Constitution and our Government were formed. He naturally felt that the people have a right and a need to know what their representatives to Government and their Executive and judicial agents in Government are doing, else ours is not—in Lincoln's language—government by the people and for the people. The Jeffersonian phrase to which I refer is that in which he declared that through newspapers widely circulated Government information should be disseminated to all citizens and that those citizens should be able to read and to know what is going on in their Government. Thus it was that Jefferson consistently promoted the freedom of the press and the general advancement of popular education. The essential right here is the people's right to know. Without implementation of that right, a popular government may very likely degenerate into a bureaucracy, an autocracy, a dictatorship, or a dynasty.

The practical difficulty and the basic cause of our present dilemma lies in the fact that hundreds of thousands of official acts are being performed every day at Government desks throughout the land. A Government is doing so many things that it has become so big and complicated as to endanger the application of the Jeffersonian principle. Legislation is framed in a multitudinous majority of cases in committee meetings rather than in open debate. Legislative powers are by statute often delegated to executive agencies and departments which are empowered to draw up their own rules and regulations in so many cases that the Federal Register has become almost as important as the Statutes

at Large. Executive agencies are permitted to condemn, to penalize, to negotiate, to adjust, to forgive—these things that reach to the freedom of individuals and their moneys. It is not these are judicial functions that concerns us here; it is rather that such governmental actions are so seemingly trivial, so obscure, and so many that it is tremendously difficult to know what their Government is doing, and when it may be showing favoritism or performing unjustly. Without knowledge, the people cannot audit the transactions of their representative government as a people should.

A serious practical difficulty arises from the very multitude of governmental acts. There is not space in even the biggest newspapers to report all of these acts. And many of them are relatively inconsequential, and difficult to uncover. Newspapers have been assisted in their search for information by the establishment over the past four decades of information offices in Government departments and of public press conferences. Since the 1920's, when I was engaged in this work, and the present when the Moss committee has very valuably surveyed and recorded present practices, there have been two major changes: First, press conferences of department heads of Cabinet rank seem to have diminished in number. Second, there are more press information offices so that, through the press, the people may exercise their right to know. These two are factors of varying import and influence. But the basic Jeffersonian principle remains. The crux of the difficulty is that amid the complicated governmental machinery there is ever present the danger that the informational machinery may be used to conceal information because of personal, party, or partisan motives. This danger arises from the circumstance that a decision to reveal or release is made by what lawyers would call interested parties inside the organization and therefore not impartially, and not necessarily in the public interest. The perversions of the housekeeping statute of 1789 into an excuse for suppression or censorship illustrates this danger and also a trend which should be reversed in the people's interest and in the interest of representative government.

In the long view, American journalism has undergone great changes since 1900. The increase in the number of one-paper cities, the decline of the politically partisan press, the increases in circulation faster than increases in population, and that financial independence grown out of the merchandizing need for retail advertising—all of these have combined to independent and popularly responsible newspapers. Most of our newspapers today consider themselves, not partisan organs, not personal playthings, not mere business enterprises, but actually public institutions. They are distributors of facts—sometimes facts that people want to read for pleasure or for vicarious excitement, but always in large measure facts that the people need to know as participating citizens in a great republic. Most of these newspapers feel that they are servants of the people and also feel that their most important function is to secure, select, and tell the people the things about the government that the people have a right to know. I think that now, with their present ethics and high standards, newsmen can be trusted to seek out and sift through the mass of information, and to publish that which it is in the public interest to have published. They can be trusted to be more impartial and more objective than any "inside" man in the government machine. Most of these newsmen should therefore approve of your aim in trying to open the doors more fully to them as press representatives of the people.

I wish you well in your efforts to eliminate the current misreadings of the law of 1789 and to transform the law of 1946 into the public information legislation it was intended to be. Press and public should applaud. So would Thomas Jefferson.

Sincerely yours,

ELBRIDGE COLBY,
Professor of Journalism, George Washington University.

WEST VIRGINIA UNIVERSITY,
SCHOOL OF JOURNALISM,
Morgantown, June 17, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Senate of the United States,
Washington, D. C.

DEAR SENATOR HENNINGS: Let me thank you for bringing to my attention the bills concerning freedom of information which you have introduced into the United States Senate.

I have read thoughtfully S. 2148 and your statements on the proposed amendments. Your interpretations seem sound to me and your reasons for the amendments appear logical.

The people's right to know was never greater than at the present time in the complicated state of the world. The people have a number of public mediums to which they might expect to turn for information, but it is a well-known fact that all media except the press devote themselves largely to entertainment. Of course, educational TV is making strides forward in educational matters. It seems, however, that the function of the American press is becoming more and more to let the people know what is going on and to explain the significance of events. This means that all government, from the smallest local unit to the Government of the United States, must never fall into the practice of withholding information unless a clear and present danger exists by revealing such information. I wish to commend you for your efforts to let the people know and hope that your bills get favorable action.

Very truly yours,

P. I. REED, *Director.*

THE UNIVERSITY OF WISCONSIN,
DEPARTMENT OF AGRICULTURAL JOURNALISM,
Madison, Wis., June 25, 1957.

Senator THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I was very much interested in the copy of S. 2148 which you sent me a few days ago and the statement which accompanied it explaining its provisions and purposes. I am very much in accord with the intent of this bill, and feel further that the national interests of this country stand a much greater chance of being injured by restricting the access of newspapers and other communications agencies to governmental information than by legislation designed to give greater access to it. In the mind of a public official I am sure that the conflict between the public's right to know and administrative convenience or necessity is a real and continuing one. It seems to me that the conscientious public official should therefore benefit, too, from an affirmative statement in the statutes as to the nature and extent of "the right of the public to information."

Sincerely,

BRYANT E. KEARL, *Chairman.*

THE UNIVERSITY OF WISCONSIN LAW SCHOOL,
Madison, July 23, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

MY DEAR SENATOR HENNINGS: I am writing in reply to your letter of July 10 with reference to the freedom of information bill which you have introduced in the United States Senate.

Lacking firsthand knowledge of the alleged abuses these bills are intended to prevent, I am unable to make any worthwhile suggestions concerning them. However, both bills seem to me to be well drawn and to clarify ambiguities in sections 22 and 1002 of title 5 of the United States Code. Needless to say, I am completely sympathetic with the objective sought to be achieved and no valid reasons occur to me for opposing them. It would seem to me to be in the public interest for the Congress to adopt S. 2148.

Regretting that I am unable to be of help to you and your committee but expressing appreciation for being consulted, I am,

Sincerely,

JOHN RITCHIE, *Dean.*

WISCONSIN DAILY NEWSPAPER LEAGUE,
Racine, Wis., November 29, 1957.

Senator THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: Thank you very much, indeed, for sending copies of bills S. 2148 and S. 921.

It so happens the Wisconsin Daily Newspaper League will hold its annual meeting next Monday and at that time your letter and copies of the bills will be presented to the meeting for possible action by resolution.

Sincerely,

HARRY R. LEPOIDEVIN, *Secretary-Treasurer.*

WYOMING PRESS ASSOCIATION,
Laramie, Wyo., November 29, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR HENNINGS: Naturally I am very much interested in your bill S. 921—and also S. 2148. As secretary-manager of the Wyoming Press association I would like to know what I can do to help these bills to become realities.

I am familiar only in a general way with the freedom of information problems at a Federal level. I know more about freedom of information on the city-county-State level. I am assuming that your bills would concern only Federal agencies.

Anyway, I like both of these bills and wish them success. If these bills are passed for Federal agencies the results will trickle down to State and local groups, I am sure. Liberty is a slippery thing—and can disappear a little bit at a time without anyone paying too much attention to it. I feel that we must have men like you in Congress to help see that the thing called democracy and all that it needs to make it a reality—is protected.

Too many officials—not completely understanding the democratic process—are willing and anxious to guard their own small bailiwicks from public scrutiny. Both of these bills will help make secrecy a more difficult item to latch onto.

Please let me know what Wyoming newspapers can do in helping these bills get passage.

Regards,

WALLACE BIGGS, *Manager.*

HONOLULU STAR-BULLETIN,
Honolulu, T. H., June 28, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I am glad to acknowledge your letter of June 12—just received as it came by ship (surface) mail, not airmail, and additionally was apparently delayed somewhere along the line.

Copies of Senate bills 921 and 2148 had already reached me and we had in fact carried an editorial yesterday which expresses our sentiments and answers the inquiry in your last two paragraphs.

This is one of many editorials the Star-Bulletin has carried pointing to the need for legislation which will firmly pull back the curtains with which many Federal and local agencies and official bodies try to cloak their proceedings.

Our editorial, you will note, was directed particularly toward our city-county legislative body and our mayor. We will follow with interest and concern the progress of Senate bills 921 and 2148 and you can be assured we support their intent and scope.

Cordially yours,

RILEY H. ALLEN, *Editor.*

(The editorial follows :)

CONGRESS TAKING UP THE "SECRET" ISSUE

A pointer for our mayor and board of supervisors:

The Congress of the United States is taking up the issue of public officials who try to transact public business in secrecy.

Of course the Congress isn't doing this because of the increasing tendency of the mayor and board here to retreat behind closed doors when discussing public business.

The Congress is acting because in many other parts of our country, public officials—boards, agencies, individuals—have displayed this same unwillingness to let the public know what their officials are talking about.

Disturbed by an "increasing tendency toward secrecy in the conduct of governmental affairs," the United States Senate is working on sharp legislation.

The Senate bill shows that the Congress wants all officials and employees of the Federal Government to know that the public is entitled to know what its Government is doing.

In the past, the meaning of sections in the United States Code, governing the administrative functions, has been often distorted to justify withholding of information from the public.

This was never the intention of Congress. To make sure that the intent of Congress is clear, these sections of the code are being amended so there can be no mistake that, with rare exceptions, all Government business should be transacted in public, and all Government records should be available to the public.

The specific exceptions are subject matter which is:

"1. Specifically exempt from disclosure by statute.

"2. Required to be kept secret in the protection of the national security.

"3. Of such a nature that disclosure would be a clearly unwarranted invasion of personal privacy.

"However, nothing in this section authorizes withholding of information or limiting availability of records to the public except as specifically stated in this subsection."

Thus it is clearly the purpose of Congress to keep public business public.

Several States this year are adopting similar legislation in an honest attempt to eliminate the "star chamber" sessions, executive sessions behind closed doors, and to open files to press and public.

If the Honolulu Mayor and board of supervisors continue their resort to "executive sessions," there'll be a bill in the next session of the legislature to rebuke and curb them. And probably by that time the national legislation will be in effect.

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Washington Newspaper Publishers Association, Inc.	825
Wisconsin Daily Newspaper League	825
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(E) REPLIES BY PRESS AND NEWS ASSOCIATIONS

CONNECTICUT DAILY NEWSPAPERS ASSOCIATION,
April 14, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Office Building,
Washington, D. C.

DEAR MR. HENNINGS: The Connecticut Daily Newspapers Association wholeheartedly supports your freedom of information bill S. 921 amending section 161 of the Revised Statutes (5 U. S. C. 22).

No newspaper wants to reveal information that would endanger the Nation's security, but as the traditional champions of the people's right to know what their elected officials are doing, newspapers regard with growing concern the increasing tendency to withhold and suppress information that does not threaten national security and is information to which the people are entitled.

We earnestly urge favorable action on your bill and we commend you and those colleagues who are joining in this effort for attempting to cure a cancer that, if ignored, could eat away the very foundations of our free, democratic Nation.

Sincerely yours,

BARNARD L. COLBY, President.

P. S.—Your letter to my predecessor, Carter H. White of the Meriden, Conn., Record and Journal, who completed his term as president of CDNA on March 19, was forwarded to me for reply.

B. L. C.

AMERICAN MEDICAL ASSOCIATION,
Chicago, Ill., July 26, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: Your letter of July 16, 1957, with the attached copy of S. 2148, a bill concerning freedom of information, has been referred to me for answering.

I have studied this bill and the accompanying explanatory statement and must say that I find it very interesting. I will bring this bill to the attention of our committee on legislation.

The committee on legislation of the American Medical Association studies all bills of interest to organized medicine and makes recommendations to our board of trustees as to our position on these bills.

However, as a rule, the American Medical Association only takes positions on bills that are closely related to the practice of medicine and the professional interests of physicians. While we are very interested in S. 2148 as individual citizens, I would hazard a guess that the American Medical Association as a body would take no position on this bill as it is quite far removed from our ac-

tivities as a professional organization. If the association, however, decides to take a position on this bill, I will communicate that position to you immediately.

Sincerely,

WARREN E. WHYTE.

THE AMERICAN SOCIETY OF NEWSPAPER EDITORS,
June 17, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*Chairman, Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: This is a response to your notice of June 12, asking for comment on S. 2148 and S. 921.

The most pertinent comment is this: Wonderful. This legislation will be a milestone in the history of freedom. Newspaper editors, who discovered the growing barriers against access to Government information, are delighted that they now have help in Congress. What the Moss committee and you have done, and are doing, is going to make real some of the things we have hoped for.

It seems to me, though, that the bills would be stronger if there were included a positive declaration of the right to inspect public records, backed by an enforcement provision that did not involve delay or obstacles.

For example, Connecticut has just passed two freedom of information laws, one on public meetings, the other on public records. There are dangerous exceptions in both laws that may lock some doors that hitherto have merely been closed to us. But we have welcomed the bills nonetheless, hoping to improve them in the future, because of their positive statements. Thus, one bill says that "all records" of all government bodies in the State "shall be public records," incidentally defining them well. The other says that "the meetings of all" government bodies in the State "shall be open to the public." Despite the subsequent exceptions in both bills, these affirmative statements nail down the principle.

The proposed bills are good. But it seems to me that they could be made still stronger, to the benefit of the public.

Faithfully yours,

HERBERT BRUCKER.

CHICAGO DAILY NEWS,
Chicago, Ill., December 31, 1957.

Senator THOMAS C. HENNINGS, Jr.,
*Committee on the Judiciary,
United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: Mr. Basil L. Walters referred to me your letter of December 2 asking his opinion of S. 2148, a bill concerning freedom of information which you recently introduced in the United States Senate.

Mr. Walters' reason for referring this to me is that I am presently a member of the committee on freedom of information of the American Society of Newspaper Editors.

I think your amendments are good.

The only questions I have would appear to relate to the original bill and not to the amendments. Even if the original bill were not amended, it does seem to require a lot of paperwork on the part of Government departments. I am not in a position to judge whether all of this is absolutely necessary or not. If you believe it is necessary, I would certainly respect your opinion.

Sincerely yours,

A. T. BURCH, *Associate Editor.*

THE ASSOCIATED BUSINESS PUBLICATIONS,
New York, N. Y., December 13, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

MY DEAR SENATOR HENNINGS: On November 20 you addressed a request to ABP's editorial group, the National Conference of Businesspaper Editors, for their opinion as to the provision and purposes of S. 2148 and S. 921.

We have now finished surveying the group, and can tell you that this association endorses the purpose behind these bills.

We feel that any trend toward greater secrecy in conducting governmental affairs should be halted, except where disclosure of facts would be detrimental

to the national welfare. The bills you mention seem to us to adequately clarify the rules on release of information, and should halt this secrecy trend.

On behalf of the 167 ABP member business publications, I wish to thank you for the opportunity to comment on this legislation.

Sincerely,

WM. K. BEARD.

AVIATION WRITERS, ASSOCIATION,
Jenkintown, Pa., January 10, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Since receiving your letter of November 20 concerning enclosed bills S. 2148 and S. 921, I have checked the matter with several of our members, especially one who is generally located most of his time in Washington, D. C., and is very familiar with the subject matter.

It appears to us that you have a very good idea and we would welcome passage of S. 2148.

Appreciating this opportunity of communicating with you, we are,

Sincerely yours,

RALPH H. McCLAREN, *Executive Secretary.*

THE BELL SYNDICATE, INC.,
New York, N. Y., November 26, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for your letter of November 20 addressed to me at Associated Newspapers and Consolidated News Features, which are affiliated with the Bell Syndicate and McClure Newspaper Syndicate. Thank you also for the copy of S. 2148, a bill concerning freedom of information, which you introduced, as well as the other enclosures of the statement explaining in detail the provisions and purposes as well as those of S. 921, another freedom of information bill which you introduced.

I agree wholeheartedly with the purposes of your two bills and am especially happy to see that exception No. 2 does not require the disclosure of subject matter which is required to be kept secret in the interest of national security.

I am not at all sure that we have protected our own interests in the past as well as we might have in regard to security of the atomic and hydrogen bombs and missile information because it seems that the Russians certainly have profited in one way or another from information they have reportedly gleaned from us regarding these subjects.

Yours sincerely,

JOSEPH B. AGNELLI.

CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, INC.,
February 26, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
*United States Senate,
Washington, D. C.*

DEAR SENATOR: This is a delayed acknowledgment to your letter of November 20, 1957, which was addressed to Seymour C. Sterling, 1956 president of California Newspapers Publishers Association. It was forwarded to me towards the end of my term which is now expired and further correspondence pertaining to bills S. 2148 or S. 921 should be directed to Mr. Bert J. Abraham, president of our association, who is publisher of the Herald-Enterprise, Bellflower, Calif., or to John B. Long, general manager of CNPA, 809 Pacific Electric Building, Los Angeles, Calif.

Enclosed are two copies of a resolution passed at our 70th annual convention just 2 weeks ago on behalf of "the people's right to know," which I am sure will be valuable to you and your Subcommittee on Constitutional Rights.

With all good wishes.

Sincerely yours,

EUGENE C. BISHOP,
Immediate Past President.

RESOLUTION

Whereas the people's right to know is an essential part of their democratic freedoms; and

Whereas the Nation's press is an agent of the people in this right to know: Now, therefore, the California Newspaper Publishers Association, Inc., assembled in annual convention this 8th day of February 1958, at Coronado, Calif., does hereby

Resolve—

1. That the legislature, particularly Assemblyman Ralph Brown, and the Governor of the State of California be commended for their action in enlarging this right to know by the passage and approval of necessary legislation to keep open the workings of state and local government; and

2. That the national administration and Congress are urged to extend this right to know to all segments of Government save where the national security precludes the revelation of military information, and we commend Congressman John Moss for his determined efforts on behalf of freedom of information; and

3. That the free exchange of newsmen be encouraged by the national administration between this Nation and all the nations of the world except where a state of war exists between the United States of America and any nation so that the people have full access to the information necessary for sound decisions; and

4. That copies of this resolution be sent to the President of the United States, the Secretary of State of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives, the Governor of the State of California, the president of the Senate of the State of California, the speaker of the assembly, the California congressional delegation, and to Congressman John Moss and Assemblyman Ralph Brown.

CATHOLIC PRESS ASSOCIATION,
Rochester, N. Y., November 26, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: I am in receipt of your letter of November 20 with enclosures.

The officers of the Catholic Press Association will meet in early February. At this time the matter will be reviewed, and we shall be happy to give you our opinion of bills S. 2148 and S. 921.

Very truly yours,

Rt. Rev. Msgr. JOHN S. RANDALL, *President.*

CONNECTICUT EDITORIAL ASSOCIATION,
December 10, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SENATOR: The bills, S. 921 and S. 2148, are vital legislative acts which obviously will enhance the public's access to governmental information. The wall that is being elongated and heightened between the public and its Government will not only consistently reduce the amount of information available but will also permit the continuous growth of an irresponsible bureaucracy which can commit countless errors in policy and administration and develop a government by decree.

Even more serious is the probability of denial of access to information to our elected representatives. It is even now startling to read that such-and-such a committee of the Congress is either denied information, circumvented or given delayed information, and this latter obtained only after persistent demands on the part of the elected body.

There is little information which need be withheld from any of us. Apparently there is little these days that we do that is much secret, except in the minds of the bureaucracy, and, in particular, the military. Your bills force greater access to this information.

It is strange how the fight by newspapers, and by our representatives of vision, is interpreted as selfish desire. Newspapers can undoubtedly live without all this fuss, since they depend on advertising for revenue, not governmental information. And I'm sure elected officials can be elected without this freedom of access for the public.

Please be assured that newspapermen everywhere realize the significance of your work.

Sincerely,

JOHN H. GLEASON, *Executive Secretary.*

TAMPA, FLA., December 5, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

United States Senate,

Washington, D. C.

DEAR SENATOR HENNINGS: Replying to your request for a statement from Sigma Delta Chi on Senate bills 2148 and 921, which you introduced into the Senate to correct roadblocks to the free flow of information, I am enclosing the annual report of the freedom of information committee of Sigma Delta Chi, of which I am chairman.

You will note in part 3, page 6, of this report, a section dealing with this pending information. You will also note on page 20 a resolution dealing with this same legislation.

It is my great pleasure to inform you that Sigma Delta Chi, meeting at annual convention in Houston, Tex., on November 16, 1957, adopted this resolution unanimously.

You are at liberty to use this in any way, as well as any materials in the enclosed report, in behalf of the bills.

With kindest regards.

Sincerely yours,

V. M. NEWTON, Jr.

REPORT OF THE ADVANCEMENT OF FREEDOM OF INFORMATION COMMITTEE

Prepared for Presentation to the 48th Anniversary Convention of Sigma Delta Chi, Professional Journalistic Fraternity, November 13-16, 1957

PART I. THE FEDERAL GOVERNMENT

I. FEDERAL SECRECY—A THREE-PRONGED PROBLEM

Bureaucratic secrecy attained new heights in Federal Government during 1957. It engulfed virtually all of executive government and in many areas deprived the people, the Congress, and the press of legitimate information of the records of government and the actions of our public servants.

There are three basic problems underlying this widespread secrecy and they must be solved if the inherent American right to know about government is to be preserved. These problems are:

1. The Eisenhower Security Order 10501, which gives the heads of 17 Federal agencies the privilege of censoring information in the sacred name of national security, has been widely abused and has done nothing to stop "overclassification" of documents of government that threatens the effectiveness of the whole classification system. There was no effective declassification under the Eisenhower order, and one Department of Defense committee openly admitted that things were in a mess.

2. Executive agencies have twisted and tortured the so-called housekeeping statute (5 U. S. C. 22) and the 1946 Administrative Procedures Act (5 U. S. C. 1002) into authority for withholding information from the press, the public, and Congress. These agencies are actively opposing legislation which would prevent use of these laws as authority for arbitrary secrecy.

3. The broadest and most offensive secrecy claim continues to be the policy that the executive branch of government can hide anything but final decisions on grounds it is "confidential executive business." This policy was set out in President Eisenhower's May 17, 1954, letter to Secretary of Defense Charles E. Wilson, and the administration has refused to back down from this position. It

is used for the ultimate in "managing the news" in that the executive department can pick and choose which information to make available.

Executive agency heads do not even give very good lip service to the principle of free and open Government records. They insist that nonsecurity information should be withheld on grounds of "right of privacy," "public interest," or "administrative feasibility." They insist also that they have need for the three lines of defense which they are now using so effectively in barring the press, the public, and Congress from finding out how they are handling the people's business.

Their first line of defense is the secrecy classification on grounds of "national security." This has been stretched to hide anything that could conceivably be associated with national security, and a good many things where such a classification is ludicrous. Government commissions have admitted the abuse of "overclassification" and failure to declassify Government papers. This misuse of "national security" has resulted in a democracy-throttling secrecy, and an expensive accumulation of paper in Government storage. The Eisenhower administration has refused to change its order or its attitude.

The second line of defense for the secrecy-minded bureaucrats is the so-called housekeeping statute. This is the law (5 U. S. C. 22) which charges the agencies with the responsibility for keeping Government records in a safe place, and assuring they will be handled in such a way they will not be destroyed. When the "national security" excuse has been demonstrated as not proper, many administration executives have used the housekeeping statute as their authority to hide Government papers. The Moss subcommittee of the House Committee on Government Operations has been critical of misuse of this law, and has sought to amend it by simply adding:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

However, representatives of 10 key executive agencies have notified the Moss subcommittee that they will oppose any change in the existing laws.

The bureaucrats' third line of defense is the broad use of "executive privilege" as set out in a letter President Eisenhower wrote to Defense Secretary Charles E. Wilson on May 17, 1954. This is the doctrine that executive departments can treat communications between various agencies and within an agency as "confidential executive communications" and outside of the power of congressional subpoena. This is such a broad secrecy policy that it has been applied to all but the final decisions of an agency. It can be arbitrarily used to imprint "secret" on practically any papers or communications on which it is proven "national security" and the housekeeping statute should not be used.

The Moss subcommittee and other congressional committees state there is no law to support this arbitrary claim of a right to refuse to divulge Government business. However, the Eisenhower administration has persisted in insisting that it can shut the Government door against the press, the public, or the Congress by arbitrarily asserting that the information sought is "confidential executive business."

II. THE MOSS SUBCOMMITTEE MAKES A FIGHT

The Moss subcommittee has been the center of the fight in Washington against excessive secrecy in the executive departments and independent Government agencies. It has received the complaints of newspaper organizations and newspaper reporters and it has followed through in forcing Government agencies to go on record as to their reasons for withholding information.

It is significant that the complaints about Government secrecy have not all originated with the press. The Moss subcommittee has received a majority of the complaints of unjustified Government secrecy from persons outside of the newspaper field—lawyers, businessmen, scientists, and historians.

These citizen groups have found that arbitrary and unreasonable Government secrecy can hurt them directly, as well as indirectly, when press freedom is restricted. Lawyers have found that Government secrecy jeopardized the rights of their clients. Businessmen have found secrecy hampering their operations.

It is important that your committee emphasize this fact so that more and more citizens come to realize that they have a direct stake in open Government records, and that it is not just a problem for reporters and editors.

The Moss subcommittee has followed through for these citizens in the same way that it has carried the ball for the press. It has compiled lists of the complaints. It has written letters, and it has conducted hearings.

The Moss subcommittee had a significant part in some gains in the fight against secrecy, yet these gains hardly dented the suffocating curtain of censorship over Federal Government. And they did not come close to solving the three underlying problems.

The year's gains on the Federal freedom of information front may be summarized as follows:

1. The Department of Defense withdrew its directive which had restricted press releases and speeches to those making a "constructive contribution" to the department operations. The Moss committee felt this directive had "epitomized" the attitude of some Government officials who sought to "manage the news."

2. Export records are being made available to the press for the first time in more than 15 years. The Journal of Commerce was interested in greater access to export records, and for months had received a typical bureaucratic runaround in its efforts to get the policy changed to open these records. The Journal of Commerce took its problem to the Moss subcommittee, and action was forced in the several Government departments involved.

3. The Office of Strategic Information was abolished. The creation of this agency had been under fire by the American Society of Newspaper Editors since its origin. This Agency was set up in the Department of Commerce by an order of the National Security Council, and its operations showed an effort to set up a control of information released by other Government agencies. It set itself up as a clearinghouse for information that was not secret, but that might be of use to the enemy. Editors attacked it as embodying the idea of a far-reaching censor in all agencies. The Moss subcommittee took up the fight for editors, the House Appropriations Committee cut off funds for OSI, and the administration finally killed it.

4. The Treasury Department agreed to make available all information on imports except the name of the importer. The name of the importer can be withheld only upon request by the importer himself. Regulations had allowed the importer, exporter, or master or owner of a ship docking at a United States port to impose a total secrecy over importing operations. This secrecy covered the name of the person receiving goods, the type of material imported, the amount, the value, the name of the ship. The information to be made available under the new policy is copied from the incoming ship manifests filed with the collector of customs. But it took 5 months for the Moss subcommittee to bring this matter to a decision with top Treasury and Customs officials.

5. Under the pressure of the Moss subcommittee, the Foreign Claims Settlement Commission has abandoned its plan for making all employees of the Agency sign a statement that they will not reveal information from Agency files under penalty of discharge. However, Whitney Gilliland, Chairman of the Foreign Claims Settlement Commission, has continued to reiterate other broad secrecy policies which could be a blanket approval for withholding almost any information. He has set out three major areas of justifiable secrecy under the labels "right of privacy," "public interest," and "administrative feasibility." This is still under study by the Moss subcommittee, which finds Gilliland's secrecy doctrine as incompatible with free open government.

III. PENDING LEGISLATION FOR FREEDOM OF INFORMATION

The work of the Moss subcommittee over the last 2 years has reached a point where there appears to be a good chance for legislation to eliminate some of the secrecy gimmicks used by the Federal bureaucrats.

Specific legislation now pending in Congress includes the following:

1. Bills were introduced in the House and the Senate which would prohibit Government officials from using the so-called housekeeping statute as an excuse for refusing access to Government records. The legislation is in the form of an amendment to title 5, United States Code, title 22, the law which makes officials responsible for the proper "custody, use and preservation" of government records. Chairman Moss and two members of his committee have introduced the legislation in the House side which states:

"This section does not authorize withholding information from the public or limiting the availability of records to the public."

Similar legislation has been introduced in the Senate by Senator Thomas Hennings (Democrat, of Missouri).

2. Bills were introduced in the House and Senate to prohibit Government officials from interpreting the 1946 Administrative Procedure Act (5 U. S. C.

1002) as authority for imposing secrecy on nonsecurity matters. Representative Moss has charged that Federal agencies have seized on a few phrases in this law to keep information secret, not only from the public but also from Congress. The legislation introduced by Representative Moss in the House and Senator Hennings in the Senate would state that the only administrative information which can be restricted is that which is already held confidential under other laws, facts which must be kept secret to protect national security, or information which would result in unwarranted invasion of personal privacy. This proposed legislation would also require the agencies to make public all of its regulations and policies on public information, and the availability of records, files, papers, and documents received by the agency.

This legislation also would force each agency to set out and publish its policies, and not hide records when embarrassing under such vague terms as "in the public interest," "for good cause found," or because it relates to "internal management."

Under the proposed legislation, the public records would include, but not be limited to, "all applications, petitions, pleadings, requests, claims, communications, reports, or other papers and all records and actions by the agency thereon, except as the agency by published rule shall find that withholding is required."

The proposed legislation would also require that "every individual vote and official act of an agency be entered on record and made available to the public."

3. Representative Dante Fascell (Democrat of Florida) was successful in getting the House to pass legislation to eliminate the secret operations of Government advisory committees. These advisory committees have been set up by various department heads, and have had a great deal of influence in establishing Government policy. However, they have operated in many cases with a secrecy that prevented Congress and the press from finding out the names of the members, the precise function, or the matters taken up at their meetings.

Representative Fascell's bill does not bar the use of advisory committees, but would make it mandatory that there be a public notification of the establishment of the committees, the membership of the committees, and that records of the advisory committee deliberations be kept.

The proposed law provides that this information shall be public in the following paragraph:

"It is intended that such official record shall be available to the Department of Justice, General Accounting Office, and law-enforcement agencies of the Government, as well as to the Congress and the public, subject only to security and other restrictions specifically provided by law."

The legislation was opposed by almost all of the executive departments of Government, and can be expected to have some strong opposition in the Senate.

4. The House Ways and Means Committee approved legislation which would provide for public inspection of applications filed by organizations seeking tax-exempt status. These applications have been regarded as secret by the Internal Revenue Service.

For several years top officials of the Internal Revenue Service and the Treasury Department have agreed that it did not make sense to put a secrecy cloak around the representations of organizations making a claim to tax-exempt status. However, no decision was made on removing the secrecy administratively and it is left to the Moss subcommittee and the House Ways and Means Committee to initiate legislation.

The legislation coming out of the House Ways and Means Committee provides that the Government can withhold any information relating to a "trade secret, patent, process, style of work, or apparatus of the organization" if it is felt disclosure would adversely affect the organization. But even this corrective law has a dangerous qualification insofar as potential abuse by the bureaucrats and the interests of the people are concerned.

IV. PHILOSOPHY OF THE BUREAUCRATS

The Coolidge Committee report has been probably the most significant document produced in the last year in connection with the misuse of security classifications. This five-man committee was set up by Secretary of Defense Wilson to study the security problem.

Its report does away with the necessity for further work to document the fact that the Pentagon has too many people putting "secret" and "top secret" labels on too many documents, and that practically nothing is being done to declassify papers that have been classified.

Although the Coolidge Committee defended President Eisenhower's Executive Order 10501 as being reasonable in theory, it was admitted that in practice it has been a failure.

The report states:

"The Department of Defense is accused of failing to accomplish both the dual objectives of the system; it withholds too much information and too much leaks out. We think both criticisms are justified; there are both overclassifications and harmful disclosures."

The report pounced on this philosophy as tending to create overclassification.

"A subordinate may well be severely criticized by his seniors for permitting sensitive information to be released, whereas he is rarely criticized for overprotecting it."

This report blamed the "overclassification" for much of the attitude that results in harmful leaks of information. The report stated further:

"The press regards the stamp of classification with feelings which vary from indifference to active contempt. Within the Department of Defense, itself, the mass of classified papers has inevitably resulted in a casual attitude toward classified information, at least on the part of many."

The Moss subcommittee found that the Coolidge Committee had corroborated fully the complaints of excessive secrecy under the Eisenhower Executive Order 10501.

However, getting something done about this has been difficult. The Coolidge Committee estimates that all the secret documents in the Department of Defense would fill a file drawer 575 miles long.

The physical problem of merely examining the documents to see if they should be declassified is a staggering one, and the problem gets worse as the time passes.

In a spectacular and perfect illustration of the philosophy that permeates most of Federal Government, Murray Snyder, assistant Secretary of Defense, was responsible for what is considered one of the most nonsensical claims of "executive privilege." In September he refused to let the Moss subcommittee see the file on the "security clearance" review of a book written in 1879 by a Confederate Army general.

The book review was written by Maj. Gen. Ulysses S. Grant III. It discussed a new edition of a book by Lt. Gen. Richard Taylor, originally published in 1879 under the title "Destruction and Reconstruction."

The book review was submitted to the Defense Department for a "security review" by William H. Zierdt Jr., editor of Armor magazine. He told the Moss subcommittee he submitted it because the memoirs of General Taylor were critical of the Reconstruction period, and hence critical of the Government.

Obviously this book review material could not be refused the Moss subcommittee on "security grounds," and apparently it couldn't have been gotten under the housekeeping statute or "Administrative Procedures Act under the widest stretch of imagination.

So, Assistant Defense Secretary Snyder used the umbrella of "executive privilege" and "separation of powers." He wrote the Moss subcommittee as follows:

"The files of the Office of Security Review generally contain information respecting communications between members of the Department of Defense, and in many cases, between members and representatives of other agencies of the executive branch, which are merely advisory or preliminary in nature and which do not represent any final official action.

"As you know, since President Washington's time, general access by congressional committees to such material has been denied under the principle that such access was incompatible with the public interest and the proper preservation of the separation of powers among the three great branches of Government."

Moss declared that Snyder's position "would be laughable if it were not part of such a serious problem."

Snyder's position demonstrates the ultimate in executive secrecy possible under the doctrine set out in President Eisenhower's letter of May 17, 1954.

It further demonstrates how this "executive privilege" doctrine can be used to impose almost total secrecy even if President Eisenhower's controversial security Order 10501 is eliminated, and laws are enacted to bar executive agencies from using the housekeeping statute and the Administrative Procedures Act as authority for hiding Government business.

It must be understood that the broad claim of "executive privilege" represents the most sweeping and reprehensible of all of the secrecy claims being made.

It provides a broad tent of secrecy under which executive officials of all ranks are arbitrarily telling the public, the press and Congress that records will not be made available, and testimony will not be given even under a congressional subpoena.

In past years, Presidents have claimed that under the doctrine of separation of powers the Congress could not force a President to testify. It had been generally regarded that this privilege also extended to the President when he was taking advice from such top aides as the Cabinet officers and the Joint Chiefs of Staff.

However, in 1954, the Department of Justice prepared a letter for President Eisenhower's signature and attached a list of so-called precedents for withholding from Congress all communications within the executive department except final decisions.

This doctrine was set forth on May 17, 1954, in a letter from President Eisenhower to Defense Secretary Wilson. It was authority for a Department of Defense lawyer to refuse to testify in the Army-McCarthy hearings, and it was viewed generally as a blow at the late Senator McCarthy. As such, the letter won some editorial endorsement as a fine restatement of the philosophy of the separation of powers. It was not until it was used against a half dozen investigating committees, and to bar the press from information that its secrecy potential was realized.

Congressional committees have condemned this broad secrecy doctrine as having no foundation in law, or in the decisions of the courts. The Moss subcommittee has repeatedly asked the Department of Justice for its authority for this broad doctrine and its seeds of executive dictatorship.

The Department of Justice has produced no law and no court decision for the Moss subcommittee, or for reporters who have asked for the legal authorities. The Department of Justice has smugly held its position with an attitude that it needs no authority for its interpretation of "executive privilege."

Although a number of congressional committees have complained bitterly, there has usually been a partisan split within the committees. Or, in other cases, the issue was not dramatic enough to make a big issue of it.

The leadership in the Senate and House have failed to recognize that this doctrine is a severe blow at the prestige of Congress. It is an assertion of the philosophy that Congress should appropriate the billions of dollars each year, but has no real authority to dig deeply into the executive departments to find out how these taxpayer dollars were spent.

President Eisenhower has continued to support those who have asserted this doctrine in the ultimate. He constantly assures the press and the public that he would never allow this executive secrecy to hide any crimes or wrongdoing. However, in doing so he reiterates his belief that the various departments of the executive branch have the inherent right to refuse to tell Congress anything but final decisions. The studies in the executive branch, the recommendations, the names of persons taking part in decisions and the conversations leading to the decisions can all be properly withheld from Congress, President Eisenhower claims.

And this philosophy is the major problem of freedom of information in Federal Government today.

V. CONFLICTING STATEMENTS FROM THE WHITE HOUSE

On January 30, 1957, in answer to a question at a White House press conference from Mr. Pat Munroe, correspondent for the Albuquerque (N. Mex.) Journal, concerning the release of information on expenditure of public funds by junketing Congressmen, President Eisenhower said:

"As far as I am concerned, I stand on this general truth, there is no expenditure of public moneys except only involving that where public security itself is involved, that should not face the light of day any time any citizen inquires for it."

That is a mighty statement in behalf of freedom of information and any and every editor of the free American press will say "amen." Yet your committee reports the following general truths:

1. The records of the expenditure of the billions of Federal tax dollars are not open to the inspection of citizens, as are the records of city, county and State governments throughout the land.

2. Audited reports of the expenditure of the billions of Federal tax dollars are not open to inspection of the citizens, as is the case in city, county and State governments throughout the land.

On April 4, 1957, the Associated Press, in reporting on the Republican women's conference at Washington, said:

"President Eisenhower invited the American people to be 'watchful' of their Government leaders to make sure there is 'no looseness, no squandering, no racketeering, no lining of the pockets' in the big 'spending for peace.'"

Yet, in view of the closed records of Federal Government and the absence of audited reports on the expenditure of the billions of Federal tax dollars, your committee feels impelled to ask the question, how in the world can the American people be "watchful" of their Government leaders?

On May 17, 1954, in a letter to Secretary of Defense Wilson, President Eisenhower wrote:

"Because it is essential to efficient and effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations and communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions. This principle must be maintained regardless of who would be benefited by such disclosures."

The President's letter, of course, was prompted by the current political struggle between the executive and legislative branches of Federal Government. Yet, throughout 1956, the officials of 19 key Federal agencies and bureaus paraded before the House Subcommittee on Government Information and that they were using the President's letter as a precedent not only to withhold legitimate information of Government from the Congress but also from the American people.

In a White House conference September 6, 1957, with Mr. Gerald D. Morgan, special assistant to the President on legal matters, including the press, your chairman brought up the matter of these conflicting statements from the White House.

Mr. Morgan replied that Mr. Eisenhower's letter to Secretary Wilson had been misunderstood, that it meant private communications among agencies which under ordinary circumstances would not interest the public.

Your chairman countered with a question concerning a current case wherein the Secretary of Agriculture had declined to make available lists of soil subsidy payments to a newspaper in Mississippi.

"Those soil subsidy payments should be made public," declared Mr. Morgan.

Then your chairman asked about a recent case at Fieldale, Va., wherein the Post Office Department had declined to reveal the terms of a new lease.

"Why, carbons of that lease should have been given the press," said Mr. Morgan.

"That is why I am sitting in your office," replied your chairman.

Mr. Morgan observed that perhaps the President should issue a positive statement on what news of Government should be available to the press.

"That would be very helpful," replied your chairman.

VI. GOVERNMENT MANAGEMENT OF THE NEWS OF GOVERNMENT

The "leak" of the Yalta papers by the Department of State to the New York Times in March 1955 is still smoldering deeply and bitterly within the press corps at Washington today, over 2 years later, and it spotlights a growing trend in Federal Government wherein our public servants seek to manage or manipulate the news of Government for their own advantage, be it political or otherwise.

A number of prominent Washington correspondents wrote bitter comments about this to your committee. None blamed the New York Times: all lashed bitterly at the Government. The subsequent "leak" of the General Ridgway retirement letter and other key news stories to the same newspaper heightened the feeling.

A typical example was the "leak" of a high altitude photograph of the carrier *Forrestal* by the Air Force to the New York Times. This came in the middle of the running internecine warfare among the services, and it apparently was the intent of the Air Force to show how vulnerable the Navy's carriers could be under attack. Subsequently, Life magazine asked the Pentagon for the photograph, learned that at least 100 had been taken, but could not gain clearance for a single one.

A similar example was the "leak" of only part of a public opinion poll on foreign policy by the Department of State to the New York Times and the Washington Star. A subsequent investigation by a congressional committee revealed that the part of the poll "leaked" was slanted and that the expenditure of the public's tax funds on this project was illegal.

Throughout the warm congressional debate of 1957 over the national budget, administration spokesmen, from the President on down, gave out information affecting national security in defense of the budget. Of course, there is the argument that it is better to reveal key security facts than to suffer reductions in military funds. Yet your committee sadly observes that had the press, on its own initiative, dug out and printed these security facts, it would have been severely criticized by our public servants, regardless of the reason.

Illustrating this, newspapers were denied information on the production of B-52 bombers, a top secret classification General LeMay, testifying before the Symington Senate Investigating Committee, said he could not, for security reasons, discuss in public the size of the B-52 wings. Yet, at the same time, Secretary of Defense Wilson, under the political pressure of the Symington investigation, was announcing at a press conference that B-52 wings had been increased from 30 to 45 planes.

Pentagon officials said the decision to make this disclosure was reached "reluctantly" after weighing the public interest against giving our enemies such vital information.

It is in the Pentagon where our public servants make the greatest efforts to manage the news of Government, including that involving the expenditure of the taxpayer dollars, to their advantage. On March 29, 1955, Secretary Wilson issued a directive that all defense releases, speeches, etc., must make a "constructive contribution" to the department.

This slanted approach on the part of our public servants to the release of news of Government provoked a storm of protest in the press and was climaxed by a congressional investigation. Finally, on August 17, 1957, Secretary Wilson issued a new directive which eliminated the "constructive contribution" limitation but substituted the following:

"Material originating within the Department of Defense shall not be cleared for public release until it is reviewed for violations of security and for conflict with established policies or programs of the Department of Defense, or those of the National Government, since such material may have national or international significance."

Thus this new yardstick on defense news, based on the "established policies or programs of the Department of Defense or the National Government," constitutes a far broader censorship approach than the "constructive contribution" limitation, and can lead to outright censorship of any and all news of Government for just about any reason under the sun.

It is through such qualifying gobbledegook language, originating with American public servants, that the American people have been deprived of much legitimate news of their Government during the last 25 years.

The Air Force goes beyond this gobbledegook governmental language in its attempt to manage the news of Government and borrows the slick language of Madison Avenue. In its propaganda program, which lists specific campaigns "lasting through mid-1958," the Air Force advises its key people:

"Flooding the public with facts is very helpful. But facts, facts and more facts are quite useless unless they implant logical conclusions. Facts must be convincing, demonstrated living salesmen of practical benefits. These are the only kind of facts that mold opinion and channel the vibrant tensions of public thinking."

From this prime example of the ridiculous, we move to the sublime in reporting a final case of management of governmental news. Intelligence estimates of the Central Intelligence Agency are of the highest order of secrecy. Yet on November 19, 1956, on the eve of the testimony of CIA officials before congressional committees on the effectiveness of their activities, the CIA "leaked" to favored newspapers the fact that it had given the White House 24 hours' notice that a British-French-Israeli attack would be launched on Egypt.

Your committee cannot help but observe that had the CIA's report to the White House been to the opposite effect it doubtless would have been too "top secret" to even think about it—or had it not been scheduled for a congressional review, no word ever would have been revealed. Such are the ways of our public servants of 1957.

VII. FOUR DIRECT GOVERNMENT ATTEMPTS TO THROTTLE THE PRESS

Government made four outright attempts during 1957 to tighten the screws of censorship on the press, all of them concerned with stoppage of the "leaks" of information from behind the locked doors of the "executive session." These were:

1. The Wright Commission on Government Security proposed that an editor or publisher could be fined \$10,000 and sent to prison for 5 years for publishing "secret" information of Government

2. The Coolidge Committee on Classified Information proposed that newsmen be summoned in grand jury investigations in order to discover the source of the "leak" of security information from the Government to the press.

3. The civil rights bill, as first passed by Congress, carried a provision that would make it a jail crime for anyone, including newsmen, to use information from behind the locked doors of the "executive sessions" of a racial commission, to be appointed under the provisions of the bill.

4. Senate bill 2461, introduced by Senators Jackson and McClellan, would make it a crime punishable by a fine and jail sentence for anyone to reveal information, including statements, actions and even how the board members voted on matters of the people's business, from behind the locked doors of the "executive sessions" of the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Trade Commission, the Securities and Exchange Commission, the Federal Communications Commission and the Federal Power Commission.

A flood of protests from Sigma Delta Chi and other national journalistic groups effectively killed the first three. The protests were so strong that they mowed down the Wright recommendation before it left the ground, and editorials in newspapers from coast to coast buried it.

Yet the Wright recommendation, even if it is a dead duck at the moment, should give the entire free press cause for serious consideration of the whole problem of American censorship of news of Government. It not only brought out into the open the thinking of many bureaucrats on this censorship, but it illustrated clearly on paper the growing philosophy in American Government that, once elected or appointed, the bureaucrat regards Government as his private domain and that, in his opinion, the people who pay the taxes should be satisfied with the decisions of Government after they are made and should be content with spoon-fed information of Government.

Anyway, it marked the first time that the free American press has had to cope with this problem since the nefarious Sedition Act of 1800, which sent editors to jail for the great crime of printing facts of Government.

In the case of the Coolidge recommendation, Secretary of Defense Wilson hurriedly brushed it under the carpet and declared that such matters belong in the realm of the Department of Justice and not in his department.

In the subsequent interrogation of Chairman Charles A. Coolidge before the Moss House Subcommittee on Government Information, it was disclosed that the Department of Defense had conducted an investigation of the "source" of a New York Times story which reported an impending reduction of 800,000 in American armed forces. Mr. Coolidge testified that more than 150 persons in the Pentagon had perhaps handled this information, that it was impossible to pinpoint the exact Pentagon official who had "leaked" the story, and that the investigation had been dropped.

The censorship provision of the civil rights bill went entirely unnoticed throughout the torrid summer of debate on the racial issue in Congress. The Des Moines Register and Tribune finally broke the story on page 1 after the bill had passed both the House and the Senate.

The resultant uproar in the press had a marked effect upon Congress and both Senators and Representatives joined in condemning the censorship provision. This pressure was such that House-Senate conferees chopped it out of the final version of the bill. But, since it originated in the office of the Attorney General, it once again illustrated the thinking in our bureaucratic circles.

The Jackson-McClellan censorship bill is still before Congress; it probably will be fought out in the 1958 session; and your committee hereby lays it before the American press as the most dangerous menace yet proposed to the free flow of information of Federal Government.

Most of Federal executive Government—the approximate 2,000 active agencies, bureaus and departments and the more than 5,000 advisory bureaus—is con-

ducted in the secrecy of the "executive session." As an example of this curtain of secrecy, the 5,000 advisory bureaus do not make even their meeting minutes available for inspection of the citizens who pay the taxes.

Thus, most of the news of the people's business reach the people through "leaks" of information from behind the locked doors of these "executive sessions." The Jackson-McClellan bill is designed to stop these "leaks" from the six Federal regulatory commissions.

If this legislation is adopted, it probably will serve as a guide and a fore-runner of future legislation to stop all "leaks" of information from a bulging bureaucratic Government to the people who pay the bureaucrats' salaries.

The Jackson-McClellan bill was prompted by a Senate investigation of a "leak" of a Civil Aeronautics Board decision to permit Northeast Air Lines to fly the profitable New York-Miami route. Certain private interests, using this "inside" information, were reported to have made a handsome profit in the stock market.

The chairman of your committee has conducted a spirited correspondence of protest with Senator Jackson on this matter. The Senator maintains that such a censorship provision will not handicap the press, that it simply will stop the "inside" disclosures which permit the favored few to make a profit.

Your committee maintains that if all the closed "executive sessions" of the commissions were open, there would be no inside information through which the few could profit; that secret government always begets political privilege; that the protection of the interests of the many through the restraint of public opinion is far more important to free government than the profits of the few; and that, after all is said and done, these regulatory commissions are doing the people's business and the people should know about this business at the time and not after the fact, when too often in history it has been too late.

There was a very good example of this in the advisory Budget Bureau during the year. The press discovered that certain private interests were profiting from the "leak" of "inside" information from the closed "executive sessions" of this agency and promptly notified key officials. These officials just as promptly made all the information available to all the people; this stopped the private profiteering; and none was hurt. Such always is the case on free government.

VIII. THE BUREAUCRATS, THE PRESS AND PATRIOTISM

The minute a man dons the toga of the American bureaucrat, he apparently assumes he has a monopoly on patriotism. And the next minute he points a finger, usually at the press. Such was the case with the Wright Commission and the Coolidge Committee, both of which based their reports on the general premise that the press was promiscuous in disclosing American security information for the benefit of the enemy.

The Wright Commission was particularly vicious in its criticism of the press. Said its report on June 22:

"The final responsibility for the difficult decisions of what shall be secret must be confined in those loyal and devoted public servants who are qualified to make the judgment."

It then pronounced that most of the press "had lived up to those limits," but, added the report:

"There are a few exceptional cases which for some reasons have escaped prosecution. The purveyor of information vital to national security, purloined by devious means, gives aid to our enemies as effectively as the foreign agent."

The press promptly called upon Mr. Loyd Wright, Chairman of the Commission, to define the standards of "those loyal and devoted public servants who are qualified to make the judgment" and to make public the names of those in the press who had "purloined by devious means" our security information.

On June 30, Mr. Wright replied, stating that he knew of certain "dark chapters of betrayal" but could not talk about them. "An unnamed Government official persists in stamping the cases secret," he said, "and has buried them forever in the bureaucratic graveyard of a maze of files."

Under questioning, Mr. Wright gave a general indictment of the press without naming names, then he fell back on World War II and said that a story in the Chicago Tribune had informed the Japs that we had broken their code.

Three weeks later, at San Francisco, J. Russell Wiggins, executive editor of the Washington Post and Times Herald, rose on the floor of the American Society of Newspaper Editors Convention and gave documentary evidence that the Chicago Tribune had in no way informed the Japs of the code breaking.

Whereupon, Mr. Wright, on the ASNE platform at the time, promptly apologized to the Chicago Tribune.

In the middle of the controversy, Maj. Gen. Guy S. Meloy, Jr., the Army's public information chief, told the House Subcommittee on Government Information that "he had never heard of any secret information being purloined or stolen from military files by the press." This prompted Chairman John E. Moss, of the House Committee "to label the Wright charges as an unsubstantiated indictment of the American press."

The Coolidge Committee was not so outspoken as the Wright Commission, yet it harped throughout its report and later in the questioning by the House Subcommittee on Government Information on the matter of "leaks" of security information to the press. Furthermore, Chairman Charles A. Coolidge of the Commission named names in the press.

On March 11, Mr. Coolidge testified that the Wall Street Journal had "leaked" the national security secret of the list of Air Force contractors building ballistic missiles. An investigation of this charge showed that the so-called leak was a news story of August 3, 1956, which reported accurately the public speech of a top Air Force general to the Air Force Association at New Orleans, in which he listed the names of nearly a score of firms working on the project.

Similarly, Mr. Coolidge accused the press of "leaking" national security information in the form of the speed of the flight of the jet X-2. An investigation disclosed the accusation was based on a story in the New York Times of August 2, 1956, which reported, again, accurately, on a public speech by Secretary of the Air Force Donald C. Quarles. Previously, the Pentagon had declined to reveal this information and one of its public-relations officials gave "the ebb and flow of Secretary of Defense Wilson's indigestion" as the reason.

Again on March 11, Mr. Coolidge testified before the House Subcommittee on Government Information that the press had provided the enemy with key information in printing a picture of four bombers being refueled. But on March 12, he voluntarily corrected the record on this so-called "leak" by stating he had learned the picture had been cleared for publication by both the Navy and the Department of Defense.

During the year, your committee had occasion to peruse thousands of pages of Government documents, testimony and charges, all involving the question of national security and the press, and it found not a single case, despite the charges of the bureaucrats, wherein the press, on its own volition, printed a national security secret that gave aid and comfort to the enemy. On the other hand, your committee time and again ran head-long into a curtain of unnecessary secrecy that barred the American people from its rightful knowledge of their Government, even down to the ridiculous.

IX. THE PENTAGON CORRESPONDENTS SPEAK OUT

On September 6, your chairman lodged an official protest against the Pentagon secrecy in a conference with Mr. Murray Snyder, Deputy Secretary of Defense for Public Affairs, the key man in the release of all Pentagon news, at Washington, Mr. Snyder said:

"All legitimate news of the Pentagon is available to the press. You can have any news of the Pentagon you want. In fact, on my entry into the Department of Defense, I was amazed at the amount of information which is available to the press."

On the same day, your chairman conferred with a dozen Pentagon correspondents, including all the wire services, and he repeated to them Mr. Snyder's words.

The correspondents replied with a long, loud and unanimous hoot of derision.

For 1 hour, they poured out to your chairman indignant stories of how the curtain of secrecy over the Pentagon blocks them from all legitimate news of the Department of Defense, even down to the ridiculous. Without exception, these working reporters, charged with the obligation of gathering news of the expenditure of the peoples' tax funds for the people's defense, related how the bureaucrats employed every "trick of the trade" to hide legitimate information of Government behind the sacred censorship of national security.

Typical statements of these correspondents follow:

"We are buried under a mass of directives."

"The No. 1 brains of government draw the directives; the No. 8 brains abuse them."

"A million people wield the stamp of secrecy; 500,000 do the stamping; the other 500,000 check on the stampers."

"The real stumbling block is at the civilian level."

"Every item of news, regardless, must go through the red tape of policy clearance. Somewhere along the line somebody always stamps 'for official use only' upon it. Even the most trivial news takes days, weeks, and months to negotiate these roadblocks into the light of day."

"It's all due to fear—fear of reprimand and loss of job—and to just plain stupidity."

"The most important problem is the attitude at the top—at the White House and in the Department of State. Until that is changed, the guys at the pick-and-shovel level will be afraid to put out information."

"The real problem is not necessarily military security but control for policy reasons."

"Information is being put out in a quantity to use the press merely as a vehicle to form public opinion in favor of the administration. They are using the Madison Avenue technique."

"In 1950 and in 1951, when a press release came out, we used to be able to go to a source and ask background information. Now they refuse to give background information; they say they can give no more information than what is in the press release."

"Most important thing to break this information barrier is to get to the President. It's not the problem of the press releases in this building; it's the attitude of Government that the people should be spoon-fed and this attitude comes right from the White House."

"The Secretaries of the Army, Navy, and Air Force are the top policymakers and I don't know why they refuse to hold press conferences. Maybe it is an element of caution with everybody afraid to talk because the guy above him might get mad. If they had press conferences, we could get more information; we could bring an information restriction to their attention and get it sprung."

"They have developed a new standard form of mimeograph language—a sort of 'release-ese,' and they hold up information for days to get it into that language."

Not a single voice among these working Washington correspondents was raised in support of Mr. Snyder's somewhat fanciful theory that all legitimate information of the Pentagon now is available to the press.

X. CASES OF NEEDLESS DEFENSE SECRECY IN FEDERAL GOVERNMENT UNDER PRESIDENT EISENHOWER'S EXECUTIVE ORDER NO. 10501

1. Department of Defense experts, testifying before the House Government Information Subcommittee, stated that "more than a million" Federal employees are classifying security information, and that this classification is "running at a higher rate today" than during World War II. The fact that 1 out of every 175 Americans has the privilege of withholding from 174 million Americans information concerning their tax dollars spent on defense is very dangerous to the well-being of the American people; it invites wholesale violation in the matter of legitimate government information; if 1 million Americans know our security secrets, it is doubtful if these will be withheld from the enemy; and, the Government employee being a human being, that information which is "leaked" usually is slanted and no doubt is responsible for the general confusion which characterizes American Government today.

2. A case in point is the total censorship which has been slapped upon the firings of our missiles. Thousands of residents in the areas of the firings and thousands of Government employees involved in the firings know all about them. It is ridiculous to assume that all these thousands will keep silent and the result has been a steady flow of slanted and often erroneous information to the general public. The general American impression is that our missile experiments, upon which billions of American tax dollars have been spent, are a failure; whereas the enemy no doubt has complete and accurate information.

3. President Eisenhower's Executive Order No. 10501 expressly limited the use of such classifications as "confidential" to security information, yet the Department of State and the international administration not only freely used this classification but also the classification "for official use only" to withhold from the American people the results of their polls of public opinion, paid for illegally with taxpayer dollars, on foreign policy. Only part of the information obtained in the polls was "leaked" to the Washington Star and the New York Times, thereby misleading the public. The release of all of the information would not have affected national security.

4. A big chunk of our direct military aid goes to our Far East allies, Formosa, Korea, and Vietnam. The total for this area is made public. Under pressure

from the press, the Department of Defense has recommended that it be declassified further by allotments to the various countries. But the Department of State says "no" on the apparent grounds that revelation of the individual amounts would make our mutual security clients jealous. But, under the secrecy, how can the American people ascertain whether their tax billions are being honestly spent at the terminal points?

5. Department of State officials denied to the press the number of nonofficial Russians now traveling in the United States and the number of nonofficial Americans in Russia. The official excuse was lack of information, yet who but the Department of State has this information and how could its release affect national security?

6. The Army Intelligence Division declined clearance of a book by Lt. Col. Robert B. Rigg on the history of United States Army Intelligence, even though he offered to limit it to the intelligence operations of General Washington, based on material discovered in 1921. This is a perfect case of the ridiculous.

7. As an example of the bureaucratic roadblocks that customarily hinder the free flow of Federal Government information to the people, it took the Journal of Commerce 2 years of negotiations with the Department of the Treasury, Bureau of Customs, Department of Defense, Department of State, Bureau of the Budget, and Bureau of the Census before gaining on August 8, 1957, access to information on United States exports. Prior to World War II, the Journal of Commerce freely printed export information for 100 years.

8. Pictures of plush furnishings inside military transport planes, requested by Rep. Daniel J. Flood, were stamped "secret" and then even the Congressman's letter of request was stamped "secret" Representative Flood said: "It appears to me that this classification is designed to protect bureaucrats from embarrassment and not to protect genuine military secrets from potential enemies of the country."

9. The existence of a secret order, issued by some unnamed high source in the Pentagon, for Army units in the South to train for riot duty and get ready to speed to scenes of civil disorder, was disclosed on September 26. In the subsequent confusion and amid indignant protests from southern Senators and Representatives, Secretary of the Army Brucker hurriedly canceled the order. But he declined to lift the secrecy surrounding the order in spite of the fact that the American people are entitled to know at the time any plans of Federal Government to dispatch armed troops for service against any segment of the American taxpayers.

10. The Wall Street Journal pointed out in its news columns that the American taxpayers never have been given the facts of some \$64 billion of their funds spent on foreign aid, including the \$3,435,810,000 voted in 1957. In a subsequent editorial entitled "Billions for Secrecy," the Wall Street Journal said the Federal Government's excuse for this secrecy is that it "keeps peace in the international family," and that this "is an insult to the American people." The editorial pointed out that because of this secrecy, "the American people have no basis for evaluating military aid in the absence of facts," and it further said "it is secrecy—and not knowledge—that may jeopardize the national interest."

11. Newspapers were denied information on the production of B-52 bombers, a top secret classification. General LeMay, testifying before the Symington Senate investigating committee, said he could not, for security reasons, discuss in public the size of B-52 wings; yet at the same time, Secretary of Defense Wilson, under the political pressure of the Symington investigation, was announcing at a press conference that B-52 wings had been increased from 30 to 45 planes. Pentagon officials said the decision to make this disclosure was reached, "reluctantly" after weighing the public interest against giving our enemies such vital information.

12. Intelligence estimates of the Central Intelligence Agency are of the highest order of secrecy. Yet on November 19, 1956, on the eve of testimony of CIA officials before congressional committees on the effectiveness of their activities, the CIA "leaked" to favored newspapers the fact that it had given the White House 24 hours notice that a British-French-Israeli attack would be launched on Egypt. Had the CIA made an intelligence estimate to the opposite effect, it most certainly would have been regarded as too secret to mention.

13. The United States Information Agency spent \$100,000 of taxpayer funds to promote an "anti-Communist" movie, but classified the name of the movie and suppressed all facts because of reports that it was a flop. The facts were revealed in an off-the-record discussion before the House Appropriations Com-

mittee, and the Chicago Daily News later reported from an "informed source" that the name of the movie was "1984."

14. On March 29, 1955, Secretary of Defense Wilson issued a directive that all Department press releases, speeches, etc., must make a "constructive contribution" to the Department. Under pressure from a congressional committee, the Department of Defense a year later promised to rewrite the directive, eliminating the "constructive contribution" limitation. But it was not until August 17, 1957 that the Department got around to the rewriting. It then eliminated the "constructive contribution" limitation, but it promptly substituted the following: "Review material originated within the Department of Defense for official public release, or similar material submitted for review by other executive agencies of the Government, for conflict with established policies or programs of the Department of Defense or of the National Government." Thus, the "established policies or program of the Department of Defense or of the National Government" constitute a far broader censorship approach to the news of Government than the "constructive contribution" limitation and can permit the outright censorship of any news of Government, regardless of its connection with national security. It is through such qualifying language, originating with American public servants, that the American people have been deprived of much legitimate information of their Government during the last 25 years.

15. General Weible, formerly Deputy Chief of Staff, reports the Army had difficulty in getting sites for Nike missile installations, dating back to early 1954. But Army wasn't allowed to tell the story of the new missiles. Publicity would have helped convince reluctant landowners that the land was really needed for national security and that the Army was not just seeking another land grab. But, though the whole matter still is enveloped under a blanket of secrecy, the Department of Defense apparently declined to permit the Army to take its Nike story to the people, whose security was involved and who were paying for it.

16. The confusion over the General Ridgway retirement letter did not contribute to the well-being of the American people. The letter was not classified until after it was received by the Department of Defense, probably 2 or 3 days after receipt. A couple of weeks later, during the Quantico meeting of service Secretaries in July, it was "leaked" to the New York Times. The Department of Defense ordered an investigation. But this failed to produce sufficient "evidence," and to this day the case is still open and the letter still bears its "confidential" classification despite the New York Times original story and the subsequent furor in the entire press.

17. Numerous reporters, representing wire services, daily newspapers and magazines, have asked the Department of Defense for permission to print pictures showing the outside shape of an A-bomb. In addition, the Air Force has requested the Department of Defense for approval of the release of official pictures showing A-bomb configuration. The reporters were not asking for the release of Department of Defense pictures. They were asking for approval to publish pictures which they had taken of the bomb displayed in public places. Although the "shape" of the bomb is not classified because it must be used by thousands of Air Force people for training purposes, all requests to show the public pictures of what billions of tax dollars are spent on are refused. The shape of the bomb is simply stamped "for official use only." At one time, the Department of Defense displayed the shape in a glass case in the Pentagon. The weak explanations for this censorship pinpoint the absurdity which can result from security restrictions. The final reason given, for instance, is, in effect, that this information is restricted to prevent embarrassment or controversy.

18. It took Harvard University 10 years and the help of Congress to persuade eight Federal agencies and bureaus to agree to declassification of World War II records stored at the university which Harvard couldn't look at, couldn't get declassified, couldn't return to the Government, couldn't give away, and couldn't burn. It cost the university \$1,200 a year in storage.

19. Department of Navy declined permission to Capt. George W. Campbell for his story of the sinking during World War II of the cruiser *Indianapolis* to be printed in the Saturday Evening Post on the grounds that it would impede recruiting. The Navy even stamped its letter of refusal "for official use only." When the Saturday Evening Post finally gained clearance of the story from Secretary of Navy, the Navy Personnel Department, in a letter stamped "private communication," threatened censure of Captain Campbell. That is censorship of history in the raw.

20. When Robert Hotz, editor of Aviation Week, declined to reveal the source of a story about the flight of XF8U-1, a new Navy plane, uniformed Navy officers threatened that Aviation Week would not receive Navy "cooperation" in the future, and that the Navy would remember those who did or did not "play ball." At the same time, the officers admitted that no military security was involved in the story.

21. The order establishing the Office of Strategic Information was classified "secret," and three reports of OSI to the National Security Council on its progress in the field of unclassified information were classified "confidential." When this order finally was declassified, it showed plainly that OSI did not have the authority it was freely exercising.

22. As an example of bureaucratic confusion, the Department of Labor censored statistics on the armed services purchases of peanut butter on the ground that clever enemy officials could deduce from them the number of men in our armed services. At the same time, the Department of Defense was issuing monthly reports on the totals of armed services personnel.

23. The Yalta papers were leaked to the New York Times in March 1955, after being denied to the rest of the press at Washington, even though the agreements at Yalta were roundly denounced by the Republican platform of 1952. Favoritism in the release of information of Government is a growing practice in the Federal bureaucracy and resentment is smoldering deeply within the press. It is not contributing to the free flow of information of Government to the people.

24. The Chicago Daily News reported on July 2, 1957, that a report on profiteering by foreign suppliers of the United States military services and the International Cooperation Administration had been classified and would not be released by the General Accounting Office. According to this newspaper, the lid was clamped on this scandal to prevent its revelation during discussion of congressional appropriations for defense and foreign aid.

25. On March 15, 1956, Secretary of the Air Force Donald A. Quarles, gave a speech to the Boston Chamber of Commerce, which had been cleared by the Office of Security Review and which was freely reported on by the press. Two months later, on May 16, Quarles gave a similar speech to the National Industrial Conference Board in New York. But in the meantime, the same language used in the March 15 speech was censored out of the May 16 speech by the Office of Security Review. Neither the OSR nor the Departments of Defense and State ever did give a satisfactory explanation for this rather late and silly censorship.

26. In an address to the Society of Automotive Engineers in Washington April 6, 1957, Rear Adm. Rawson Bennett, Chief of Naval Research, declared that he hopes to bar the press from the launching of the first earth satellite. Stressing that it is his own decision, Admiral Bennett said that the press accounts of this great scientific event might focus the attention of the public upon it and that this would put pressure on those in charge of firing the 72-foot, 3-stage rocket that will send the satellite into its orbit.

27. The Department of Defense censored two sentences from a Saturday Evening Post article on Spain on security grounds, whereas, the Department of State objects to the whole article on the grounds that it took a "sneering approach." If the Government adopts the latter approach toward the dissemination of foreign information in the free American press, the ultimate end will be the printing of only Pollyannaish accounts of our world neighbors.

28. Despite the intent of President Eisenhower's Executive Order 10501 to make available more military information to the people, the Federal Register of June 4, 1955, reported on new Air Force orders which, it stated, would make matters of official record available "except those held confidential for good cause shown." This demonstrates perfectly how official gobbledegook language is designed to protect the "management of news" by Government. The Air Force order went on to say: "The great mass of material that relates to the internal operation of the Air Force Establishment is now a matter of official record for the purpose of these sections, and accordingly will not be released." There has been no change in these Air Force orders to this day.

29. The Federal climate of censorship is such today that free American editors, in order to protect themselves, feel that they should get security clearance on even historical documents. The editor of Armor magazine asked for and obtained Department of Defense clearance on a review of a book written by Lt. Gen. Richard Taylor of the Confederate Army and published in 1879. When asked why he got the clearance, the editor said: "Due to the fact that the book is critical of the Reconstruction Period, which in turn is critical of our Government, I deemed it advisable to protect both the reviewer and myself by having it sent through security review."

30. In May 1956 Gen. Maxwell Taylor gave a public speech before the Council of Foreign Affairs, which publishes the quarterly *Foreign Affairs*. Hamilton Fish Armstrong, editor of the quarterly, asked General Taylor to prepare an article based strictly on the speech; the general promptly accepted; and the article was scheduled for the October issue of *Foreign Affairs*. That is, it was until the Department of Defense refused security clearance.

31. Joseph and Steward Alsop, Washington columnists for the New York Herald Tribune, report they have been investigated 5 times in 5 years by the Federal Government in an attempt to ascertain their news sources and to intimidate them. They state: "It is a serious matter indeed, and not just for reporters but for everyone, when the American Government actively seeks to stop the flow of significant information to the American public. And that is what is happening today, and on the specious pretext of 'maintaining security.'"

32. Gen. John E. Hull, a member of the Coolidge Committee which conducted a study of classification and information practices in the Defense Department and the military services, stated: "It is my personal opinion that the apparent reluctance on the part of the heads of the three military services to hold frequent press conferences may stem from the belief that Secretary Wilson prefers to have disagreements among the three military services settled within the Pentagon and not aired publicly." This illustrates the hostility of attitude within the Pentagon toward the general principle of the American taxpayers' right to know about their Government.

33. On February 8, 1955, the New York Times and the Associated Press carried detailed accounts of how United States Navy frogmen were being used to remove mines from Tachen Islands harbors. Yet the Navy, on grounds of national security, refused clearance to a bare mention of its frogmen in a story in Collier's magazine on May 27, 1955.

34. On March 11, 1957, the Coolidge Committee accused the press of "leaking" the national security secret of the list of Air Force contractors building ballistic missiles. An investigation of the charge showed that the so-called "leak of national security secrets" was a news story in the Wall Street Journal of August 3, 1956, which reported accurately the public speeches of a top Air Force general to the Air Force Association convention at New Orleans, announcing the names of nearly a score of firms working on the project.

35. Similarly, the Coolidge Committee accused the press of "leaking" national security information on the speed of the flight of X-2. Investigation disclosed the accusation was based on a story in the New York Times on August 2, 1956, reporting on the public speeches of top Air Force generals who boasted of the new air-speed record. Previously, the Pentagon had declined to reveal this information on the grounds of the ebb and flow of Secretary Wilson's indigestion.

36. The Air Force declined to permit the press to photograph the new B-58 plane in its first test showing September 1, 1956. On December 24, 1956, Aviation Week printed a picture of part of the crowd of 3,000 citizens attending the test flight, which plainly showed a number of citizens photographing the plane. On December 26, 1956, the Air Force released five pictures of the plane.

37. The Pentagon has affixed its "for military use only" classification to official United States weather data. The Soviet Ambassador can telephone the Department of Defense and ask for Extension 79355. Whereupon, a recording automatically gives the latest 24-hour weather forecast from nearby Bolling Air Force Base. This automatic recording concludes as follows: "This information is for military use only and dissemination to the public is not authorized."

38. The Air Force propaganda program, which lists specific campaigns "lasting through mid-1958," supports this official military theory of managing the news. The program is written largely in the language of Madison Avenue, and its very wording states that it is for the management of news that will be favorable to the Air Force rather than for the release of strictly factual data to the people. Take, for example, the following paragraph: "Flooding the public with facts is very helpful. But facts, facts, and more facts are quite useless unless they implant logical conclusions. Facts must be convincing, demonstrated living salesmen of practical benefits. These are the only kind of facts that mold opinion and channel the vibrant tensions of public thinking."

39. In the course of the running internecine warfare among the services, the Air Force "leaked" to the New York Times a secretly taken high altitude photograph of the carrier *Forrestal*, apparently to show how vulnerable the *Forrestal* could be to enemy attack. The picture was printed in the New York Times on May 19, 1956. The following week Life magazine asked the Pentagon for a copy of the picture, learned that at least 100 had been taken, but could not get clear-

ance on a single one. Yet neither the Air Force nor the Department of Defense would admit that the pictures were classified in any way.

40. The Army not only likes its secrecy, but it puts it into effect through secret orders. On October 17, 1955, Secretary of the Army Brucker issued a new personnel security order based on "commonsense" principles. But this did not come to light until in May 1956, as a result of questioning before the Senate Constitutional Rights Subcommittee. Similarly, the Washington Daily News uncovered on March 24, 1956, another Army censorship order, which went far beyond President Eisenhower's Executive Order 10501. This military order, regulation 34-14, provides that documents and communications can be shown "only to those whose official duties require such information," and it further provides that "the term 'for official use only' will be used for all unclassified correspondence."

41. It took pressure from a congressional committee to force the Attorney General to lift his classification of "secret" from the reasons for trips by Immigration and Naturalization Service officers to public rifle and pistol matches, Mr. Brownell did not offer an explanation of why the "secret" classification was necessary in the first place.

42. A five-man Army team was set up to look into the system of enlisted men's pay. The press had been checking into this subject for 2 years. The team's report was completed on April 27, 1957, and its chairman told the press it was all right to use it but that he needed approval of his superiors. The Adjutant General's Office objected to its release because of its objection to some of the recommendations and declared the report could not be used until the "official Army position was determined." The report never has been released.

43. It was announced that an American Air Force crew would meet the Russian jet transport at Newfoundland and bring it into the United States. The Air Force said it had the names of the American crew but could not reveal them because the Department of State said "No." The press insisted, but the Department of State did not relax its censorship until after the Russian plane had landed in this country.

44. It was announced while the Japanese Minister was in Washington that American troops were to be withdrawn from Japan. The press prepared a story that the 1st Cavalry unit was to be withdrawn and the 24th Infantry was to be deactivated. The Army approved the story, but the Department of State refused to approve its release until the Japs were informed. The Department of State said it was a question of "national policy," but both the Jap and American publics already had been informed of the withdrawal and there appeared no good reason whatsoever to refuse to say what divisions would be taken out.

45. The press asked for a report on aircraft development plants. The report, made by the Ad Hoc Committee on Aircraft Development From Concept to Inventory (David Chewning, Executive Director), was promptly censored. Later excerpts were released but not until some of the criticisms of development plans had been deleted because it would make some faces red.

46. The press attempted to obtain figures on how much each military service is currently spending for purely investigative function. The Air Force and Army flatly refused. The Navy said it would release its figures if the Air Force and Army would. Press appealed to the Department of Defense but got a polite brushoff. An appeal was finally made to a member of the House Armed Services Committee, but he, too, got the old military brushoff. To this day, after a long series of telephone calls and letters, the press has been unable to report to the people just how much of their tax funds are being spent on military investigations.

47. Congressman James Patterson of Connecticut asked Gen. Maxwell Taylor, Army Chief of Staff, for help in presenting the Army's side of the defense story. In reply, General Taylor wrote that he was "sorry that the Army was unable to provide your office with all the data you required." This indicates the heavy arm of official censorship from the Department of Defense in military information in which national security was in no way involved.

48. The Washington Star reports: The so-called Marilyn Monroe design in supersonic fighter planes was revealed to the American public in 1954 when the Grumman Tiger was unveiled. Nevertheless, the plane still was classified by the Air Force for another year. Finally, Fred Hamlin, "an irate aviation magazine (Aero Digest) publisher broke the story after keeping it locked in his desk for more than a year."

49. The Pentagon decided in early 1954 to discontinue its cumulative report on the 100 largest defense contractors, which it had been accustomed to issuing

each 6 months starting with 1951. In the turmoil which resulted from this clamping on of the lid of secrecy, a Senate Armed Services Subcommittee issued the following statement in 1955: "A subsequent report on major defense contractors, which was produced especially for it by the Department of Defense produced much misleading information."

50. The Vitro Corporation of America, which is involved in atomic and nerve gas developments, prepared a brochure which was submitted to the Department of Defense for clearance. This clearance was refused on the grounds "the less said about the matter the better." Yet virtually all the information contained in the brochure had previously been printed locally and Life magazine had done an even more complete picture story of Vitro's operation than was contained in the brochure.

51. A mimeographed release of Secretary of Defense Wilson's press conference of April 12, 1955, carried the following notation stamped at the top: "Not for general distribution." This illustrates the stamp-happy attitude in the Pentagon.

52. In October of 1955 the Pentagon suddenly announced that 15 of the Nation's 25 Reserve divisions would be converted into noncombat organizations and that nearly 200 other Reserve units would be deactivated. The press learned of this only when reservists themselves were notified and protested widely, although this sweeping change of the Reserve system apparently had been planned for months. The Washington Post, in commenting on the shakeup, said that the plan was "not previously announced though no longer secret or classified in any way."

53. Military censorship of legitimate information of government goes beyond its relationship with the free American press and reaches literally down to the people, themselves. Elmer B. Gower, an American attorney in Frankfurt, Germany, has filed complete documentation of two such cases of direct Army censorship with congressional committees. In one case, the Army Adjutant General's Office declined to supply the name of a former serviceman, who owed considerable money in Germany, and said: "The addresses of former service personnel cannot be divulged." In the other case, involving the accidental asphyxiation of a serviceman at Frankfurt, the Adjutant General declined to reveal results of the CID investigation of the case on the grounds that "it is considered detrimental to the best interests of the service to release information which would disclose the investigative procedures of the Army, or make public its findings, recommendations, or other official expressions of opinion by board members or other investigating officers."

54. Similarly, Norman S. Bowles, a Washington attorney, has offered to a congressional committee complete documentation of a case wherein the Army declined to reveal the exact nature of the crime charged against the son of a friend of his, when the court-martial would be held or any other details. Despite his efforts, the family of the serviceman first learned of the results from news stories which reported a guilty verdict and a sentence of life imprisonment.

55. Joseph A. Dear, of Dear Publications, has been trying for many months to obtain a list of 50 top officials at the Pentagon who are serving "on leave with pay." This term means these men are drawing down both their regular salaries from their private employers and also full salaries from the Department of Defense. Mr. Dear was refused this list and then appealed to Mr. Wilbur Brucker, then General Counsel of the Department of Defense and now Secretary of the Army. Mr. Brucker said that since he was chief legal officer for the Department of Defense and since these men "on leave with pay" were employees of the Department of Defense, he felt that releasing their names would violate the privileges of "the attorney-client relationship." All of this, of course, involved taxpayer funds.

56. The San Rafael (Calif.) Independent Journal reports that, because of "bad publicity" accorded MATS on a story involving the close escape of a GI-loaded C-124 Globemaster landing at San Francisco, it was shut off from such news by the 41st Air Rescue Squadron at Hamilton Air Force Base and forced to go to the MATS headquarters at Travis Air Force Base for all such news. This necessitated long-distance telephone calls and great delays on each such subsequent story.

57. Aviation Week reports this incident. Following the introduction of President Eisenhower's open-sky plan for mutual aerial inspection and following Bulganin's answer that such inspection would be worthless, the Air Force was ordered to release certain aerial photographs to demonstrate just how effective aerial inspection could be. Whereupon, the civilian bureaucrats in the Office

of Strategic Information overruled the military and ordered the photographs withheld. Aviation Week points out that nobody in OSI could be termed an expert in photography whereas it is assumed that Air Force men are such experts.

58. The Dayton Herald-Journal was unable to get official financial figures on the annual national air show even though the Air Force, at taxpayer expense, furnished most of the airplane and pilots.

59. Hamilton and Mather Air Force Bases withheld all information on their appropriation requests until after Congress acted upon them, apparently in the mistaken idea that this was their business and not the people's. In protesting this secrecy, California newspapers pointed out there were no basic national-security problems involved and that this Air Force censorship of legitimate news was entirely unreasonable.

60. Early in 1956 the Air Force "temporarily" clamped a secrecy label on accident statistics. There was wide protest among newspapers, which prompted a congressional demand for the figures. This controversy continued on into 1957. The Air Force argued that revelation of such figures on plane accidents would benefit the Russians. But the first 7 major military plane accidents of 1957 involved 7 different types of aircraft, which pretty well invalidated the Air Force's excuse for secrecy.

61. An organization of citizens asked the Pentagon for a list of the names of 29 Korean war veterans who were still carried on the official rolls as "presumed dead." Hunt Clement, Jr., Chief of the Press Branch, Department of Defense, wrote a letter to this organization on October 17, 1955, in which he said: "It would be, as you must realize, an almost impossible research task to obtain this information, since the files are not categorized according to the type of death determination. Statistically, 29 individuals are accounted for in this category (presumed dead)." How can the Pentagon achieve this number of "presumed dead" unless it has the names, and why this official brushoff on a matter in which national security is not concerned?

62. Charles Clift, of Reporter magazine, protests that several arms of the Department of Defense, including the Navy and NSA, would not give him information on the extent of their lie-detector programs nor would they reveal the identities of those operating the detectors. What in the world have lie-detector tests to do with national security? Numerous police departments reveal all lie-detector information to municipal taxpayers, and why wouldn't Federal taxpayers have that same privilege?

63. Trevor Gardner, former Assistant Secretary of the Air Force, prepared an article on ballistic missiles based solely upon material which he gleaned from high-school textbooks, which included the classroom formulas for determining arc speed, the amount of thrust needed for desired range, and the strength of the base platform needed to withstand this thrust. He sent it to the Security Review Office for clearance. Whereupon the security-reviewing people "blew their tops," charged the article contained "top secret" information, and refused clearance.

XI. CASES OF NEEDLESS ADMINISTRATIVE SECRECY IN FEDERAL EXECUTIVE GOVERNMENT

1. *Attorney General*.—Attorney General Brownell denied to the press the following information: (1) Who drafted the civil-rights bill; (2) who briefed President Eisenhower on the bill; and (3) whether or not the President approved the original bill. The American people are entitled to all pertinent information on such far-reaching legislation.

2. *Office of Defense Mobilization*.—Gordon Gray, Director of the Office of Defense Mobilization, invoked the plea of executive privilege and denied to the United States Senate Antitrust and Monopoly Subcommittee and members of the free press, including the New York Times and Washington Post and Times Herald, pertinent information on the issuance of tax-amortization certificates to the Idaho Power Co., by his Office. What is this executive privilege, and how does it appease the inherent right of Americans to know about their Government and their tax funds?

3. *Post Office Department*.—Various underlings of the United States Post Office Department denied to the Providence Journal & Bulletin, for a period of nearly 6 months, the fines levied against the New Haven Railroad for slow delivery of mail, on the grounds of public interest. On direct appeal, Postmaster General Summerfield finally released the information. This perfectly illustrates the hostility of attitude and the long delay in obtaining most information of our Federal bureaucracy.

4. *Post Office Department.*—Various underlings of the United States Post Office Department denied to the Martinsville (Va.) Bulletin the terms of a lease of a new post office at Fieldale, Va., on the grounds that this is a confidential matter. After long delay and on direct protests from national editorial freedom-of-information committees, Postmaster General Summerfield finally released this information.

5. *Post Office Department.*—In 1956, the Post Office Department denied to the Indianapolis News information on the names of persons leasing post-office buildings in Indiana to the Government, the amount of the leases and the length of the leases. The newspaper reported it received no cooperation whatsoever. It was, first, referred to the Cincinnati regional official, which said only Washington could release the data. Washington officials then declined the information on the grounds it would involve too much work and might be costly.

6. *Department of Agriculture.*—Various underlings of the United States Department of Agriculture denied to the Aberdeen (Miss.) Examiner the names of Mississippi farmers who were paid not to plant cotton. This is characteristic of all dealings between the press and the Department of Agriculture involving release of information on expenditure of about \$5 billion of the American taxpayers' funds. In the long controversy with the Tampa Tribune over release of soil-subsidy payments in Florida. Secretary Benson pleaded this was a violation of privacy between the Government and the recipients of the subsidies.

7. *The White House.*—The President's press aid, James Hagerty, refused to confirm to the Milwaukee Journal that a certain Milwaukee educator was a guest at one of Mr. Eisenhower's stag luncheons. The American people certainly are entitled to the identities of those citizens whose advice is being sought on how to run the American Government by the White House.

8. *Department of Defense.*—Various defense officials have consistently declined to reveal to the Knight newspapers and other publications the names of members of families and companions who accompany Congressmen on defense junkets around the world. These persons draw American taxpayer dollars for their spending at American Embassies. In reply to a direct question on the matter at a press conference, President Eisenhower said: "As far as I am concerned, I stand on this general truth; there is no expenditure of public moneys except only involving that where public security, itself, is involved, that should not face the light of day any time any citizen inquires for it." But the names of the Congressmen's junketeering guests are still hidden.

9. *Department of the Army.*—Despite assurances from the top that Army procurement information would always be available to the press, it is the usual procedure on the lower levels for clerks to decline to permit newspapermen to examine public-bid invitations, bids submitted, and contract awards. Latest road-block of this kind was at Rome, N. Y., where the press had to go all the way to the top to gain information of this expenditure of the public's tax funds.

10. *Federal Advisory Committees.*—The meetings and minutes of more than 5,000 Federal advisory committees are not public, thus permitting insiders the privilege of special information. This happened recently in the Budget Bureau Advisory Committee. The press advised the committee that certain commercial interests were reaping profits from inside information and asked that the information be made public, which was done. Secrecy in government always breeds this privilege for the insider, whereas, open government places everybody on the same footing.

11. *Department of the Treasury.*—For 3 years, the Department of the Treasury declined to disclose to the press the applications for tax exemptions from non-profit, nonpolitical organizations. It was not until stories by Clark Mollenhoff, of the Des Moines Register and Tribune, and a subsequent investigation by the House Subcommittee on Government Information that the Treasury finally agreed to sponsor legislation that would make this legitimate information of government available to the American citizens who are not exempt from taxes.

12. *Department of the Treasury.*—After stories by Clark Mollenhoff in the Des Moines Register and Tribune, and subsequent inquiry by the House Subcommittee on Government Information, the Department of Treasury finally agreed to make public out-of-court settlements of fines in cases involving the refilling of liquor bottles, but declined, on the grounds of technicalities of the law, to make public similar settlements in cases involving the watering of whisky and other minor offenses.

13. *Department of the Treasury.*—The Internal Revenue Service denied to the Indianapolis News a compilation of the 20 top tax delinquents in the United States, as on file in the United States Tax Court. At the same time, the Joe

Louis tax delinquency of nearly a million dollars was being told in great detail. In denying the request, the Internal Revenue Service gave the excuses that its records were decentralized into 64 districts; that it would be too time consuming and costly to assemble the data; and that such disclosures were prohibited by law. The newspaper replied that the records of the Tax Court are public information and that the people are entitled to a complete report. This went ignored and the records are still censored.

14. *Post Office Department*.—In July 1957, the Post Office Department declined to disclose to the Indianapolis News why a postmaster had been fired at Carthage, Ind., with no public notice. There were numerous reports in Carthage about the case, some involving politics, but the Department ignored the newspaper's argument that a postmaster's job is a public trust and that it might appear as if the Department was acting as investigator, judge, and jury in such cases, and with no restraint of public opinion. The Department simply said that the postmaster "already has been punished enough by losing his job."

15. *Department of State*.—In 1953, the Department of State admitted to congressional appropriations committees that it was 18 years in arrears in the publication of state papers for historical use, and promised to expedite at least five volumes. One million dollars of taxpayer funds was appropriated for this purpose. Today, 4 years later, only 1 volume has been produced—the Malta-Yalta papers—and it immediately resulted in a controversy. It was first compiled in uncensored form and then underwent censorship before publication. In the uproar, Dr. Donald M. Dozer, of the Historical Division of the Department of State, was summarily fired from Government for "inefficiency," even though his record of 14 years in Government was characterized by strong efficiency ratings year after year. In a speech to the House of Representatives on August 29, 1957, Representative John E. Henderson, of Ohio, charged that Dr. Dozer was fired simply because he objected to this censorship of historical documents and protested publicly that the Department of State's program of publication was subjected to deliberate delays, sabotage, and expurgation of records. Can this censorship of history be any worse than the dictatorial book burning which the American people down through history have criticized most severely?

16. *Department of the Treasury*.—The Internal Revenue Service denied to the Indianapolis Star the cause for disbarment of an Indiana attorney in practice before agencies of the Department of Treasury. In the debate over this issue, the newspaper argued that the Government was denying a citizen the privilege of practicing a profession before Federal agencies, yet was unwilling to inform the public as to cause. The Treasury argued that the purpose in withholding the information was to prevent injury to the disbarred attorney. The newspaper replied that the attorney already was stigmatized by disbarment and a statement why he was disbarred would throw up a cloak of protection around him, permitting the public to know and, therefore, judge the merits of the case. But this had no effect on the Treasury censorship.

17. *Customs Bureau*.—A blanket of secrecy has been draped over lists of imports arriving at Great Lakes ports, through requests of importers, even though the lists of imports arriving at east- and west-coast ports are made public. This blackout of legitimate information has been protested by many American trade groups.

18. *United States Coast Guard*.—The Detroit Free Press was denied photographic access to evidence in public hearing on a St. Clair River accident. Subsequent congressional investigation of this censorship case revealed widespread secrecy in Coast Guard investigations of marine casualties. Coast Guard promised, early this year, to rewrite its regulations to eliminate secrecy, but today, 6 months later, there has been no action.

19. *General Services Administration*.—The General Services Administration attempted to establish regulation requiring its employees to sign forms stating they will not divulge "administratively controlled" information. This collapsed under threat of investigation by Congress, but it shows, clearly, the general atmosphere of secrecy that prevails through our Federal bureaucracy.

20. *Department of the Navy*.—The Navy declined for 6 months to confirm to the Pensacola (Fla.) Journal and News the fact that 600 middies from Annapolis would receive their air indoctrination in the summer of 1957 at the Pensacola Naval Air Station. In a subsequent speech to Congress, Representative Robert L. Sikes, of Florida, attributed the Navy's secrecy to its secret plans to seek appropriations for a \$17 million naval air station near Annapolis, which, he said, would give the admirals a fancy headquarters near Washington and which was

opposed by citizens living near the Annapolis area, as revealed by letters to the editor in the Baltimore Sun.

21. *Department of Agriculture*.—The Indianapolis Star was refused access to an application for a Rural Electrification Administration loan from an Indiana cooperative. The co-op requested \$42 million, biggest single loan ever made by REA, for the purpose of constructing a steam generating plant near Petersburg, Ind. REA bureaucrats declined to give access to the facts on the grounds of Department of Agriculture regulations, which were drawn by the bureaucrats without prior restraint by the American taxpayers, whose \$42 million were involved.

22. *Department of Defense*.—Assistant Secretary of Defense Robert T. Ross, in an official ruling, stated that only those persons with a legitimate interest are entitled to know the location of military bases where liquor is sold by the bottle. His letter containing the ruling specifically mentioned wholesale liquor dealers, but it implied that a member of the Women's Christian Temperance Union would be denied the information on the grounds of a lack of legitimate interest. On what basis does the Department of Defense draw the line in the matter of legitimate interest in the sale of liquor at military bases?

23. *Civil Service Commission*.—Chairman Philip Young, of the Civil Service Commission, declined for 3 years to reveal a list of pensions paid to former Congressmen on the grounds that this was a matter of privacy, even though taxpayer funds were involved. In the middle of the 3-year debate, Senator Williams, of Delaware, revealed in a speech in the Senate that a number of former Federal public servants had obtained windfall pensions through payment of only a few dollars. The Civil Service Commission finally issued a new regulation that a pension would be made public if the recipient agreed. But who ever heard of a free people having to ask permission of their public servants to ascertain if their tax dollars are being spent honestly?

24. *The White House*.—On May 17, 1954, President Eisenhower wrote a letter to Secretary Wilson in which he stated: "Because it is essential to efficient and effective administration that employees of the executive branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that, in all of their appearances before the subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it, they are not to testify to any such conversations or communications or to produce any such documents, or reproductions." The President's letter directed this action "so as to maintain the proper separation of powers between the executive and legislative branches of the Government." In the subsequent investigation of the subcommittee of the House Committee on Government Operations, key officials of 19 agencies and departments testified under oath that they were accustomed to the withholding of legitimate information of Government from the American people, and most of them gave the President's letter as the precedent for their withholding actions.

25. *Department of Defense*.—Under pressure from the press and the House Subcommittee on Government Information, the Department of Defense finally agreed to make public the terms of the new leases of private concerns renting space in the Pentagon. But the Department still maintains its secrecy over the terms of old leases for Pentagon space, which still have several years to run.

26. *General Services Administration*.—On August 20, 1956, Administrator Franklin G. Floete stated in an official letter that news photographers are not required to get prior consent from custodians to take pictures in public, non-security areas of Federal buildings. Yet on June 13, 1957, Deputy Marshall Atha A. Knight confiscated the camera of News Photographer W. C. Shoemaker of the Jackson (Miss.) Daily News for taking a picture in the public corridor of the Jackson Federal building. The camera was not returned until the Jackson Daily News Editor, Frederick Sulens, and others personally lodged strong protests with Federal officials.

27. *Veterans' Administration*.—The Portland Journal was denied in July 1956, access to a Veterans' Administration report on residential lot values in the Portland metropolitan area. It was not until 6 months later, December 1956, that the VA finally yielded to pressure from the House Subcommittee on Government Information and made the report public.

28. *Department of Agriculture*.—The Department of Agriculture issued a regulation requiring TV news film producers to sign agreements permitting the Department to censor their productions. This regulation was revised in April 1957.

only after a strong protest from the House Subcommittee on Government Information, but it illustrates the thinking throughout bureaucratic government in Washington.

29. *Department of Defense*.—It took the Louisville Courier-Journal several weeks to dig out the facts on a junket of Louisville big shots to the Navy maneuvers off the Florida coast. The Department of Defense at first swore up and down that there could have been no such junket. But when the newspaper dug out the facts in Louisville that definitely established the junket, the Department of Defense finally confessed all—that there was a junket under the auspices of the Coast Guard.

30. *Civil Aeronautics Board*.—On October 4, 1957, Representative Moulder of Missouri publicly protested that the Civil Aeronautics Board had declined to permit access to pertinent files and records to a House investigating subcommittee which he heads. He said that he feared other Federal regulatory boards also would block the investigation with similar censorship of the people's business and that this subcommittee would seek contempt citations, if necessary.

XII. A RESOLUTION

In view of the foregoing report on secrecy in Federal Government, your committee recommends to the 1957 Convention of Sigma Delta Chi the adoption of the following resolution:

"Whereas freedom of speech and freedom of the press, as guaranteed by the Constitution of the United States, are essential to the preservation of a free and democratic people; and

"Whereas the government of a free people derives its just powers from the consent of the governed; and

"Whereas a constant knowledge by the free people of the actions and undertakings of their Government is essential that their Government continues to derive its powers justly and solely from the consent of the governed; and

"Whereas there have been and continue to be increasing efforts on the part of various public servants of the American people in their Federal Government to deny to the people and the press such essential knowledge and information; and

"Whereas if the secret government, which results from this denial of such essential knowledge and information, is permitted to be expanded in Federal Government during the next 25 years as it has been permitted to be developed in the last 25 years, freedom of speech, freedom of the press and all other American freedoms are certain to be irreparably damaged, if not destroyed: Now, therefore, be it

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity deplores and condemns the widespread abuse and misapplication of Executive Order 10-501 throughout Federal Government, and that the President of the United States be respectfully called upon to take definite steps to eliminate this abuse and misapplication, through which the American people are denied their inherent right to knowledge and information of their Government; and be it further

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity endorses and supports H. R. 2767 (Representative John E. Moss), H. R. 2768 (Representative William L. Dawson), H. R. 2769 (Representative Dante Fascell) and H. R. 3497 (Representative Abraham J. Multer), and S. 921 (Senator Thomas C. Hennings, Jr.), bills introduced in the Congress to amend title 5, United States Code, section 22, the housekeeping statutes, and also H. R. 7172 (Representative Dawson), H. R. 7173 (Representative Fascell), H. R. 7174 (Representative Moss), and S. 2148 (Senator Hennings), bills introduced into Congress to amend title 5, United States Code, section 1002 of the Administrative Procedures Act. These bills are designed to eliminate legal roadblocks in the United States Statutes, based on pure technicalities, to the free flow of rightful knowledge and information of Federal Government to the American people; and be it further

Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity condemns and opposes legislative bill S. 2461 introduced in the United States Senate by Senators Henry M. Jackson and John L. McClellan, which would under penalty of imprisonment, obstruct the free flow of information from meetings of the Interstate Commerce Commission, Federal Trade Commission, Securities Exchange, Federal Communications Commission, Federal Power Commission and the Civil Aeronautics Board, and which would deny to the American people their

rightful knowledge of the actions and business of these agencies of their government; and be it further

"Resolved, That the 1957 Convention of Sigma Delta Chi Fraternity instructs its officers to place copies of this report and accompanying resolution into the hands of the President of the United States and all Members of Congress of the United States."

This report and resolution respectfully submitted to the 1957 Convention of Sigma Delta Chi Fraternity, meeting November 13-16, 1957, at Houston, Tex., by its freedom of information committee. V. M. Newton, Jr., chairman, The Tampa (Fla.) Tribune; David W. Howe, publisher, The Free Press, Burlington, Vt.; Alvin E. Austin, head, department of journalism, University of North Dakota; James K. Toler, Commercial Appeal Bureau, Jackson, Miss.; Bert Struby, editor, News & Telegraph, Macon, Ga.; Clark Mollenhoff, Washington Bureau Des Moines Register, Washington, D. C.; Theodore F. Koop, Columbia Broadcasting System, Washington, D. C.; J. Alex Zehner, Pittsburgh (Pa.) Sun-Telegraph; James R. Brooks, Ekco Products Co., Chicago, Ill.; Mort Stern, The Denver (Colo.) Post.

PART II. STATE AND LOWER LEVELS OF AMERICAN GOVERNMENT

I. THE AXIOM OF FREE GOVERNMENT

It is essential in free government that the people, who elect their governors and pay all the bills of government through heavy taxation, have the constant restraint of public opinion upon their public servants through open government records and open government meetings. And this is particularly true if the people are to retain their freedom.

As 1957 dawned, this great axiom of free government was being booted freely over the rocks and rills across the country by the politician. The press, obligated to print all facts of government at the time and not after the fact when too often in history it has been too late, found itself facing a curtain of secrecy over most of Federal Government and a growing menace of secret government in cities, counties and States.

As an example of the latter, a survey by a legislative research council, appointed in Massachusetts at the instigation of the press, disclosed that no less than 187 town and school councils, boards, and committees were accustomed to conduct the proceedings of the people's business in secrecy, with the press and public barred. It also disclosed that 146 town and school councils, boards, and committees barred the public from inspecting their minutes, and that 48 boards and committees kept no minutes at all of the Massachusetts people's business.

In regard to State government, the Massachusetts survey reported: "Returns * * * by 140 State boards, and information on another 4 boards obtained from other sources, show that closed meetings predominate when public meetings are not required by law; moreover, a substantial minority of the boards close their minutes to public inspection."

This official legislative survey was well supported by Sigma Delta Chi-sponsored surveys of the press and open government by the University of Maine, in Maine, and by Marquette University in Wisconsin. Editors reported 23 current abridgments of freedom of information in Maine and 53 such incidents in Wisconsin.

Your committee compiled the results of these three State surveys in an interim report and, at the same time, drew two simple model laws stipulating (1) open government records and (2) open government meetings, and, with the help of hundreds of sincere editors, launched a nationwide drive in the State legislatures in behalf of freedom of information.

Purpose of the drive was twofold:

1. To preserve free, open government in the cities, counties and States of free America.
2. To build up grassroots sentiment among the people in behalf of free, open government so that it could be used as a mighty weapon against the curtain of secrecy draped over Federal Government by the bureaucracy of Washington.

II. EIGHT STATES ADOPT SIGMA DELTA CHI LAWS

The Sigma Delta Chi model laws for open government records and open government meetings were introduced in the legislatures of 15 States, and this promptly precipitated a running fight from coast to coast in which the politician's plaintive, unctious, and sanctimonious squawks bounced against the blue.

But when the last political bleat had whistled across the Mississippi, the legislatures of 8 States had adopted the law guaranteeing open government records, bringing to 29 the number of States having such legal safeguards. And the legislatures of 6 States have adopted the law stipulating open government meetings, bringing to 17 the number of States having such statutes.

The legislatures adopting the open records law in 1957 were: Vermont, Connecticut, Pennsylvania, Tennessee, Minnesota, North Dakota, Kansas, and Illinois.

The legislatures adopting the open meetings law in 1957 were: Vermont, Connecticut, Pennsylvania, Minnesota, North Dakota, and Illinois.

The politician always swings his hardest in defense of his precious secrecy, and even in several legislatures where he lost, he managed to insert qualifying words and phrases in the model freedom of information laws. In Pennsylvania, he inserted a clause that permits "executive sessions," which is the politician's uplifting term for his secret meetings; while in Connecticut, he slipped in a clause permitting the same executive sessions if the majority vote for it.

The Tennessee law for open records was qualified by amendments barring newsmen from State hospital security and those records closed by previous laws. Just how security figures in the records of a State is quite a question, but the Connecticut politicians went ahead, also, and put this exemption in their new open records law.

But even good, strong, unqualified laws do not keep the politician pure in the matter of secret government. Alabama has such a law, the first State, in 1915, to adopt a statute barring secret government meetings. But George M. Cox, executive editor of the Mobile Press and Register, reported to your committee that it has been a running fight for 40 years, with the editors using the law as a club to preserve the Alabama people's right to know about their government.

Your committee lost its fight for both open records and open meetings laws in the legislatures of New Hampshire and Texas and for the open meetings law in the legislatures of Florida, Massachusetts, Tennessee, Kansas, New Mexico, Michigan, and Nevada. In most cases, the politician simply employed the cute trick of burying the laws in committee, and that was that.

California, with the help of your committee, adopted a very fine freedom of information law in 1953, but during the last 4 years the editors found it too general in nature to cope with their secrecy-loving politicians. So this year, with the help of Assemblyman Ralph Brown, they pushed through their legislature unanimously 66 new laws, one for each State board, stipulating that both its records and meetings must be open to the public.

Those States now having laws guaranteeing the people open government records are:

Alabama	Louisiana	Oklahoma
Arizona	Massachusetts	Oregon
California	Michigan	Pennsylvania
Connecticut	Minnesota	South Dakota
Florida	Mississippi	Tennessee
Idaho	Montana	Utah
Illinois	Nevada	Washington
Indiana	New Mexico	Wisconsin
Kansas	North Carolina	Vermont
Kentucky	North Dakota	

Those States now having laws guaranteeing the people open meetings of government are:

Alabama	Illinois	North Dakota
Arkansas	Indiana	Pennsylvania
California	Louisiana	Utah
Connecticut	Maryland	Washington
Delaware	Minnesota	Vermont
Idaho	Ohio	

III. TOO MANY EDITORS ARE STILL APATHETIC

In almost every case where the newspaper editors have become aroused over the people's right to know about their government, they have routed the politician; but where the editors are apathetic, the politician rules over the people in secret splendor.

This was clearly brought out in the surveys in Maine and Wisconsin where too many editors not only ignored the questionnaires but evidenced little interest in the question of the politician's secret government itself.

When the New Hampshire Legislature buried the Sigma Delta Chi freedom of information bills in committee, the Keene Sentinel said:

"It is indeed a sad commentary on the citizens of the State and New Hampshire newspapers that there obviously was no organization whatsoever of proponents of this bill who might have argued its merits before legislators.

"It seems a bit ludicrous to watch the 'Right to Know' bill washed down the drain while considerable effort is devoted to making such weighty decisions as what definition should be given itinerant hairdressers."

On the other hand, after the freedom of information bills safely navigated the Pennsylvania legislature, the Harrisburg Patriot said:

"We who write and edit your newspapers are especially heartened by the passage of these two bills by the general assembly. They did not travel through the legislative jungle in a simple matter of course without incident. They had to be fought for and they had to be spotlighted just about every step of the way. In this battle, just about every Pennsylvania newspaper joined."

And when California's editors put through their legislature the 66 new open record and meeting bills, David N. Schutz, editor of the Redwood City Tribune and doughty chairman of his State's freedom of information committee, wrote your committee as follows:

"The success in California, I believe, is based on an enthusiasm that stems from such advocates as Ed Murray, of the Los Angeles Mirror; Jack Craemer, of the San Rafael Independent; George and Lee Grimes, of the Oxnard Record; and editors in general who scream every time some small town dictator tries to pull a sneak punch."

IV. NORTH DAKOTA AND VERMONT

Two smaller States, North Dakota and Vermont, led the way in the 1957 fight for freedom of information laws. Their campaigns, bringing into play virtually all of the editors of both daily and weekly newspapers, could well serve as models for editorial cooperation in similar campaigns in other States.

The North Dakota drive, sparked by John O. Hjelle, editor of the Bismarck Tribune and chairman of the State's Sigma Delta Chi Freedom of Information Committee, and John D. Paulson, editor of the Fargo Forum and president of the State's Sigma Delta chapter, began with a Newspaper Day in the North Dakota Legislature.

Between 60 and 75 North Dakota publishers and editors, representing 45 to 50 communities, journeyed to Bismarck, spent the day with legislators, and thoroughly briefed the lawmakers on the problems of the free press and the right of the people of North Dakota to know about their government.

The occasion was climaxed with a joint session of the legislature which was addressed by Mason Walsh, managing editor of the Dallas Times Herald and chairman of the Associated Press Managing Editors Association freedom of information committee. Walsh told the legislature: "Dishonesty of any sort, in any field of activity, breeds and thrives in hidden places; corruption wilts and withers in the bright light of public knowledge."

North Dakota's editors followed up this occasion with new stories and editorials, and on February 15 both the open records and the open meetings bills were adopted by the house without a dissenting vote.

Opposition, however, developed in the senate, which prompted the editors of North Dakota's weekly newspapers to go into action. They telephoned or telegraphed the senators of their districts, and on March 7 the open meetings bill was adopted by the senate by 29 to 18 and on March 10 the open records bill by 30 to 13.

That this was a great victory for freedom of information was plainly indicated by the following paragraph written to your chairman by Alvin E. Austin, of the University of North Dakota and a member of your committee: "It must be recorded that newsmen at first were lukewarm to the idea, seeing no great need for such legislation; and that officials and legislators generally opposed the proposal."

The Vermont campaign, led by David W. Howe, publisher of the Burlington Free Press and a member of your committee, was pitched on a different level, yet it was just as effective. Actually, the Vermont Press Association took its freedom of information story to the people and won a decisive victory.

Here is a step-by-step report on the campaign:

1. The Vermont Press Association was twice briefed on the great need for freedom of information laws.

2. The association then appointed a steering committee composed of the publishers of 2 daily and 3 weekly newspapers.

3. A brochure, containing typical laws of the 21 States already having such legislation and also the findings of the Massachusetts Legislative Research Council, was distributed to every Vermont editor and other interested parties.

4. Two large mailing cards, calling attention to the constitutional rights of the people and the need for corrective legislation, was sent to every member of the Vermont Bar Association and to every candidate for the legislature.

5. Briefings on freedom of information were given to the Vermont Bar Association, the League of Women Voters, the State farm bureau federation, the State Legion, the State Federation of Women's Clubs and other civic groups.

6. Public hearings were arranged in the senate and house and such speakers as a school teacher, a farmer a United States Weather Bureau man, a retired ordinary citizen and a TV station manager were obtained to present the freedom of information case.

7. Large advertisements were printed in many Vermont newspapers calling attention to the right of the Vermont people to know about their government.

After both bills negotiated the legislature with no organized opposition, Mr. Howe sounded the keynote of the victorious campaign with the following report:

"At all times we preserved the position that we were seeking no favors for the press; that no bills would be introduced by request; that only if we found members of the legislature who wished to sponsor bills would they be introduced; that we would not register as lobbyists or buttonhole anyone in the State capital; that we would ask for public hearings and would testify on invitation and leave copies of our testimony at such hearings; and that we would help the sponsors to prepare model laws, but that the exact wording was up to the legislature, and we were making no insistent demands of any kind."

V. FLORIDA AND MASSACHUSETTS

On the other side of the picture, freedom of information took a beating in Florida and Massachusetts, where laws for open government meetings were smothered in forensic outbursts that paraded all the old smug arguments of the politician for his sacred secrecy. There also was much apathy on the part of editors in both States.

The law lost, 43 to 33, in the Florida house, and Representative Cliff Herrell, of Miami, led the fight against it. For one thing, he beat his breast mightily over the risk of ruining teachers' reputations in discussing their employment at open meetings of Florida school boards.

But what about the case in your committee's files wherein a school board met in secrecy and fired the principal of a high school for being a sex pervert; and the school board of the adjoining county met 2 weeks later in secrecy and employed this character as the principal of a high school. Your committee would like for Representative Herrell to tell how the interests of the parents and pupils were protected in these secret proceedings.

The matter of land condemnation for public use also figured in the Florida debate. Representative Herrell shook with horror over the very idea of the people being given up-to-date information as to their public servants' actions in buying land for public use, and he ranted mightily over the possibility that speculators might drive up the price.

However, Representative Herrell did not discuss the ancient fact that many a politician has gotten rich, himself, in secret governmental land deals, often at the expense of the taxpayer. He did not dwell either on the fact that the law of condemnation was introduced into American government to protect the taxpayers' interests. Nor did he condescend to mention that the homeowners taxpayers are entitled to advance knowledge of the politician's intent to locate say a city garbage incinerator in a certain vicinity.

In Massachusetts, the politician employed the age-old tactic of killing the bill with crippling amendments. The bill started out a simple legislative measure stipulating that all governmental bodies must meet in the public, but when it finally was adopted by the house, it contained the following amendments:

1. City and town councils and boards could hold executive sessions on majority vote of the members.

2. Executive sessions could be held in matters in which an individual's personal reputation was at stake, or in which financial negotiations were being discussed.

3. Certain committees would be exempt from the open meeting regulation.

4. A newspaper reporting inaccurate information must correct the error "in boldface type on the front page of its next edition."

The Massachusetts Senate also tacked similar crippling amendments onto the bill before passing it. And when house-senate conferees finally got a whack at the amended bill, they sanctimoniously spurned each other's amendments, and thus died the Massachusetts' people's right to know about their government, even in the face of the legislative survey which showed that no less than 187 Massachusetts town councils and school boards were accustomed to hold secret meetings with the press and public barred.

VI. FREEDOM OF INFORMATION LAWS ARE NEEDED

During the year, editors in some States argued that they did not need the freedom of information laws, the constitutional rights plus alert and energetic reporters were sufficient protection for the people's right to know. Your committee examined this argument in the case of Tennessee, one of the first States in 1957 to adopt the open records law, and found it wanting.

The Tennessee law was not a month old when the secretary of the State pardons and parole board declined on May 28 to disclose to newspapers the names of 14 persons who had signed a petition to reduce a man's prison sentence. The newspapers promptly blasted the board editorially for violating the new freedom of information law; whereupon, Gov. Frank G. Clements ordered the names released.

Still later, the school board of a rural county declined to release its minutes to the Nashville Tennessean in a case involving the firing of two school teachers. The Tennessean lodged a complaint with the county attorney, based on the new freedom of information law, and this public servant, after some deliberation, finally released the minutes. They revealed:

1. Evidence which, when printed in the Tennessean, resulted in the reinstatement of one of the teachers to his job.

2. Evidence of unsavory contracts for school construction which the newspaper printed for the benefit of the taxpayers.

In a third Tennessee case, the Nashville Tennessean used the new law to obtain some records from the office of the State commission on finances and taxation—records which previously had been barred to the press and public.

"I was among those who once thought that our constitutional rights were sufficient," said Coleman A. Harwell, editor of the Nashville Tennessean. "But I have changed my thinking. Tennessee's new open records law has been extremely effective and useful to the press. Our great problem now is to fight off the politician's attempts to amend it with qualifying clauses."

VII. THE 1958 CAMPAIGN IN THE STATES

The legislatures of 14 States meet in 1958, and 13 of them do not have freedom of information laws. Your committee sincerely urges, in behalf of not only the present right of freedom of information but also in behalf of the future of freedom of the press, that editors in those 13 States organize determined campaigns, pointed to the people, for open government records and open government meetings laws.

The editors of New York and Virginia, 2 key States, already have organized, endorsed the Sigma Delta Chi model laws and plan vigorous 1958 campaigns.

Those States, the legislatures of which meet in 1958, lacking open government records laws are as follows:

Colorado
Georgia
New Jersey

New York
Rhode Island
South Carolina

Virginia
West Virginia

Those States, the legislatures of which meet in 1958, lacking open government meetings laws are as follows:

Arizona
Colorado
Georgia
Kansas
Massachusetts

Michigan
Mississippi
New Jersey
New York
Rhode Island

South Carolina
Virginia
West Virginia

VIII. THE POLICIES OF THE GOVERNORS ON OPEN GOVERNMENT

The policies of the governors of the States are extremely important in the field of the American people's right to know about government simply because the governor of a State, with his appointive and dismissal power over the State commissions and agencies, holds the key.

Because of this, your committee early in the year asked each of the governors of the 48 States for their thinking on the matter of open meeting versus the secret meeting in government. Forty-four governors replied, and your committee got out an interim report, which was widely distributed throughout the country, based on their replies.

Twenty-four governors declared outright, for the record, that their policies stood for open meetings of all State governing bodies. Nine others said they favored open government generally but did not pinpoint their exact policies on closed meetings. Three governors also said they favored open meetings but commented sharply on the press' responsibility in reporting the news, and their statements hinted strongly that their actual policies depended upon the actions of the press.

Only six governors said for the record that they favored closed executive sessions and most of those declared that such sessions should be limited to discussions of people's reputations and negotiations for public land.

The statements of the governors, who came out for open government, ranged from Florida Gov. LeRoy Collins' "Let us conduct our government in the sunshine, not in the shade" to Kansas Gov. George Docking's "I don't think anybody has any business holding anything back from the people" to California Gov. Goodwin J. Knight's "All public agencies should be willing to conduct their business as if they were in a department store window."

On the other side of the ledger, Gov. Earl K. Long, of Louisiana, simply announced to the press: "There are certain times when it will work out better in the interests of the people if there is not so much publicity in advance." But your committee suspects that Governor Long really meant that there are times when the secret proceedings will work out better for the politician and that this really is the prevailing thought of most politicians.

Gov. Robert D. Holmes, of Oregon, was one of the three governors who hit sharply at the press' responsibilities. He said, in his statement to your committee: "The press, too, as public officials do, sometimes forgets to use its responsibility. A free press, by irresponsible interpretation of fact, may be as guilty as the official in keeping the truth from the people."

In August, Mervin Shoemaker, political writer for the Portland Oregonian, quoted this statement back to Governor Holmes in a TV presentation and asked him if it applied to Oregon newspapers.

"The answer is," said Governor Holmes, "that I never made that statement."

In reply to an appeal from Mr. Shoemaker, your committee sent him a photostat of Governor Holmes' letter, written on his official stationery and bearing his personal signature, which showed that he had written the exact words which he denied in front of the TV camera.

Gov. Orval E. Faubus, of Arkansas, wrote your committee: "Being editor and publisher of a country newspaper, I have long maintained that these meetings should be open to the public, especially to the press."

Yet in the summer national meeting of governors at Williamsburg, Va., Governor Faubus demanded that meetings of the committees of governors be held in closed executive sessions, and this led to a spirited exchange with Governor Collins, of Florida, who argued for open meetings.

Whereupon, on Governor Collins' return to Florida, he engaged in a public controversy in which he informed the State board of control, which directs the State's university system, that it should not reveal the deliberations and decisions of its meetings until this information had first been conveyed to the parent State board of education, of which the governor is a member. The controversy involved the selections of a president and the name of a new State university, to be located in Tampa, which was of wide interest to the people of Florida.

IX. THE JUVENILE COURTS

Public awareness of the need for full information concerning offenders in juvenile-crime cases began to swing the pendulum toward more liberal press coverage, including identifying of many delinquents, during the year 1957.

Citizens groups, seeking means of coping with increased juvenile delinquency in their communities, have begun to strip the protective cloak of secrecy from these offenders.

Although the results have been heartening to date, the pendulum must be given concerted impetus if it is to swing far enough to be of any appreciable value throughout the Nation. Indeed, there are pressures to keep it from swinging any further at all.

Eleven different States have seen activity this year in behalf of fuller coverage of juvenile courts. Three States have experienced moves in the contrary direction. Not all of the activity has been legislative; some has been quasi-official, some merely expressions of public sentiment.

Here is a rundown of the 11 favorable States:

Arizona.—Gov. Ernest W. McFarland signed a bill in March opening the records and proceedings of juvenile courts to the press and public. In signing the measure, Governor McFarland voiced some misgivings because it opened the records of dependent and neglected children who have been made wards of the court and of juveniles accused of minor offenses.

"But I am confident," said Governor McFarland, "that the newspapers also will recognize the effect of publicity on this type of juvenile and will exercise their own good judgment in individual cases and not abuse the discretion permitted."

Arkansas.—Citizens of Texarkana in a mass meeting formally voted to request newspapers and other communications media to identify juveniles involved in crimes in that community. With the exception of one radio station, all media acceded to the request.

Connecticut.—At the request of the New Haven Register, a district judge agreed to allow news coverage of juvenile-court proceedings as a regular beat, but with publication of names prohibited pursuant to State law.

Georgia.—The State legislature, after lengthy public hearings, amended the juvenile court act to make it mandatory that judges release the names of offenders who "come under the jurisdiction of the court" for the second or subsequent time. Publication of the name of such juvenile shall not be an offense. First names to be released under the new statute were published in Georgia newspapers on July 3. They were three Atlanta girls charged with abducting a schoolmate and forcing her to dance nude in a public park.

Florida.—Following a recommendation by the governor's committee on juvenile delinquency, the State legislature reversed a previous law and threw open to the press and public any juvenile-court hearing not specifically ordered closed by the judge. The earlier statute had required hearings to be closed unless specifically opened by the judge.

New Hampshire.—The legislature enacted a measure opening to the public all juvenile-crime cases serious enough to go subsequently into higher courts. The previous law had kept closed such cases unless the judge, in rare instances, decided otherwise.

New York.—Protests by press groups (the New York Society of Newspaper Editors and the New York State Publishers Association) won a delay in the effective date of a new Youth Court Act which would have extended the "protection" of secrecy beyond the usual juvenile age up to age 21. Effective date was postponed from February 1, 1957, to April 1, 1958. Efforts will be made to amend the measure.

North Dakota.—As a prelude to model "open records" and "open meeting" statutes approved by the State legislature, the North Dakota attorney general ruled that youthful offenders placed in the State training school could be identified. Transferring delinquents to the school technically released them from the ban which governed their secret status in the juvenile court, he said.

Ohio.—A higher court reversed a conviction of the editor of the Gallipolis Tribune who published names of juveniles sentenced to an industrial school. The Ohio juvenile law prohibits publication of probation department records, but carries no provision for keeping secret names of juveniles sentenced and committed to State institutions.

Also, in Ohio, the Ohio State Journal of Columbus, published a 2-week series asking readers to help shape the newspaper's policy on publishing names of juvenile violators. Result: The Journal declared it would broaden exceptions to its general rule of non-identification and after September would publish more names. Offenders would be identified in cases of "violent assault, hoodlumism by gangs, serious property destruction and other outbreaks and unusual instances * * *."

Pennsylvania.—The Philadelphia juvenile court, which had been closed to the press and public since it was established in 1913, was opened by action of the board of judges of the municipal court. The order directed that "all hearings shall be public unless otherwise provided by law." Only exception to the judges' order was adoption cases which are closed by State law. Pennsylvania law generally calls for open hearings in most cases, including municipal courts.

Wyoming.—The Lusk Herald and Free Lance, a weekly newspaper, conducted a survey among high school students, inquiring what they thought about identifying young offenders. The score: In favor of publishing names 113; opposed 13.

Three States which saw moves in the other direction were these:

Kansas.—The legislature enacted a new status which excludes all persons from juvenile court trials except counsel for the involved parties.

Missouri.—Adopted a new juvenile code based on the theory that no criminal stigma should be attached to neglected or delinquent children under 17. The code provided that both hearings and court records on such cases shall be closed.

West Virginia.—The Wheeling juvenile court judge issued an order forbidding publication of juvenile crime news until after a trial is held and the court has acted. Judge David A. McKee, while admitting that a State law banning use of names "is not conducive of correction or a deterrent of wrongdoing of others," nevertheless said publication should be of facts established and not of mere accusations.

X. THE PRESS AND THE BAR

In January, the New York State Bar Association adopted a new canon 20 of its code of ethics, which, under penalty of disbarment, stipulates:

"It is unprofessional for a lawyer to make, or to sanction the issuance, or use by another, of any press release, statement or other disclosure of information, whether of alleged facts or of opinion, for release to the public by newspaper, radio, television or other means of public information, relating to any pending or anticipated civil action or proceeding or criminal prosecution, the purpose or effect of which may be to prejudice or interfere with a fair trial in the courts or with the administration of justice."

Because such a canon, if rigidly enforced within the bar, would apply legal censorship to all information concerning all court suits and trials until after the judge's final verdict, your chairman lodged an official protest with leaders of the New York State Bar Association based on the following reasons:

1. It is a direct abridgment of the great American principle of open justice, set forth in our Constitution.

2. It is an abridgment of the constitutional principle of freedom of the press in that it, by necessity, creates censorship either through the bar association or through the courts.

3. It is an outright abridgment of the constitutional principle of free speech.

Your chairman's protest resulted in an exchange of correspondence through February, March, and April, in which the leaders of the New York State Bar Association debated the matters of star-chamber justice and abridgment of freedom of the press but studiously avoided even mentioning abridgment of the constitutional principle of free speech.

They based most of their debate upon the necessity of disciplining lawyers who sought to try their cases in newspapers and upon the matter of pretrial confessions of defendants in criminal proceedings.

Your chairman based his debate upon the simple ground that American courts of justice belong to the American people, that all lawyers are servants of the court and thereby are servants of the people, and that all of their actions and the actions of the court should be open to the restraint of public opinion at the time.

Midway in the correspondence, the president of the New York Association of Prosecuting Attorneys joined in and offered five reasons why the new canon would abridge the rights and privileges of prosecuting attorneys. Your chairman replied that the new canon also would abridge the rights and privileges of those citizens facing prosecution.

In June, your committee issued this exchange of correspondence in an interim report as a matter of record, and subsequently, on appeal from California editors, copies were sent to the California State Bar Association and members of the California Supreme Court.

Your committee takes a most dim view of this new canon 20 of legal ethics and forthwith warns that if it is spread throughout the courts of justice of

our land, it will constitute a serious new threat to freedom of information and the American people's right to know about their Government.

XI. THE RIGHT TO SEE

Based upon the premise that the public has the right to see as well as know, freedom of information as concerns photojournalism, and those men who report the events of the day through the lens of a camera, has advanced during the last year on all fronts.

Canon 35, the legal profession's ban of the news camera in the courtroom, still remained the focal point of abridgment of the public's right to see, but there were many indications that the lawyer is beginning to soften in the face of great scientific advances in photography.

The continuing reeducation program in behalf of news photography scored a notable victory in the courtroom of Criminal Court Judge Charles Gilbert, of Nashville, Tenn. After 2 years of permitting photographers the unofficial right to photograph proceedings in his court, he prepared a 26-page research paper relating to the coverage. Shortly, thereafter, Judge Gilbert made the rights of news cameramen in his courtroom official provided they used small news cameras.

Approaching the problem of canon 35 from a different angle, a group of still and motion-picture photographers executed what is now known as Operation Noise.

Sparked by Dave Falconer, of the Portland Oregonian, the competing newspapers and TV channels contributed time, brains, and equipment for the experiment. It came about during the trial of a convicted district attorney, William M. Langley. One of his defense attorneys, K. C. Tanner, voiced objection to photographs, both during court and during recesses. He said the whirring of television cameras bothered him particularly.

This argument upon the part of the various bar associations, that cameras were too noisy, was flattened by Operation Noise.

The experiment was made in the courtroom of Presiding Judge Charles Redding, where trial conditions were duplicated except for the presence of the spectator crowd. Sound measurements were recorded on a decibel meter by men from the telephone company. The test was made in an empty courtroom because camera sounds with the crowd present would be unmeasurable.

The decibel meter was located midway between the court rail and the judge's bench, where the lawyer's table is usually located. One by one, the photographers operated their equipment for the electronic ear.

Next, the meter picked up the sound of a witness being questioned, then three cameramen clicked their shutters simultaneously. The meter failed to register the whisper of the three shutters above what one of the telephone engineers termed the "normal level of conversation."

Test results, as noted by the observers showed the Auricon Cine-Voice sound camera made no reading on the decibel scale, while the Speed Graphic, seldom used in courts, hit a score of 50 which is equal to the sound of a paper match being struck. Normal conversation registered at 60, a cough at 62, and an unsilenced door hit 64, the same score recorded for an attorney examining a witness.

Other cameras registered as follows in the tests: Bolex 16 millimeter, average 44; Bell & Howell 70DR 16 millimeter, maximum 48; Leica M3, maximum 44; Nikon S-2, maximum 48; Contaflex II, maximum 53, and Rolleiflex 2.8G, maximum 48. Rewind and cocking sounds varied little from the maximums.

The comparison of decibel ratings between photographic equipment and normal courtroom noise is certainly conclusive proof that any sounds from photo equipment would not disturb a court while in session.

As a result of speeches, motion pictures, articles and demonstrations by various photographers and others interested in the promotion of courtroom photography throughout the country, more and more courts permitted photojournalists to cover trials of public interest during 1957. While the actual number of courts that have permitted photo coverage is small in comparison to the number of courts in existence, each one represents a gain.

Few incidents of clashes between law-enforcement agents and news cameramen also were reported during 1957.

Because a Philadelphia policeman forcibly prevented a photographer from the Philadelphia Bulletin from taking pictures at a political rally, a new ruling was handed down by City Solicitor David Berger declaring the rights of newsmen to depict police action for the public.

Since then a press seminar is held for each class of graduating Philadelphia police rookies. At the seminar, a local managing editor discusses the concept of freedom of the press, a city editor describes the process of covering the news, a district reporter and photographer describe their jobs and a veteran policeman recounts his experiences with newsmen.

Private censors, those people who try to cover up mistakes, irregularities, and what they consider bad publicity, have always been a thorn in the side of news cameramen.

When Bob Bartlett, of the Martinsville (Va.) Bulletin, had his camera torn from around his neck by an official of the National Association for Stock Car Auto Racing, at the scene of an accident, he pressed charges through the courts. The National Press Photographers Association made a strong presentation in Bartlett's behalf, but his paper would not back him up when he pressed his charges, claiming that he was acting as one individual against another individual. This, of course, ended the investigation.

A motion-picture actor, Tony Franciosa, took it upon himself to censor a photographer, Bill Walker, Los Angeles Herald-Express, in Los Angeles Superior Court. He had accompanied Shelly Winters as she went to bid on a house for sale.

Walker was slugged, kicked, and had his camera and watch smashed. He immediately filed charges against Franciosa. Found guilty of assault and sentenced to 10 days in jail, the sobbing actor listened while Judge Mark Bandler admonished him.

"Since this unprovoked and cowardly assault," stated Judge Bandler, "with the use of your foot resulted primarily from your persistent but futile efforts to, in effect, muzzle the press and prevent the dissemination of news and information to the public, this court feels compelled to review the facts and then comment on the legal principles involved * * *."

Regarding Franciosa's "right of privacy" the jurist said: "It is the right to be let alone. This protection is given to persons who live ordinary private lives and covers only the private aspects of their lives. If Miss Winters had any right of privacy, she waived any such right to be let alone and remain anonymous when she appeared in court and submitted a bid to purchase a home."

When Secretary of State John Foster Dulles cracked the door slightly to permit 24 of the Nation's news mediums to send 1 man each to Red China, he also kept the door tightly locked to news photographers. NPPA immediately issued a joint statement with the American Society of Magazine Photographers protesting such discrimination. A strong letter was sent directly to Mr. Dulles by the NPPA, pointing out that "words with pictures present to the American public a more complete, truthful and accurate report, than would otherwise be possible."

By discriminating against the professional photojournalist, "the Government is depriving the American people their right to see and judge for themselves those occurrences described in the word report."

In reply the State Department stated "* * * permission to a limited number of news gatherers to go to Communist China would be in accord with our foreign policy whereas to let an unlimited number go could produce adverse effect in the Far East area."

Although the field of photojournalism is relatively new as compared to word reporting, each year finds that more and more people in all walks of life are looking to pictures in the news. The National Press Photographers Association proudly points out that the day is not far off when the man with the camera will be regarded in the same light as the man with the pencil * * * as a person who reports the news. And your committee supports this statement.

XII. RADIO AND TELEVISION

American broadcasters succeeded this year in opening several legislative and judicial doors which had been barred to microphones and cameras. Others, however, remained closed to electronic newsmen.

One of the most important achievements was the opening of the Florida House of Representatives to television cameras on May 1, after the rules committee had made a unanimous recommendation to permit televising of the proceedings.

In New York, on the other hand, the city council refused to permit radio and television coverage of its sessions, despite a detailed hearing on the subject. One of the arguments against granting permission was that the councilmen might make grammatical errors.

In Washington, House Speaker Sam Rayburn remained adamant in refusing to open House committee hearings to broadcasters. Representative Madden (Democrat, Indiana) proposed a resolution to require the Secretary of State to approve any questions asked to Communist leaders by radio or television newsmen. The resolution was not acted upon.

The House Subcommittee on Government Information, continuing its efforts to pry out news from Federal agencies, persuaded the Department of Agriculture to modify regulations on cooperation with film producers. The Department agreed to omit news film stories from rules requiring approval of script and pictures.

The American Bar Association took no action looking toward modification of canon 35, which opposes courtroom photography and broadcasts. The ABA house of delegates will debate proposed changes in February 1958. Broadcasting organizations in several communities met with judges and lawyers to demonstrate that cameras can be unobtrusive, and in some instances received favorable action. A University of Oklahoma survey indicated that 83 percent of trial judges in Oklahoma are favorably inclined toward television news film coverage of court proceedings.

In Texarkana, Tex., Circuit Judge Lyle Brown opened a murder trial to cameras and sound recording equipment. He prohibited broadcast of the actual testimony until a verdict was reached. A television camera was permitted in a corridor outside the courtroom. In Cleveland a judge approved broadcasting of actual court traffic cases via tape recordings.

Not all court matters, however, turned out so successfully for broadcasters. In Tallahassee, Fla., City Judge John Rudd held a television cameraman in contempt of court because he failed to destroy film taken of witnesses in a corridor outside the courtroom.

Arthur Selikoff, a newsmen for station KVOX at Moorhead, Minn., was fined \$10 for contempt of court after a dispute with Police Magistrate Roscoe Brown. Selikoff asked for permission to record a hearing, and Brown's refusal led to an argument.

Unhappily, working relations between newspaper reporters and radio and television newsmen did not always reflect harmony. In Los Angeles newspapermen refused to let television cameras or tape recorders be set up at news conferences or during pool interviews. A similar situation prevailed at Idlewild Airport in New York, where newspapermen succeeded in getting separate interviews with traveling celebrities.

Your committee urges that every effort be made locally to iron out such difficulties, in order that freedom of access may prevail for the entire news profession.

This report respectfully submitted to the 1957 Convention of Sigma Delta Chi Fraternity, meeting November 13-16, 1957, at Houston, Tex., by its freedom of information committee. V. M. Newton, Jr., chairman, the Tampa (Fla.) Tribune; David W. Howe, Publisher, the Free press, Burlington, Vt.; Alvin E. Austin, head, department of journalism, University of North Dakota; James K. Toler, Commercial Appeal Bureau, Jackson, Miss.; Bert Struby, Editor, News and Telegraph, Macon, Ga.; Clark Mollenhoff, Washington Bureau, Des Moines Register, Washington, D. C.; Theodore F. Koop, Columbia Broadcasting System, Washington, D. C.; J. Alex Zehner, Pittsburgh (Pa.) Sun-Telegraph; James R. Brooks, Ekco Products Co., Chicago, Ill.; Mort Stern, the Denver (Colo.) Post.

GILMARK FEATURES,
New York, N. Y., November 27, 1957.

MR. THOMAS C. HENNINGS, JR.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you for sending us a copy of your bill, S. 2148, to strengthen the free press in this country. We heartily endorse it. It is in line with the conviction of American journalism that the freedom of the press guaranteed by the constitution embodies the twofold aim: (a) the right to publish information (b) the right to obtain information.

May we suggest an additional clause to strengthen the objectives of your bill, to wit: In section 1002, paragraph F (3) following the line reading "of such a nature that disclosure would be a clearly unwarranted invasion of personal privacy" add the words "and where no public interests are involved".

It may interest you that the right to obtain information from Government offices was won in the early 1950's in the case of *Antonio Valdive seo Ayuso v. The*

Government of Puerto Rico. The case came to the courts when as publisher of a Spanish tabloid, El Imparcial, in San Juan, Ayuso sought to examine the records of the Department of the Interior involving a charge of corruption. The Boston Court of Appeals (considered the highest tribunal for territorial cases) ruled in favor of the publisher. If you hold any hearings on the bill, it may prove worth while to invite Ayuso to them.

Best wishes to you on the passage of the bill.

Sincerely yours,

LOU SHAINMARK, *President and Editor.*

HARDALE ASSOCIATES,
New York, N. Y., December 4, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Many thanks to you for the opportunity given me in your letter of December 2 to comment on the two bills mentioned in that letter and your accompanying statement.

I am in full agreement with the intentions you have outlined, but I am not a lawyer and therefore cannot be certain that these two bills go as far as I would like.

It seems to me imperative that we take away from anyone in Government the power to conceal facts by marking material "confidential" or "secret" unless the release of that information may be of aid to our enemies. I believe it is a crying shame that any department head can be in a position to cover up his activities and/or mistakes by classifying such information. Naturally our security must be protected in every possible way, but when our Government labels as "top secret" Russian-made planes that were flown intact to freedom, one can only wonder who the Government considers the enemy to be. Most certainly Russia knew all about these planes.

Repeating my support of your intentions I only wonder whether S. 2148 and S. 921 go far enough. Free, honest, democratic government can exist only under the light of pitiless publicity.

Again my sincere thanks for the opportunity to comment.

Respectfully,

NORRIS HARKNESS.

ILLINOIS PRESS ASSOCIATION,
December 6, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you kindly for the copies of the two freedom of information bills introduced by you which are now pending before the Senate Constitutional Rights Committee.

In my opinion both are good bills and I sincerely hope you are successful in getting them passed into law at this next session of Congress.

My only criticism, pertinent to both bills, concerns paragraph (f) Exemptions (3). It seems to me that the limitation for "unwarranted invasion of personal privacy" provides a convenient loophole for officials. I think this exemption should be eliminated, or more specifically spelled out.

Yours very truly,

ARTHUR E. STRANG,
Secretary-Manager.

INTERNATIONAL COUNCIL OF INDUSTRIAL EDITORS,
Dayton, Ohio, January 20, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: On November 20 you sent to the president of the International Council of Industrial Editors copies of Senate bills S. 2148 and S. 921 regarding freedom of information which are now pending before the Senate Constitutional Rights Committee for consideration. You asked for an expression of the council's views on the two bills.

We have made a careful study of both bills as well as the text of the hearings on similar bills which were held by the House Committee on Government Operations last year.

At the executive board meeting of the International Council of Industrial Editors held in Kansas City, January 17, it was decided that, since we have never been refused any information we sought under the present law, the council would prefer to remain neutral on this subject.

This is not to be construed in any way that we object to the bills nor do we endorse them. We take no position on the matter and will abide by the policy established by Congress.

Respectfully submitted.

H. F. HEIL,
Chairman, Liaison Committee.

INTERNATIONAL LABOR PRESS ASSOCIATION, AFL-CIO,
Washington, D. C., January 7, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

MY DEAR SENATOR HENNINGS: The International Labor Press Association, at the final session of its 1957 convention, adopted the enclosed resolution endorsing Senate bills Nos. S. 921 and S. 2148.

I am transmitting the resolution adopted in accordance with the vote of the convention in accordance with the vote of the convention so that it may be incorporated in the appropriate records.

With kindest personal regards, I remain,
Sincerely,

BERNARD R. MULLADY,
Secretary-Treasurer.

P. S.—I was a longtime associate of Allen Raymond dating back to the days when we organized the Newspaper Guild of New York together, and I have followed with considerable admiration your activities to keep the channels of information open.

RESOLUTION ADOPTED UNANIMOUSLY BY THE INTERNATIONAL LABOR PRESS ASSOCIATION IN CONVENTION ASSEMBLED IN ATLANTIC CITY, DECEMBER 4, 1957

Whereas in recent years there has been an increasing tendency to withhold information regarding conduct of governmental affairs; and

Whereas this problem of censorship by governmental agencies poses a continuing threat to freedom of the press; and

Whereas there have been many instances of unwarranted withholding of information from both the public and Congress by various Government departments and agencies; and

Whereas Senator Thomas C. Hennings, Jr., of Missouri has introduced in the United States Senate two bills, Nos. S. 921 and S. 2148, the purpose of which bills is to insure that the public receive adequate information from administrative agencies; and

Whereas Senator Hennings has asked for an expression of informed opinion regarding these bills: Now, therefore, be it

Resolved, That the International Labor Press Association, AFL-CIO, go on record as endorsing Senate bills Nos. S. 921 and S. 2148; and be it further

Resolved, That the secretary-treasurer of the International Labor Press Association be instructed to inform Senator Hennings by letter of the wholehearted support of the members of ILPA for the two aforementioned bills.

INTERNATIONAL NEWS SERVICE,
New York City, December 16, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights, Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Acknowledging your December 2 letter, I feel that both your freedom of information bills, S. 2148 and S. 921, would help preserve freedom of the press in this country. I am strongly in favor of them.

Sincerely yours,

KINGSBURY SMITH.

WASHINGTON, D. C., January 3, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: International News Service endorses the objectives of S. 921 and S. 2148. As an independent news agency we support all measures which contribute to the widest possible dissemination of all governmental information insofar as it is compatible with the security requirements of the United States.

Sincerely,

W. K. HUTCHINSON,
Chief, Washington Bureau, International News Service.

MICHIGAN PRESS ASSOCIATION, INC.,
East Lansing, Mich., November 27, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.

DEAR SIR: Thank you for sending this office material regarding the freedom of information proposals.

You will not be surprised to know that press association secretaries are most interested in such legislative activity, and that newspapers as a group are most concerned with what appears to be a steady increase in the tendency among Government officials to withhold all sorts of information to which the public should properly have access.

This trend is particularly serious at the national level since it seems to set the precedent for local government to adopt the same practice.

It is my hope that the Federal Government can reverse the philosophy at its level and that thinking will filter down and reverse the local tendency to withhold information from the public.

You may be interested in the enclosed clipping which describes some legislation which will probably be proposed in the next session.

Best regards,

ELMER E. WHITE.

[From the Lansing (Mich.) State Journal]

FREEDOM OF PRESS BILL IS PROPOSED

Legislation designed to make State governmental records and information readily available to newspapers is expected to be introduced in the forthcoming session of the legislature.

Impetus to the move has been given by James M. Hare, secretary of state, who has made a study of laws in other States, and by resolutions adopted last week by the Associated Press managing editors in convention in New Orleans.

In one resolution, the convention urged its members to—

1. Fight governmental secrecy at local, State and national levels.
2. Know and act upon their legal rights at the local and State level with regard to access to governmental records and governmental meetings.
3. Keep the public informed about activities affecting the people's right to know.
4. Stay alert to any efforts by Government to increase secrecy and oppose those efforts promptly.
5. Remember always to describe closed meetings as "closed to the public" rather than the misleading "closed to the press."

EXAMPLES

Another resolution adopted cited several instances of governmental censorship, such as:

1. Department of Defense experts, testifying before the House Government Information Subcommittee, said that more than a million Federal employees are classifying security information and that this classification is running at a higher rate today than during World War II.
2. The Army Intelligence Division declined clearance of a book on the history of the Army intelligence, even though the author offered to limit it to the intelligence operations of Gen. George Washington, based on material discovered in 1921.

HARVARD BAFFLED

3. It took Harvard University 10 years and the help of Congress to persuade 8 Federal agencies and bureaus to agree to declassification of World War II records stored at the university which Harvard couldn't look at, couldn't get declassified, couldn't return to the Government, couldn't give away, and couldn't burn. It cost Harvard \$1,200 a year in storage.

4. The Department of Labor censored statistics on the armed services purchases of peanut butter on the ground that clever enemy officials could deduce from them the number of men in the armed services. At the same time, the Department of Defense was issuing monthly reports on the totals of the armed services personnel.

5. The Pentagon has affixed its "for military use only" classification to official United States weather data. The Soviet Ambassador can telephone the Department of Defense and ask for extension 79355. Whereupon, a recording automatically gives the latest 24-hour weather forecast from nearby Bolling Air Force Base. This automatic recording concludes as follows: "This information is for military use only and dissemination to the public is not authorized."

BILL NOT FILED

6. A mimeographed release of Secretary of Defense Wilson's press conference of April 12, 1955, carried the following notation stamped at the top: "Not for general distribution."

7. The United States Post Office Department denied to the Providence Journal and Bulletin for nearly 6 months information on the fines levied against the New Haven Railroad for slow delivery of mail on the grounds of public interest. On direct appeal, Postmaster General Summerfield finally released the information.

At the last session of the legislature, Senator Frank D. Beadle (Republican, St. Clair) indicated his interest in offering legislation to correct unnecessary governmental censorship but in the rush of late legislation his bill was not filed. At that time, he said he undoubtedly would file such a bill in the forthcoming session.

CHICAGO, ILL., November 30, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Committee on Rules and Administration,
United States Senate.

DEAR SENATOR HENNINGS: Your proposed amendment to title 5, United States Code, section 1002, strikes me as being very ably prepared. It clarifies the language of the present law, and should go far toward preventing the withholding of information to which the public is entitled.

I'd like to express my appreciation, and I'm sure that goes for all of us in the newspaper business, to you and to any others who so ably and conscientiously drew up this proposed amendment. Let us hope you can make it law.

Sincerely,

WADE FRANKLIN,
President (1956), Midwest Travel Writers Association.

MINNESOTA EDITORIAL ASSOCIATION,
Minneapolis, Minn., December 6, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

MY DEAR SENATOR: It was remarkably thoughtful of you to send us material on your effort to keep open the many channels of official information. Most certainly the effort has our hearty endorsement and support. My only doubt centers around line 19, page 3 (f) exceptions: (2) "required to be kept secret"—if there were some way of avoiding the snap judgment of self-important and nonresponsible (nonresponsible in the sense of not being elected by the people, and having a chain of "bosses" among whom it is so easy to lose the buck that is regularly passed) petty officials, the course would be relatively smooth. Yet I realize the vital need of caution along many crucial lines.

Hope you will read two brief enclosures and find them helpful.

Thanks a lot, and cordial good wishes.

RALPH W. KELLER.

(The enclosures follow :)

Excerpt from an October 1957 letter to Senator Mundt regarding Patent Office wish to bar from practice attorneys who advertise:

"There is something very specific I believed Congress can do to stem the jungle growth of regulations and restrictions and prohibitions with which information and advertising are slowly but very surely being throttled.

"* * * cease to delegate legislative and executive powers to all manner of unknown and irresponsible bureaus, commissions, departments, and agencies. Then by specific withdrawal or wholesale nullification abolish the roadblocks already painstakingly erected in the normal course of news, information, accounting, advertising, etc., and the exercise of other constitutional freedoms * * *"

"BEAUTIFUL UPON THE MOUNTAINS"

Extension of remarks of Hon. Harold C. Hagen of Minnesota in the House of Representatives, Friday, July 2, 1954

Mr. HAGEN of Minnesota. Mr. Speaker, just recently I had the great privilege and opportunity of listening to an outstanding speech given by Ralph W. Keller, secretary of the Minnesota Editorial Association, Minneapolis, Minn. The speech was given at the banquet at the Shoreham Hotel here in Washington, D. C., on June 22.

Among the distinguished guests were the President of the United States, Dwight D. Eisenhower, many Senators and House Members, and other distinguished Federal officials. Also on hand were the hundreds of editors of small weeklies and dailies throughout the United States.

Mr. Keller in a way indicted the newspaper profession and charged it with some failings. However his talk also answered any and all critics of the newspaper profession in a most able and proper manner.

I think it is one of the finest speeches I have ever heard and the great applause given the speaker at the conclusion of his speech indicated it was well received by the large audience present. In fact, President Eisenhower himself referred to many points in the speech when he followed Mr. Keller with his own outstanding and excellent remarks.

I think Mr. Keller's speech is so outstanding that I am inserting it in the Congressional record so that it will have a wider audience. The speech was entitled "Beautiful Upon the Mountains," and it follows:

"In a broadcast message not many weeks ago the President of the United States said, 'In this country public opinion is the most powerful of all forces.'

"The most powerful physical force known to man is nuclear reaction. This force is equally capable of good or ill, depending, of course, upon the intent of its users. Even so with the force of public opinion. Enlightened, informed, it is a powerful force for good. Uninformed or misinformed public opinion can be an equal force for evil—the destructive, devastating force that marches across too many pages of history—a frightful force that many of us here have seen thrice loosed upon a hapless world.

"Only a few days ago the President, in another broadcast, commended the anniversary theme of a great American university: 'Man's right to knowledge and the free use thereof.'

"It is to this universal right to knowledge—the essential need for and value of an informed, enlightened public opinion—that I would for a few minutes direct your thinking. First by talking 'shop' with my esteemed newspaper colleagues, then by talking 'turkey' to our distinguished friends in Government.

"On this same Columbia occasion the President praised the steadfast adherence of one of his illustrious predecessors, Thomas Jefferson, to two fundamental principles of freedom: the need for newspapers to disseminate information, and faith in the assurance of the gentle Galilean that 'Ye shall know the truth, and the truth shall make you free.' It might be noted in passing that neither Congressmen nor editors are given any priority on truth; the promise is to an impersonal and universal 'ye.'

"Now how are we to learn the truth? How can 160 million far-scattered citizens find the truth? How shall we recognize it when we do find it?

"Public opinion can be informed only by having the facts; we gain enlightenment, approach the truth, only by seeing, discussing, comparing, evaluating, all of the facets of every issue, whether that issue be township roads or foreign policy. This process involves every one of the cherished freedoms enumerated

in article I of the amendments to the Constitution of the United States: religion, speech, press, assembly, and petition.

"Full and free discussion involves the right to assemble peaceably, to speak freely, and to petition constituted authority, mundane or divine. There we have four of our sacred freedoms in action. But essential to the most effective assembly, speech, and prayer, is information—the right to know that, rests squarely upon and revolves forever about the fifth freedom, a free press.

"It is hardly necessary to define to this august assemblage a free press, yet, since it obviously means many things to many persons, it may not be amiss to reappraise our concepts.

"Free press, first of all, is not a vested right of any publisher, or publishers' organization. It is not the privilege of any individual to take pictures in a courtroom, televise congressional hearings, report mishaps in the armed services, probe individuals and departments of government.

"Free press is, however, the inherent and everlasting right of the people who foot the bill to see these courtroom pictures, hear these official proceedings, learn what happens to our boys in uniform, know what their public servants are doing. Nor is free press only the right—it is the duty of free citizens to be informed about society, commerce, and government.

"Free press is yet more. It is the right of enfranchised taxpayers to choose the mediums through which we prefer to see and hear and learn: to select our own radio and TV channels, buy our favorite newspapers and magazines, read the books of our choice.

"In these rights and duties of American citizens is America's free press rooted. From them arise sacred obligations and sublime opportunities to perpetually challenge editors and broadcasters and book publishers.

"It follows that those of us who give life and substance to the free press are charged with a grave and solemn responsibility. Let us, then, ladies and gentlemen of the press, consider for a moment how we of the fourth estate are meeting that responsibility.

"How beautiful upon the mountains are the feet of him that bringeth good tidings, that publisheth peace." So spake that wise and fearless Hebrew shepherd, prophet, statesman, Isaiah the son of Amoz. I think he would have made an influential and inspiring editor, this ancient crusader. Listen to some more of Isaiah's personal paragraphs:

"Therefore my people are gone into captivity, because they have no knowledge.

"Come now, and let us reason together.

"I have not spoken in secret.

"Now go, write it before them in a table, and note it in a book.

"The people that walked in darkness have seen a great light.

"Wisdom and knowledge shall be the stability of thy times."

"Ages ago the feet of the sun god were beautiful upon the mountains bearing warmth, health, and cheer. So, too, the fleet-footed courier who sped homeward the stirring news of faraway victories and discoveries. The public bulletin boards of Babylon, Thebes, and ancient Rome, the bellringing criers of medieval towns, were messengers with feet ever beautiful upon the mountains to benighted peoples hungering for information.

"All these traditional bearers of tidings but yesterday in the calendar of eternity culminated in the swiftest, most effective messenger yet to serve mankind: That modern phenomenon, that lusty and prolific descendant of Johannes Gutenberg, the newspaper.

"Practically all of the learned professions antedate journalism. Many, I suspect, are wealthier. Yet none of them—and I am not unmindful of the teacher, the preacher, and the lawyer—not one of the professions, possibly not all of them together, exceed in influence the press.

"Now, my colleagues of the fourth estate, dare we be proud of that influence? Is it as great as it could be? Is ours as good an influence as it should be? Does it reach the young and old, the tolerant and the intolerant, the prejudiced and the unprejudiced, with fair and impartial impact? Nor am I asking only the Star and the Post here in Washington, the New York Times, the St. Paul Dispatch, the Minneapolis Tribune. The question is equally significant to the Canyon City Record, the Rock Rapids Reporter, the Woodhaven Leader. The nature of newspaper influence concerns not only the great national and international mediums with feet upon earth's high and distant mountains. It is even more vital to those messengers who run the local courses, whose feet are intimately meaningful upon the hills of home.

"Let us ask ourselves frankly and answer honestly, how good is our news coverage? Of course we record the storms, the weddings, the accidents. But are we telling our readers about the earnest helpful sermons in our local churches, the inspirational talks at Lions and Kiwanis meetings, recent additions at the library, new trend-marking developments in local agricultural and marketing practices? Do we permit careless headlines to mislead hasty readers? Are we guilty of inaccurate leads that give a wrong impression of the facts in a story? Do we ever permit the advertising columns to interfere with complete and accurate news reporting?

"And what about news pictures? Are we doing with camera, plate, and imagination what television and facsimile will take away from us if we limp along in the comfortable rut of tradition and smug self-satisfaction? Improved modern techniques impose upon the press the selfsame obligation that devolves upon teacher and preacher, doctor and architect, to keep abreast of the times in their respective fields. Let us not hobble our courier with indifference or false economy.

"Is the influence of our newspaper helped or hindered by our typography? Are our typefaces, format, makeup attractive? Is our presswork any better than the blurred images we sometimes ridicule on the infant TV? I wonder how long it has been since any of us made any specific effort to improve the physical appearance of our product—and thereby enhance its influence.

"We hear recurring charges of 'a one-party press.' Yet the only issue on which our 10,000 weekly and daily newspapers have ever been found anywhere near at one is neither party politics, farm prices, nor postal rates. Our one common objective is more advertising.

"So let us look into the influence of our advertising columns. Which is our higher aim, to sell goods for our advertisers or space in our newspapers? To bring plenty to our readers, or to our own banking account? Have we done all we can, or anything at all, to make our advertisements more neat, readable, appealing? How hard do we work to make the messages of our advertisers interesting, informative, credible? How carefully do we screen the users of our space for honesty and reliability? Can our readers patronize our advertisers with the same confident assurance with which they call on the family physician, or sit down in their church pews Sunday and midweek?

"Nor should we overlook legal advertising: public notice, stepchild of greed and waif of expediency. We are wont to set legals in the smallest hairlined face on the premises, make them up like gerrymandered precincts, hide them away like Captain Kidd's gold—then clamor for more at higher rates.

"How often do we attend or adequately cover town, village, utility, school, county, welfare meetings, at which taxes are levied and public funds expended? Most of us are likely addicted to the practice revealed in recent Texas and Minnesota surveys, 'If they won't pay for publishing the minutes, to heck with the meeting.' Which is hardly a persuasive approach to public officials from whom we ask a freer flow of information and advertising.

"Newspapers worry quite a bit about help, too. Yet the record is pretty clear that we treat the human factor about as cavalierly as legal notices. I wonder what any one of you may have done recently to make any member of your staff glad that he works for you. What do we do to imbue our employees with genuine, sincere, deep-rooted pride in their profession? How long since an eager school kid walked into your plant, as I did into Frank Wilder's out in western North Dakota many years ago, and said with reverent awe, 'I'd like to be a newspaperman. Can you give me a job?' A long time I'll wager. And I'll further wager that you blame today's kids, the times, your contemporaries, perhaps even the Government—everything but the real hitch, the unattractiveness of your own shop and your own product.

"Still measuring the length of our strides upon the mountains of public opinion—the degree of enlightenment we afford 'the people who walk in darkness,' let us take a close look at our editorial pages—or at the sorry grave of lost leadership where the editorials ought to be. Are you among the mute majority who lack the time, the white space, the mental discipline and moral fortitude to evolve and pursue an editorial policy? This lazy indifference, this cowardly preference for the easy unchallenged course, does more to cripple the feet of newspapers upon the mountains of influence than all the malicious missiles our worst critics ever hurled. Think what we could do for farm, home, and highway safety. Mourn with me over our dereliction in the currently appalling epidemic of parental delinquency and juvenile vandalism.

"You are afraid to be wrong? Then you are too timid to run a good newspaper. You have an unpopular viewpoint? So have the preachers, but the churches haven't been closed. You might win but few issues? The object of editorials is not to win arguments, but to stimulate and perpetuate the discussion of which democracy is born and on which it is nourished.

"Nor is our influence strengthened by submitting to the soul-searing pressure to put ever more paid lineage before more and still more paid subscribers. Too many of us confuse mere bulk with reader interest, size with influence. Quantity is so much easier of achievement than quality.

"Now, while our newspaper friends with characteristic optimism appraise and approve each his own operation, attributing to his contemporaries all the shortcomings we've noted, let us turn to our guests. Having glimpsed a few of the problems, obligations, and aspirations of the free press, let us now attempt a quick appraisal of public and official attitudes toward the struggle of the press to stay free, and to fulfill its mission to a free people.

"We first encounter the disturbing fact that, no matter how perfect our newspapers, they cannot always tread the high places shod only with good news.

"News is a relative term, rarely absolute good or unequivocal bad. That the thermometer has gone to 18 would be awfully good news after a day or two at 35 below, but awfully bad news to a chap with several vines of ripe tomatoes in the backyard. The bad news that Uncle Hezekiah has been gathered to his father is sometimes mitigated by the extent of those possessions uncle was unable to take with him.

"No matter how many times we've heard it, no report is really news until we have the complete, accurate, corroborating printed details to read for ourselves and refer back to as we wish, which satisfying personal scrutiny, incidentally, is why it seems unlikely that radio and TV will supplant the newspaper as a news medium.

"Now what do the newspapers do about all this?

"They print it as they find it, the good and the bad, the uplifting and the depressing, many things many readers don't like, some things the editor himself doesn't like.

"In striving to completely and accurately record today's turbulent passing parade, we newspaper people are alarmed at the implications of Indochina, Guatemala, Geneva; uneasy at the perpetual threat of the Kremlin; sometimes dubious about the goings-on on Capitol Hill. We find ourselves at a loss to reconcile public doles with our traditional concept of independent enterprise in both trade and agriculture. We contemplate in mild astonishment a paternal Government punishing with equal severity and enthusiasm, on the one hand violators of the price-fixing Fair Trade Act, and, on the other, violators of the anti-price-fixing antitrust laws.

"We wonder at the complacent inconsistencies of Government at all levels continually bespeaking newspaper support of countless so-called good causes, while persistently withholding all manner of significant information in every field of public activity, from drainage ditches and school salaries to atomic development and international commitments. We marvel at the wry military psychology which insists upon shielding our people, who in one generation have faced the casualty lists of three major wars, from the devastating news that some of our boys sometimes fall short of selective service physical requirements.

"But what we newspaper people really find difficult to accept, and impossible to understand, are those governmental vagaries which confront us, on the one hand, with constantly climbing costs, and on the other with multiplying restrictions on our earning power.

"Statute and departmental directive subject us to ever-rising wage levels, ever more liberal fringe benefits, increasingly difficult apprenticeship requirements, and the inflated prices of artificial shortages, while steadily mounting mail distribution rates help finance our Post Office competition as envelope printers and bill peddlers.

"Then these wounds are salted by meddlesome governmental units persisting in efforts to curtail statutory public notice of all kinds—by banks, school districts, welfare boards, and most other money-spending public agencies. Curtailments which not only impair newspaper revenue but impinge heavily upon the right of taxpayers to full and frequent accounting.

"Finally, the salt is cruelly rubbed in by State and Federal lawmakers who insist upon laying on advertising the clammy hand of regulation.

"The first amendment is riddled by continuing efforts to bolster tottering codes of professional ethics, obliterate price tags, and placate highly vocal minorities of

visionary reformers with State and Federal laws restricting, regulating, and even prohibiting many forms of advertising.

"Only a few evenings ago the President of the United States reminded a radio audience that 'the founders of the Republic feared only misguided efforts to suppress ideas.'

"How many misguided lawmakers would suppress the idea of free markets and open competition; would abrogate the right of free American citizens to use their own God-given intelligence, make their own character-forming decisions?

"Is the judgment of our people so unsound, have public fiscal policies so warped our sense of values, that we can't be trusted to study and compare price schedules for ocular examinations and eyeglasses? Has our moral fiber grown so flaccid that we mustn't be exposed to printed pictures of beverages and tobacco products—commercial items legitimately manufactured under Government license, produced and distributed by wage-earning, taxpaying, voting citizens, openly displayed in business buildings on public thoroughfares, and subjected to enormous taxes in support of our schools, hospitals, and public works?

"This protective zeal would even deny us the privilege of judging for ourselves the validity of interest rates promised by taxpaying financial institutions duly licensed and regularly examined by that same Government which we presumably blind and impotent voters create and maintain.

"These rampant regulators would rob numberless honest business men and women of the humble right to cry their wares in the open market places of the Nation. Continuing efforts to legislate professional monopolies and give statutory protection to secret price cartels seem, to us who work under constant antimonopoly surveillance and in the midst of the open display of competitive prices, strangely incompatible with our antitrust laws and the principles of free competition on which our mighty economy is based.

"This whole restrictive philosophy is diametrically opposed to the recent declaration by our Chief Executive that 'wherever man's right to knowledge and the use thereof is restricted, man's freedom in the same measure disappears.' Man's right to know is no less basic and essential in the market place than in governmental council chambers. Any theory or doctrine to the contrary is doubly dangerous to a free press and a free people. First, because legislative restriction on any type or form of legitimate advertising discourages the full and free employment of this potent stimulant of commerce and prosperity. Second, because legislative control of newspaper policy and revenue in one instance portends eventual control of all policies and all revenues, and the inevitable demise of a free press.

"Nor is advertising actually unrestricted. The public, however careless or credulous, is not at the mercy of unscrupulous charlatans. High standards and rigid codes have been set up by the honest professions, by numberless better business bureaus and trade associations, by our own newspaper organizations. Practically every State has fraudulent advertising statutes, fully endorsed and carefully observed by the newspapers. And overall, with watchful eye on advertisers and mediums alike, stand the Federal Trade Commission and the Federal Communications Commission.

"May we not then accept the fact that newspapers, whatever their virtues and their imperfections, are not the architects but only the faithful mirrors of our times? Mirrors in which we see reflected all the touches of elegance and perfection, all the faults and foibles, that make the human race what it is—the human race.

"We may not like what we see. But that does not impugn the mirror. Nor absolve the editor from keeping it clean and polished and sharply focused. Public aversion to the bitter truth does not justify dilution or distortion in any word, phrase, or degree. Yet for stanch refusal to omit, color, or distort, newspapers are criticized, maligned, subjected to public castigation and official regulation.

"Some of us have faced a completely impersonal, wholly relentless mirror the morning after—have stood aghast at the sagging folds of a stubby chin, drawn lips and sallow cheeks, the eye bags packed for a long journey and the eyes too tired to follow. But do we turn out the light and break the mirror? Would that help? Of course it wouldn't, and we don't do any such silly thing. Matter-of-factly we set about repairing the damage, using that same uncompromising mirror to check the results and measure our progress.

"So the inevitable question must be asked, Do the newspapers have to uncover and write and reflect in word and picture all of the manifold phases of the kaleidoscopic life forever unfolding about us—the sordid as well as the stimulating, the jaded with the jubilant?

"Well, suppose you had a magic mirror, a selective reflector. On those gruesome mornings—after this timid inoffensive little mirror would be wholly oblivious to the growth of your beard and the bulge of your eyes. You would take a smug look, and sally forth. But your appearance would not be improved.

"Such innocuous unrevealing mirrors have, from time to time, been turned upon county contracts and school board finances, State funds and Federal procurement practices—upon the Commodity Credit Corporation and the Federal Housing Administration. But nobody learned much. Selective reflection failed to reveal the whiskers of irregularity until the beard of calamity had grown.

"How much better a complete and accurate look the first time. Irregularity does not bear inspection. Corruption does not flourish in the bright light of publicity. Nor is there authority for assuming that half truths will make us even half free. Or that our economy can exist half slave and half free, any more than could our Nation.

"Obviously, a selective mirror is as bad as no mirror. Vain as we are, male and female, I doubt that we look in the mirror so much to see what is right about us as to assure ourselves that nothing is wrong. So with our printed mirrors of life. We can't hope to see only good reflected until we live only good. And we must see to improve.

"When a vain or faint-hearted public loses the courage to face up to an accurate reflection of the life we lead; or, far worse, if our badgered and misunderstood writer and commentators ever lose the courage and the integrity to keep the mirrors free and impersonal, truthful and accurate in merciless detail, then indeed must freedom falter and civilization pause. Unshaven progress will sprout the beard of inertia, incentive grow pallid, the smooth coiffure of culture be tousled and disheveled.

"No more than individuals can be at their best without mirrors can freedom survive without a free press.

"American freedoms have brought forth a mighty system of free enterprise, nurtured on open competition and unfettered advertising. A system that feeds, clothes, and arms our own and many other peoples on a fabulous scale. A system built not alone on vast material resources, nor solely on superior know-how.

"One other mighty tool we have, practically unknown anywhere else in the world—almost wholly exclusive to these United States. With all of its faults, problems, and handicaps, we still have our vigorous, ubiquitous, grassrooted free press. Time forbids a technical survey of the numerous features wherein our newspaper structure differs from that of every other nation. One instance will suffice: Had our courageous and intrepid Argentine neighbor, the ill-fated daily newspaper *La Prensa*, been supported in its preeminence by several thousand smaller daily and weekly buttresses, it would not have been so prominent and vulnerable a target—indeed, might well have withstood the assault of autocracy. If any one of you, my friends, is ever tempted to exalt some of our own journalistic giants and underrate our hometown weeklies, just remember that the big ones rise impregnable from a firm, loyal, and steadfast base of many small ones.

"In this farflung free press lies the secret of American vigor. Thousands of free and independent newspapers constitute the Samson locks of our national strength. Let them be shorn by official decree or public apathy and America's might, like Samson's is gone.

"The advertising columns of our newspapers stoke the roaring fires of mass production, grease the far-stretched routes of distribution, and lead the American people to ever new heights of living.

"The news columns, with their folksy personals and social notes, have made us friends and neighbors from coast to coast and from border to border.

"Whatever their shortcomings and imperfections, our newspapers have made the feet of America, upon the cold forbidding mountains of fear, bold with a deep-rooted mutual understanding. They have made the feet of our people, upon the dark mountains of intolerance and suspicion, firm with a steadfast mutual confidence.

"Informed, enlightened, and inspired by a free press, mankind will yet walk with feet unfettered and beautiful upon the mountains of eternal peace."

CHILlicothe, Mo., January 18, 1958.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: This concerns your efforts to further freedom of information which, I am sure, will meet with the approval of newspapermen everywhere.

I have read S. 2148, the statement explaining its provisions and purposes, and the information regarding S. 921.

The trend, it seems to me, is in the wrong direction as far as the public's right to know is concerned. More and more, matters of public concern are being withheld.

The two bills you have introduced, in my opinion, are steps in the right direction to halt the trend and to afford the American people the privilege of being well informed on governmental matters.

I am certain all newspaper people feel as I do. You are to be congratulated for your efforts.

Sincerely,

CHARLES E. WATKINS,
President, Missouri Associated Dailies.

NATIONAL ASSOCIATION OF CREDIT MEN,
New York, N. Y., November 27, 1957.

Re S. 921, S. 2148.

Hon. THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, Senate Office Building, Washington, D. C.

DEAR MR. HENNINGS: Thank you very much for your letters and enclosures of November 20 addressed to the president and to the secretary of this association.

Although, as an association of credit executives in industry, banking, and commerce, we have traditionally reserved judgment on legislative matters which do not pertain directly to credit practices or policies, I believe I can safely speak for a majority of our 36,000 members in applauding any action by your committee which would help restore the availability to the public of such information from Federal agencies as would in no way impair national security.

From our examination of the provisions of S. 921 and S. 2148 to amend section 22 and section 1002 of title 5 of the United States Code, it would seem that such proposed amendments would tend greatly to accomplish this purpose.

Respectfully,

HENRY H. HEIMANN,
Executive Vice President.

NATIONAL ASSOCIATION OF RADIO & TELEVISION BROADCASTERS,
Washington, D. C., December 31, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senator, Washington, D. C.

DEAR SENATOR HENNINGS: In accordance with my letter to you of December 2, I am submitting herewith our comments on the freedom of information bills which you have introduced.

May I first reiterate our support of the basic purposes of your proposed legislation? This association believes that the channels of communications between Government and the people should be maintained free and open so as to assure that the people will be continuously and fully informed on the business and activity of its Government.

Your bill, S. 2148, should accomplish this objective, and at the same time, through its exceptions in paragraph (f), should provide sufficient statutory authority for maintaining secrecy when such is required in the protection of the national security and the prevention of disclosure of material which would be a "clearly unwarranted invasion of personal privacy." Under the latter category, I would assume there would be included the myriad of statements which are required to be filed with the governmental agencies, touching upon financial

matters, wherein privacy, historically, has been respected by the Government. There are many financial reports, some of which are submitted voluntarily, and others of which are submitted pursuant to rules and regulations, which for competitive purposes should not be made publicly available.

In this regard, I realize the difficulty in drafting specific language to cover all situations, but I believe the statistical information now obtained by the Federal Government would not be as all inclusive if individual reports were made publicly available.

In this connection, it occurs to me that you may find it helpful to submit your proposed legislation to the respective specialized bar associations practicing before administrative agencies for their comments.

Sincerely,

HAROLD FELLOWS.

THE NEW ENGLAND SOCIETY OF NEWSPAPER EDITORS,
November 25, 1957.

Senator THOMAS C. HENNINGS, Jr.,

Chairman, Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR: Thank you for your copy of S. 2148 designed to clarify and protect the right of the public to information.

This is a most important piece of legislation, and it is my intention to present it before the annual convention of the New England Society of Newspaper Editors to be held in Hartford, Conn., December 6 and 7, for action by the full body.

S. 921, which is explained in your statement, will also be taken up at the convention.

With warmest personal regards.

Very truly yours,

DAVID BRICKMAN, Vice President.

NEW ENGLAND WEEKLY PRESS ASSOCIATION,
Boston, Mass., December 27, 1957.

Senator THOMAS C. HENNINGS, Jr.,

Chairman, Committee on the Judiciary, Subcommittee on Constitutional Rights, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: The work of your committee on S. 2148 and S. 921 deserves much applause. I am most hopeful that the provisions you have noted receive fast and full support from your colleagues in the Senate and your friends in the House.

Any advancement in the free flow of information must be considered as highly important to the healthful life of our democracy. The wider you open the gates, the more our people will act and react with wisdom and courage.

Best wishes for the new year.

Cordially,

ROBERT BARAM, Executive Secretary.

CLEVELAND PLAIN DEALER,
Cleveland, Ohio, December 3, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights,
United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: The copy of the proposed legislation dealing with freedom of information, which your subcommittee is now considering and which you sent to Mr. Gordon Strong, president of the Ohio Newspaper Association, has been passed along to me as chairman of the Freedom of Information Committee of the ONA. You asked for some comment on the matter.

We are delighted that you are moving in this direction, and hope that legislation to accomplish the purposes you have stated, will be enacted in the next term of Congress. It is all too clear that misinterpretation of departmental rules in the Federal Government has encouraged certain administrative officials to with-

hold public records, regulations, and interpretations from the newspapers, radio and TV; and that spelling out clearly the statement that such officials do not have the right to withhold this will clarify the matter greatly. We believe there is altogether too much suppression of such information, not for security reasons, but simply because of the mistaken view that Federal officials have the right to withhold certain information if in their opinion it may promote a controversy, or embarrass the officials.

We further believe that there is a tendency among military departments to put secret labels on far too much material which is in no sense really secret. This device is also often used to cover up departmental embarrassment.

Action by Congress on this matter would do a great deal to clear up the present foggy situation and permit the agencies of communication to get, without a pitched battle, information to which the taxpayers are clearly entitled.

Yours sincerely,

PHILIP W. PORTER,
Sunday and Feature Editor.

NEW MEXICO PRESS ASSOCIATION,
Carlsbad, N. Mex., November 27, 1957.

Senator THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.*

DEAR SENATOR HENNINGS: I feel strongly that the people of the United States are very much in accord with the provisions and purposes of S. 921 and S. 2148, bills concerning freedom of information which are now pending before the Senate Constitutional Rights Committee.

It is my belief that such legislation should be enacted to give the Congress and the public ready access to public records that should be open to the public.

Sincerely yours,

JACK SITTON, *Executive Secretary.*

THE ITHACA JOURNAL,
Ithaca, N. Y., December 9, 1957.

Senator THOMAS C. HENNINGS, Jr.,

Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: You have asked the New York State Associated Press Association for an opinion on your bill, S. 2148, to amend title 5, United States Code, section 1002, the public information section of the Administrative Procedure Act enacted June 11, 1946.

This request was made to Mr. Leonard Gorman, managing editor of the Syracuse Post-Standard, a past president of the association. It came to me through Mr. Gilbert P. Smith, managing editor of the Utica Daily Press, the association's current president. Mr. Smith recently appointed me to represent the association on a steering committee organized by newspaper groups in New York State to direct right-to-know activities.

I have before me a copy of S. 2148. It is an effective amendment, eliminating the controversial reference to "secrecy in the public interest," and spelling out the obligation of all Federal agencies to make information and records available to the public.

The New York State Associated Press Association is always intensely interested in any effort which will broaden and make complete the public's right to know the facts about its government.

I hope that you will press for the adoption of this amendment, as well as for the amendment to title 5, United States Code, section 22 embodied in your bill, S. 921. To this so-called "housekeeping" statute, the addition of the sentence, "This section does not authorize withholding information from the public or limiting the availability of records to the public," is vital to the public's right to know.

Sincerely yours

WILLIAM J. WATERS.

NORTH DAKOTA PRESS ASSOCIATION,
ADVERTISING AGENCY DIVISION,
Langdon, N. Dak., December 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
*United States Senator, Chairman of Subcommittee on Constitutional
Rights, Senate Office Building, Washington, D. C.*

HONORABLE SIR AND DEAR SENATOR HENNINGS: I am satisfied that your proposed S. 2148 and S. 921 will go a long way toward returning an important part of the Government of the United States to government by law, rather than government by persons, into which rut we have slipped in so many instances, including in this matter of public information.

Frankly, I carefully read S. 2148 and your very excellent personal statement with the aim of approving, rather than of criticizing, correcting or revising, and I certainly do approve the amendments which you propose.

Now, it is essential that I make it plain that my wholehearted approval is only that of an individual newspaperman. Your communication came addressed to me as secretary of the North Dakota Press Association. I retired from that position in April 1957, and the secretary now is F. J. Froeschle, publisher of the Ransom County Gazette, Lisbon, N. Dak. I am forwarding your letter, statement, and copy of S. 2148 to him.

Further: Your mailing addressed to Frank Hornstein, president of NDPA, Langdon, N. Dak., landed in my mail; mostly because I am the only person in this comparatively small town who ever receives North Dakota Press Association mail. Mr. Hornstein never resided in Langdon, and he has not been president of NDPA since the last annual election in April 1957. I am forwarding that mailing to the now president, Orion Cole, publisher of the Hatton Free Press, Hatton, N. Dak.

I hope that you will get supporting statements from these two NDPA officers.

May I add, North Dakota, at the early 1957 session of its State legislature, passed freedom of information laws. These laws were introduced and passed entirely through the efforts of North Dakota newspapermen. I say "newspapermen" rather than North Dakota Press Association for a specific reason, which I believe I can explain briefly.

The North Dakota Press Association has spent considerable time discussing freedom of information, has had an active committee on the subject, and has passed resolutions which have been forwarded, more than once, to State officials and North Dakota's congressional delegation.

However, the active handling of the freedom of information matter in North Dakota, has been spearheaded by the North Dakota professional chapter of Sigma Delta Chi, national professional journalism fraternity. John D. Paulson, editor of the Fargo Forum and Moorhead Daily News, a two-city daily and North Dakota's largest newspaper, at Fargo, N. Dak., has been the leading figure throughout the successful handling of the freedom of information matter in our State, partly as president for a year of the North Dakota chapter of SDX, but before and after that tenure as chairman of an SDX committee and dedicated worker.

There is nothing unusual or irregular in the prominence of the North Dakota professional chapter of Sigma Delta Chi in the freedom of information work, rather than the North Dakota Press Association. The membership of the two organizations is practically the same. They both include practically every practicing newspaperman in their separate membership lists. However, while NDPA also includes a certain number of so-called supply men and peddlers the SDX chapter does not include such, but does include radio, magazine, and public relations workers, of which NDPA includes very few as associate members. The two organizations, SDX and NDPA, hold their annual meetings on successive days, with the same persons attending both meetings.

There is no rule or agreement covering a division of interests, but it is a fact that NDPA is predominantly a trade association and SDX is a professional group, and in North Dakota they do, to a great extent, divide their efforts and dedicate their principal efforts accordingly, always with the feeling that one is working for the other, and always in perfect unanimity.

May I suggest that you add Mr. Paulson to your mailing list in connection with the matter under discussion. I know that you will get his devoted attention and his diligent cooperation if need for that would develop. I believe that contact with Mr. Paulson would give you the best continuing contact in our State in connection with this matter, because it is entirely possible that

the officers of the North Dakota Press Association will again be changed in April, with the old officers reluctant to continue acting in any capacity after the successors are installed. On the other hand, I know that all North Dakotans concerned will be satisfied to have Mr. Paulson representing them in this contact, because he is their "Mr. Freedom of Information."

With personal best wishes.

Respectfully yours,

EDWARD J. FRANTA.

THE DAILY REVIEW,
Toledo, Pa., April 30, 1958.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Senate Subcommittee on Constitutional Rights,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: Am much concerned about the outcome of the Senate bill 921 which is identical in content to the Moss freedom of information bill, H. R. 2767, which has passed the House as of Wednesday, April 16, 1958.

As president of the Pennsylvania Newspaper Publishers' Association of which more than 300 newspapers are members I express to you at this time our hope that the Senate subcommittee and the full Senate Judiciary Committee will express favor toward this important piece of legislation.

We feel that it is a safeguard for the freedom of information to which every American is entitled and that at this particular point in history it is an instrument which can play a most important role in the life of all of us.

Your support and that of your committee can pave the way for a better informed America and the publishers of this Nation as well as the State of Pennsylvania will be deeply grateful.

Sincerely yours,

DAVID M. TURNER,
President, Pennsylvania Newspaper Publishers Association.

PRAIRIE RADIO CORP.,
Lincoln, Ill., December 4, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

*United States Senate,
Washington, D. C.*

DEAR SENATOR HENNINGS: Thank you for the material concerning freedom of information.

I am heartily in favor of proposed action on both S. 2148 and S. 921. Your proposed amendments seem to be complete and comprehensive in every respect.

It has always been my feeling that censorship in any form is odious in a republic such as ours. Of course, during times of genuine emergency, so declared by Congress, in peace or war, certain withholding of information is desirable, but properly handled by a constitutionally appointed officer, such as the OWI, set up during World War II. In peacetime, such an office is probably not required. Experience has shown that the press and broadcast news mediums will do an outstanding job of withholding classified material voluntarily when apprised of its importance and adequate reasons for its being withheld.

In any event, department heads or subordinates should not be allowed to arbitrarily set up censorship standards for material concerning their offices, or to use vaguely worded laws to a blanket refusal to release or permit use of material that, by no stretch of the imagination, could be construed as classified.

Freedom of information must be maintained in this country. It should not be used without discretion in releasing information obviously of benefit to potential enemies. Neither should existing or proposed law be used to stifle public knowledge of that which can be of little benefit to an enemy. In the absence of a specific office of information, departments of Government need a clear cut law or laws on which to base future actions in the information field.

S. 2148 and S. 921 will do much to clear up the present cloudy issue and to properly deal with the always delicate problem of freedom of information. As a representative of broadcast news, I commend you on your good work.

Sincerely,

WILLIAM M. BRADY, *Program Director.*

SOCIETY OF MAGAZINE WRITERS,
New York, N. Y., December 5, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

*Chairman, Subcommittee on Constitutional Rights, United States Senate,
Senate Office Building, Washington, D. C.*

DEAR SENATOR HENNINGS: Thank you for your kind November 20 letter with enclosures explaining the provisions and purposes of your bills S. 2148 and S. 921 on freedom of information.

The Society of Magazine Writers, whose membership includes the foremost contributors to America's leading magazines, heartily endorses your two bills in the strongest terms. We firmly believe that anything which helps to circumvent the growing tendency in Washington toward censorship, is not only of value to us as writers but as citizens in a democracy.

Many of our members have pointed out to me that the big need is for a dramatic change in the censorship attitude in many Washington quarters, such as the Pentagon, and that this can only be achieved by unceasing congressional pressure.

Best of luck in your most worthy undertaking.

Respectfully yours,

JACK HARRISON POLLACK, President.

STANDARD FEATURES SERVICE,
Chicago, Ill., December 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,

Washington, D. C.

DEAR SENATOR HENNINGS: With reference to your letter of November 27, 1957, I am in favor of both of your bills relating to the American public being deprived of their right for more information in public affairs.

There has been too much secrecy in the past. We can stand more light on most all Government matters.

Yours very truly,

D. R. LONGFELLOW, President.

JOHNSON CITY PRESS-CHRONICLE,
Johnson City, Tenn., December 2, 1957.

Senator THOMAS C. HENNINGS, Jr.,

Chairman, Committee on the Judiciary,

Subcommittee on Constitutional Rights,

Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: This will acknowledge receipt of your letter of November 27, 1957, addressed to me as president of the Tennessee Press Association, in care of the Press-Chronicle. I wish to advise you that my term as president of the Tennessee Press Association came to a conclusion on June 30, 1957.

I have taken the liberty of forwarding your letter and the enclosures to Hon. John Bragg, the present president of the Tennessee Press Association at the Rutherford Courier in Murfreesboro, Tenn.

The Tennessee Press Association is vitally interested in freedom of information and I can assure you our president and our secretary-manager will be forthcoming with information at once. Also, I am sure they will call this matter to the attention of the chairman of our freedom of information committee, Mr. Coleman Harwell, editor of the Nashville Tennessean.

In the meantime, I am requesting our editor, Mr. George W. Kelly to confer with me regarding comments of our own.

A further letter will be addressed to you following our conference.

We appreciate the opportunity of looking over your bills and to look at your statement.

Respectfully,

CARL A. JONES, Publisher.

TEXAS DAILY NEWSPAPER ASSOCIATION,
Houston, Tex., December 2, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate,
Washington, D. C.

DEAR SENATOR HENNINGS: Thank you very much for sending us a copy of your bill concerning freedom of information.

I have referred both the copy of Senate bill 2148 and your comments on Senate bill 921 to one of our editors for study and comment.

I will pass these on to you just as soon as I get them.

Warmest regards.

Cordially,

JOHN H. MURPHY.

APRIL 15, 1958.

Senator THOMAS C. HENNINGS, Jr.,
Chairman, Subcommittee on Constitutional Rights, Committee on the
Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: As chairman of the Virginia Press Association's freedom of information committee, I am glad once again to endorse the purpose of Senate bills 921 and 2148, proposing an amendment to the "housekeeping" statute. This legislation has the full support of my committee and of the entire Virginia Press Association.

We feel it to be essential that the housekeeping statute be amended so as to make it clear beyond any doubt that the present law does not authorize censorship or the withholding of information from the public.

You are at liberty to make any use of this letter or other communications from the Virginia Press Association in the furtherance of this objective.

Very truly yours,

BARTON W. MORRIS, Jr.,
Chairman, Freedom of Information Committee,
Virginia Press Association.

WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION, INC.,
Seattle, December 4, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SIR: I have read with interest your proposed bills which would clarify the matter of public information as it relates to various governmental subdivisions.

I heartily endorse your bills and I am sure that all of the newspaper publishers in our State will back me up with their support.

It is my belief that you are on the right track and these bills should do much to clarify this matter of public information. It seems as though all of these various governmental subdivisions and commissions get the idea that they are kings unto themselves. Your bill would do a great deal to bring these people into line and be of great service to the entire country.

Thank you for sending this information along and if there is anything we can do to assist you in promoting these bills, we should be happy to do so.

Yours sincerely,

C. B. LAFROMBOISE, *Manager.*

WISCONSIN DAILY NEWSPAPER LEAGUE,
Racine, Wis., November 29, 1957.

Senator THOMAS C. HENNINGS, Jr.,
United States Senate, Washington, D. C.

DEAR SENATOR HENNINGS: Thank you very much, indeed, for sending copies of bills S. 2148 and S. 921.

It so happens the Wisconsin Daily Newspaper League will hold its annual meeting next Monday, and at that time your letter and copies of the bills will be presented to the meeting for possible action by resolution.

Sincerely,

HARRY R. LEPOIDEVIN,
Secretary-Treasurer.

WYOMING PRESS ASSOCIATION,
Laramie, Wyo., November 29, 1957.

Senator THOMAS C. HENNINGS, Jr.,
Senate Office Building, Washington, D. C.

DEAR SENATOR HENNINGS: Naturally, I am very much interested in your bill, S. 921—and, also, S. 2148. As secretary-manager of the Wyoming Press Association, I would like to know what I can do to help these bills to become realities.

I am familiar only in a general way with the freedom-of-information problems at a Federal level. I know more about freedom of information on the city-county-State level. I am assuming that your bills would concern only Federal agencies.

Anyway, I like both of these bills, and wish them success. If these bills are passed for Federal agencies, the results will trickle down to State and local groups, I am sure. Liberty is a slippery thing—and can disappear a little bit at a time without anyone paying too much attention to it. I feel that we must have men like you in Congress to help see that the thing called democracy—and all that it needs to make it a reality—is protected.

Too many officials—not completely understanding the democratic process—are willing and anxious to guard their own small bailiwicks from public scrutiny. Both of these bills will help make secrecy a more difficult item to latch onto.

Please let me know what Wyoming newspapers can do in helping these bills get passage.

Regards.

WALLACE BIGGS, Manager.

EXHIBIT No. 5

Court Cases Involving Section 161 of the Revised Statutes

Syllabus.**BOSKE v. COMINGORE.****APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KENTUCKY.**

Submitted January 8, 1900. — Decided April 9, 1900.

A United States Collector of Internal Revenue was adjudged by a court of limited jurisdiction in Kentucky to be in contempt because he refused, while giving his deposition in a case pending in the state court, to file copies of certain reports made by distillers, and which reports were in his custody as a subordinate officer of the Treasury Department. He based his refusal upon a regulation of that Department which provided: "All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose." This regulation was made by the Secretary of the Treasury under the authority conferred upon him by section 161 of the Revised Statutes of the United States, which authorized that officer, as the head of an Executive Department of the Government, "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it." The Collector having been arrested under the order of the state authorities, sued out a writ of *habeas corpus* before the District Court of the United States for the Kentucky District. *Hold:*

- (1) That the case was properly brought directly from the District Court to this court as one involving the construction or application of the Constitution of the United States.
- (2) As the petitioner was an officer in the revenue service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the state authorities might have interfered with the regular and orderly course of the business of the Department to which he belonged, it was proper for the District Court to consider the questions raised by the writ of *habeas corpus* and to discharge the petitioner if held in violation of the Constitution and laws of the United States.
- (3) The regulation adopted by the Secretary of the Treasury was authorized by section 161 of the Revised Statutes, and that section was, consistent with the Constitution of the United States. To invest the Secretary with authority to prescribe regulations not incon-

sistent with law for the conduct of the business of his Department and to provide for the custody, use and preservation of the records, papers and property appertaining to it, was a means appropriate and plainly adapted to the successful administration of the affairs of his Department; and it was competent for him to forbid his subordinates to allow the use of official papers in their custody except for the purpose of aiding the collection of the revenues of the United States.

- (4) In determining whether the regulation in question was valid, the court proceeded upon the ground that it was not to be deemed invalid unless it was plainly and palpably against law.

The case is stated in the opinion of the court.

Mr. John G. Carlisle, Mr. Henry M. Winslow and Mr. William S. Taylor for appellant.

Mr. Assistant Attorney General Boyd for appellee.

MR. JUSTICE HARLAN delivered the opinion of the court.

This is an appeal from a final order of the District Court of the United States for the District of Kentucky discharging appellee, United States Internal Revenue Collector for the Sixth Collection District in Kentucky, from the custody of the appellant as Sheriff of Kenton County in that Commonwealth.

The discharge was upon the ground that the imprisonment and detention of the appellee were in violation of the Constitution and laws of the United States. That ruling presents the only question to be considered.

Under date of April 15, 1898, the Commissioners of Internal Revenue, with the approval of the Secretary of the Treasury promulgated certain regulations for the government of collectors of internal revenue, as follows:

"All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose. Collectors are hereby prohibited from giving out any special tax

records or any copies thereof to private persons or to local officers, or to produce such records or copies thereof in a state court, whether in answer to *subpoenas duces tecum* or otherwise. Whenever such subpoenas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this department. The information contained in the records relating to special-tax payers in the collector's office is furnished by these persons under compulsion of law for the purpose of raising revenue for the United States; and there is no provision of law authorizing the sending out of these records or of any copies thereof for use against the special-tax payers in cases not arising under the laws of the United States. The giving out of such records or any copies thereof by a collector in such cases is held to be contrary to public policy and not to be permitted. As to any other records than those relating to special-tax payers, collectors are also forbidden to furnish them or any copies thereof at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a state court or in a court of the United States, collectors should refer the persons interested to the following paragraph in rule X of the rules and regulations of the Treasury Department, namely: In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which makes it necessary to decline, in the interest of the public service, to furnish such a copy."

These Treasury regulations being in force, a proceeding was

instituted in the County Court of Carroll County, Kentucky — a court of limited jurisdiction — in the name of the Commonwealth against Elias Block & Sons, for the purpose of ascertaining the amount and value of a large amount of whisky which, it was alleged, the defendants had in their bonded warehouses for a named period, but had not listed for taxation, and of enforcing the assessment and payment of state and county taxes thereon. Ky. Stat. § 4241.

In the progress of that proceeding the Commonwealth of Kentucky, represented by the Auditor's agent, took the deposition of Comingore, Collector of Internal Revenue. In answer to questions propounded to him, the Collector stated that Block & Sons, owners of a distillery, made monthly reports to his office of liquors manufactured by them and deposited in the bonded warehouses on the distillery premises from 1887 on; that the defendants made application from time to time for permission to withdraw liquors from bond; and that such reports, commencing October 1, 1885, and ending July 1, 1897, were on the files of his office, but not under his control except as Collector. He was then asked to file copies of those reports and make them part of his deposition. This he declined to do, "under section 3167 of the Revised Statutes of the United States and the rulings of the Department." That section reads: "§ 3167. If any collector or deputy collector, or any inspector or other officer acting under the authority of any revenue law of the United States, divulges to any party, or makes known in any other manner than may be provided by law, the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, he shall be subject to a fine of not exceeding one thousand dollars, or to be imprisoned for not exceeding one year, or to both, at the discretion of the court, and shall be dismissed from office, and be forever thereafter incapable of holding any office under the Government." Being asked what rulings of the Department he referred to other than section 3167 of the Revised Statutes, he said: "The Department does not permit the giving out of anything contained in internal revenue returns or documents by a collector, storekeeper or any other officer of a collection district

for purposes other than those which the statutes of the United States contemplate." That ruling he said was made by the Secretary of the Treasury through the Commissioner of Internal Revenue.

In consequence of the refusal of the collector to file and make part of his deposition copies of the above reports of the defendants, the notary public before whom his deposition was taken adjudged him to be in contempt and ordered him to pay to the Commonwealth a fine of five dollars and to be confined in the county jail for six hours or until he was willing to furnish the copies called for or permit access to the records of his office in order that information might be obtained to be used as evidence in the above case.

The matter having been reported by the notary public to the Carroll County Court, as required by section 538 of the Kentucky Civil Code of Practice, that court made the following order:

"It is therefore ordered and adjudged by the court that the plaintiff's motions be sustained and that plaintiff is entitled to use as evidence the facts stated in the reports and papers filed by any or all of the defendants in the office of the Collector of Internal Revenue for the Sixth District of Kentucky, and also such facts as are stated in the reports made to said office by certain officers known as United States storekeepers, and any other similar records, papers, documents or exemplifications in said office tending to show the amount of liquors on hand at the distillery of the defendants on the 14th day of September, 1889, 1890, 1891, 1893, 1894, 1895, 1896 and on the 15th day of November, 1892; it is further ordered that the witness, D. N. Comingore, make or cause to be made or permit the plaintiff, its agent or attorneys, to make true copies of such of said papers as the plaintiff or its attorneys may demand, and that said Comingore, as Collector, attest the same and attach his seal of office thereto, if he has such seal, and that he permit the plaintiff or its agents or attorneys to compare said copies with the originals and verify same, and that he shall also testify further in regard to same, if demand be made, and leave is hereby given to complete the taking of said deposition on giving proper notice, and

for this purpose the clerk is directed upon request of plaintiff's attorneys to transmit said deposition as now on file to W. A. Price, notary public, Covington, Kentucky. It is further adjudged that the action of the notary public, Price, in adjudging the witness, D. N. Comingore, to be in contempt for failure to file copies of reports, papers, documents and exemplifications or to testify as to their contents, as requested, be sustained and affirmed, and that the Commonwealth of Kentucky recover of said D. N. Comingore the sum of five dollars as a fine, and that he be taken by the sheriff of Kenton County, Kentucky, and confined in the jail of said county for the space of six hours, or until he signifies his willingness to comply with the request made in the deposition attempted to be taken, as follows: Please file official copies of the reports made to your office by Block & Son as to the amount of liquor which they manufactured and deposited in the bonded warehouses located on their distillery premises from the year 1887 down to the present time, and also official copies of applications made by them to your office during said time for permission to withdraw such liquors from bond. Also with the following request: Please file official copies of such reports of the United States storekeepers as show the liquors on hand at the warehouses on the distillery premises of the defendants in Carroll County on September 15, 1890; September 15, 1891, November 15, 1892, September 15, 1893, 1894, 1895 and 1896."

This action of the County Court having been brought to the attention of the Collector, he still refused to give the copies called for or to allow access to or inspection of the records of his office for the purposes indicated by the questions propounded to him: He was thereupon again held by the notary public to be in contempt, and, the petition states, that officer adjudged that "the Commonwealth of Kentucky recover of your petitioner the sum of five dollars as a fine, and that he be taken by the sheriff or some constable of Kenton County and confined in the jail of said county for the space of six hours or until he shall signify his willingness to purge himself of the said contempt and testify and give the information from the records and documents under his control and in his custody as Collec-

tor of Internal Revenue of the United States for the Sixth District of Kentucky or allow an inspection of his records for the purpose of obtaining such information for use as evidence in said action of *The Commonwealth of Kentucky v. Block et al.*, in said county' court," etc.

Having been taken into custody by the Sheriff under this order, the Collector sued out a writ of *habeas corpus* and was discharged from custody by the order of the United States District Court for the Kentucky District.

1. In the brief of the Assistant Attorney General some doubt is expressed whether we can take cognizance of this case upon appeal from the District Court.¹ Prior to the passage of the act of March 3, 1891, establishing the Circuit Court of Appeals, an appeal from the final judgment of a District Court on an application for a writ of *habeas corpus* by or on behalf of one alleged to be restrained of his liberty in violation of the Constitution or any law of the United States went first to the Circuit Court. Rev. Stat. § 763. But by the above act of 1891 it was provided that appeals or writs of error may be taken from the District Courts or from the Circuit Courts direct to this court in certain cases, among others, "in any case that involves the construction or application of the Constitution of the United States." 26 Stat. 826, 828, c. 517, § 5. The present case belongs to that class. The appellee, who was discharged upon *habeas corpus*, invoked the protection of the Constitution against his being restrained of his liberty by the appellant acting under an order of commitment issued by an inferior state court; and the judgment of the District Court proceeded upon the ground that the proceedings against him were inconsistent with the laws of the United States and with the regulations of the Treasury Department legally prescribed under those laws. Throughout, the contention of the appellant has been that the Constitution forbade the giving of the force of law to those regulations adopted by merely executive officers. We think the case is properly here on appeal as one involving the construction and application of the Constitution of the United States.

2. Of the power of the District Court to discharge the appell-

lee if he was held in custody in violation of the Constitution of the United States, no doubt can be entertained. It is true that in *Ex parte Royall*, 117 U. S. 241, 251, it was said that although a court of the United States had power to discharge one held in custody by state authorities in violation of the Constitution of the United States, it was not bound to interpose immediately upon application being made for the writ, but should exercise the discretion with which it was invested "in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution." Hence, the general rule that the courts of the United States should not interfere by *habeas corpus* with the custody by state authorities of one claiming to be held in violation of the Constitution or laws of the United States, until after final action by the state courts in the case in which such custody exists. *Ex parte Royall*, above cited; *New York v. Eno*, 155 U. S. 89, and authorities there cited; *Whitten v. Tomlinson*, 160 U. S. 231, and authorities there cited. But to this general rule there are exceptions which are thus indicated in *Ex parte Royall*: "When the petitioner is in custody by state authority for an act done or omitted to be done in pursuance of a law of the United States, or of an order, process or decree of a court or judge thereof; or where, being a subject or citizen of a foreign State, and domiciled therein, he is in custody, under like authority, for an act done or omitted under any alleged right, title, authority, privilege, protection or exemption claimed under the commission, or order, or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations; in such and like cases of urgency, involving the authority and operations of the General Government, or the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of *habeas corpus* and discharged prisoners who were held in custody under state authority."

The present case was one of urgency, in that the appellee was

an officer in the revenue service of the United States whose presence at his post of duty was important to the public interests, and whose detention in prison by the state authorities might have interfered with the regular and orderly course of the business of the Department to which he belonged. The District Court therefore did not err in determining the question of constitutional law raised by the application for a writ of *habeas corpus*, and rendering final judgment.

3. We come then to inquire whether the imprisonment of the appellee was in violation of the Constitution or laws of the United States. This question was fully examined in the elaborate and able opinion of Judge Evans of the District Court, 96 Fed. Rep. 552.

The commitment of the appellee was because of a refusal to file with his deposition copies of certain reports made to him by Block & Sons, distillers, of liquors manufactured by them and deposited in the bonded warehouses on the distillery premises during a specified period. Manifestly, he could not have filed the copies called for without violating regulations formally promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. If these regulations were such as the Secretary could legally prescribe, then, it must be conceded, the state authorities were without jurisdiction to compel the Collector to violate them.

The Commissioner of Internal Revenue is an officer in the Department of the Treasury. Rev. Stat. § 319. And the Secretary of the Treasury, as the head of an Executive Department of the Government, was authorized "to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it." Rev. Stat. § 161.

Now, the reports or copies of reports in the possession of the Collector—for not producing copies of which he was adjudged to be imprisoned—were records and papers appertaining to the business of the Treasury Department and belonging to the United States. The Secretary was authorized by statute to

make regulations, not inconsistent with law, for the custody, use and preservation of such records, papers and property. The Constitution gives Congress power to make all laws necessary and proper for carrying into execution the powers vested by that instrument in the Government of the United States or in any Department or officer thereof. Const. Art. 1, § 8. That power was exerted by Congress when it authorized the Secretary of the Treasury to provide by regulations not inconsistent with law for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it. The regulations in question may not have been absolutely or indispensably necessary to accomplish the objects indicated by the statute. But that is not the test to be applied when we are determining whether an act of Congress transcends the powers conferred upon it by the Constitution. Congress has a large discretion as to the means to be employed in the execution of a power conferred upon it, and is not restricted to "those alone without which the power would be nugatory;" for, "all means which are appropriate, which are plainly adapted" to the end authorized to be attained, "which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." "Where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground." *McCulloch v. Maryland*, 4 Wheat. 316, 415, 421, 423. In the more recent case of *Legg v. United States*, 144 U. S. 263, 283, 293, this court, referring to the above constitutional provision, said that "in the exercise of this general power of legislation, Congress may use any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution." Again: "Every right created by, arising under or dependent upon the Constitution of the United States may be protected and enforced by Congress by such means and in such manner as Congress, in

the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object."

Can it be said that to invest the Secretary of the Treasury with authority to prescribe regulations not inconsistent with law for the conduct of the business of his Department, and to provide for the custody, use and preservation of the records, papers and property appertaining to it, was not a means appropriate and plainly adapted to the successful administration of the affairs of that Department? Manifestly not. The bare statement of the proposition suggests this conclusion, and extended argument to support it is unnecessary.

This brings us to the question whether it was inconsistent with law for the Secretary to adopt a regulation declaring that all records in the offices of collectors of internal revenue, or any of their deputies, are in their custody and control "for purposes relating to the collection of the revenues of the United States only," and that collectors "have no control of them, and no discretion with regard to permitting the use of them for any other purpose."

There is certainly no statute which expressly or by necessary implication forbade the adoption of such a regulation. This being the case, we do not perceive upon what ground the regulation in question can be regarded as inconsistent with law, unless it be that the records and papers in the office of a collector of internal revenue are at all times open of right to inspection and examination by the public, despite the wishes of the Department. That cannot be admitted. The papers in question, copies of which were sought from the appellee, were the property of the United States, and were in his official custody under a regulation forbidding him to permit their use except for purposes relating to the collection of the revenues of the United States. Reasons of public policy may well have suggested the necessity, in the interest of the Government, of not allowing access to the records in the offices of collectors of internal revenue, except as might be directed by the Secretary of the Treasury. The interests of persons compelled, under the revenue

laws, to furnish information as to their private business affairs would often be seriously affected if the disclosures so made were not properly guarded. Besides, great confusion might arise in the business of the Department if the Secretary allowed the use of records and papers in the custody of collectors to depend upon the discretion or judgment of subordinates. At any rate, the Secretary deemed the regulation in question a wise and proper one, and we cannot perceive that his action was beyond the authority conferred upon him by Congress. In determining whether the regulations promulgated by him are consistent with law, we must apply the rule of decision which controls when an act of Congress is assailed as not being within the powers conferred upon it by the Constitution; that is to say, a regulation adopted under section 164 of the Revised Statutes should not be disregarded or annulled unless, in the judgment of the court, it is plainly and palpably inconsistent with law. Those who insist that such a regulation is invalid must make its invalidity so manifest that the court has no choice except to hold that the Secretary has exceeded his authority and employed means that are not at all appropriate to the end specified in the act of Congress.

In our opinion the Secretary, under the regulations as to the custody, use and preservation of the records, papers and property appertaining to the business of his Department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character. —

The judgment of the District Court is

Affirmed.

Syllabus.**UNITED STATES EX REL. TOUHY v. RAGEN,
WARDEN, ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT.**

No. 83. Argued November 27-28, 1950.—Decided February 26, 1951.

1. Pursuant to Department of Justice Order No. 3229, issued by the Attorney General under 5 U. S. C. § 22, a subordinate official of the Department of Justice refused, in a habeas corpus proceeding by a state prisoner, to obey a subpoena *duces tecum* requiring him to produce papers of the Department in his possession. *Held:* Order No. 3229 is valid and the subordinate official properly refused to produce the papers. Pp. 463-468.
2. The trial court not having questioned the subordinate official on his willingness to submit the material “to the court for determination as to its materiality to the case” and whether it should be disclosed, the issue of how far the Attorney General could or did waive any claimed privilege against disclosure is here immaterial. P. 468.
3. Order No. 3229 was a valid exercise by the Attorney General of his authority under 5 U. S. C. § 22 to prescribe regulations not inconsistent with law for “the custody, use, and preservation of the records, papers and property appertaining to” the Department of Justice. *Boske v. Comingore*, 177 U. S. 459. Pp. 468-470.

180 F. 2d 321, affirmed.

In a habeas corpus proceeding by a state prisoner, the District Court adjudged a subordinate official of the Department of Justice guilty of contempt for refusal to produce papers required by a subpoena *duces tecum*. The Court of Appeals reversed. 180 F. 2d 321. This Court granted certiorari. 340 U. S. 806. *Affirmed*, p. 470.

Robert B. Johnstone argued the cause for petitioner. With him on the brief were *Edward M. Burke* and *Howard B. Bryant*.

Robert S. Erdahl argued the cause for McSwain, respondent. With him on the brief were *Solicitor General Perlman, Assistant Attorney General McInerney, Stanley M. Silverberg* and *Philip R. Monahan*.

MR. JUSTICE REED delivered the opinion of the Court.

This proceeding brings here the question of the right of a subordinate official of the Department of Justice of the United States to refuse to obey a subpoena *duces tecum* ordering production of papers of the Department in his possession. The refusal was based upon a regulation¹ issued by the Attorney General under 5 U. S. C. § 22.²

Petitioner, Roger Touhy, an inmate of the Illinois State penitentiary, instituted a habeas corpus proceeding in the United States District Court for the Northern District of Illinois against the warden, alleging he was restrained in violation of the Due Process Clause of the Federal

¹ Department of Justice Order No. 3229, filed May 2, 1946, 11 Fed. Reg. 4920, reads:

"Pursuant to authority vested in me by R.S. 161 U.S. Code, Title 5, Section 22), *It is hereby ordered*:

"All official files, documents, records and information in the offices of the Department of Justice, including the several offices of United States Attorneys, Federal Bureau of Investigation, United States Marshals, and Federal penal and correctional institutions, or in the custody or control of any officer or employee of the Department of Justice, are to be regarded as confidential. No officer or employee may permit the disclosure or use of the same for any purpose other than for the performance of his official duties, except in the discretion of the Attorney General, The Assistant to the Attorney General, or an Assistant Attorney General acting for him.

"Whenever a subpoena *duces tecum* is served to produce any of such files, documents, records or information, the officer or employee on whom such subpoena is served, unless otherwise expressly directed by the Attorney General, will appear in court in answer thereto and respectfully decline to produce the records specified there in, on the

Constitution. In the course of that proceeding a subpoena *duces tecum* was issued and served upon George R. McSwain, the agent in charge of the Federal Bureau of Investigation at Chicago, requiring the production of cer-

ground that the disclosure of such records is prohibited by this regulation."

Supplement No. 2 to that order, dated June 6, 1947, provides in part:

"TO ALL UNITED STATES ATTORNEYS

**"PROCEDURE TO BE FOLLOWED UPON RECEIVING A SUBPOENA
DUCES TECUM**

"Whenever an officer or employee of the Department is served with a subpoena duces tecum to produce any official files, documents, records or information he should at once inform his superior officer of the requirement of the subpoena and ask for instructions from the Attorney General. If, in the opinion of the Attorney General, circumstances or conditions make it necessary to decline in the interest of public policy to furnish the information, the officer or employee on whom the subpoena is served will appear in court in answer thereto and courteously state to the court that he has consulted the Department of Justice and is acting in accordance with instructions of the Attorney General in refusing to produce the records. . . .

. . . It is not necessary to bring the required documents into the court room and on the witness stand when it is the intention of the officer or employee to comply with the subpoena by submitting the regulation of the Department (Order No. 3229) and explaining that he is not permitted to show the files. If questioned, the officer or employee should state that the material is at hand and can be submitted to the court for determination as to its materiality to the case and whether in the best public interests the information should be disclosed. The records should be kept in the United States Attorney's office or some similar place of safe-keeping near the court room. Under no circumstances should the name of any confidential informant be divulged."

* "The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

tain records which, petitioner Touhy claims, contained evidence establishing that his conviction was brought about by fraud.³ At the hearing that considered the duty of submission of the subpoenaed papers, the U. S. Attorney made representations to the court and to opposing counsel as to how far the Attorney General was willing for his subordinates to go in the production of the subpoenaed papers. The suggestions were not accepted. Mr. McSwain was then placed upon the witness stand and ordered to bring in the papers. He personally declined to produce the records in these words:

“I must respectfully advise the Court that under instructions to me by the Attorney General that I must respectfully decline to produce them, in accordance with Department Rule No. 3229.”⁴

Thereupon, the judge found Mr. McSwain guilty of contempt of court in refusing to produce the records referred to in the subpoena and sentenced him to be committed to the custody of the Attorney General of the United States or his authorized representative until he obeyed the order of the court or was discharged by due process of law.

On appeal, the Court of Appeals reversed on the ground that Department of Justice Order No. 3229 was authorized by the statute and

“confers upon the Department of Justice the privilege of refusing to produce unless there has been a waiver of such privilege.” 180 F. 2d 321 at 327.

³ The subpoena was also addressed to the Attorney General. There is no contention, however, that the Attorney General was personally served with the subpoena; nor did he appear. See Fed: Rules Civ. Proc., 45.

⁴ We take this answer to refer to both the original Department of Justice Order No. 3229 and the supplement.

The court then considered whether or not the privilege of nondisclosure was waived. It quoted from Supplement No. 2 to Order No. 3229 this language:

"If questioned, the officer or employee should state that the material is at hand and can be submitted to the court for determination as to its materiality to the case and whether in the best public interests the information should be disclosed. The records should be kept in the United States Attorney's office or some similar place of safekeeping near the court room. Under no circumstances should the name of any confidential informant be divulged." 180 F. 2d at 328.

The Court of Appeals said that "this language contemplates some circumstances when the material called for must be submitted 'to the court for determination as to its materiality to the case and whether in the best public interests the information should be disclosed.' " The court found, however, that no such limited disclosure was requested but that Mr. McSwain was called upon "to produce all documents and material called for in the subpoena without limitation and that at no time was he questioned" as to his willingness to submit the papers for determination as to materiality and best public interests. Consequently, he was not guilty of contempt unless the law required the witness to make unlimited production. The court thought that, since this last would mean there was no privilege in the Department to refuse production, such a holding should not be made. It said:

"Submission could only have been required to the extent the privilege had been waived by the Attorney General and for the purpose and in the specific manner designated." 180 F. 2d at 328.

We granted certiorari, 340 U. S. 806, to determine the validity of the Department of Justice Order No. 3229.

Among the questions duly presented by the petition for certiorari was whether it is permissible for the Attorney General to make a conclusive determination not to produce records and whether his subordinates in accordance with the order may lawfully decline to produce them in response to a subpoena *duces tecum*.

We find it unnecessary, however, to consider the ultimate reach of the authority of the Attorney General to refuse to produce at a court's order the government papers in his possession, for the case as we understand it raises no question as to the power of the Attorney General himself to make such a refusal. The Attorney General was not before the trial court. It is true that his subordinate, Mr. McSwain, acted in accordance with the Attorney General's instructions and a department order. But we limit our examination to what this record shows, to wit, a refusal by a subordinate of the Department of Justice to submit papers to the court in response to its subpoena *duces tecum* on the ground that the subordinate is prohibited from making such submission by his superior through Order No. 3229.⁵ The validity of the superior's action is in issue only insofar as we must determine whether the Attorney General can validly withdraw from his subordinates the power to release department papers. Nor are we here concerned with the effect of a refusal to produce in a prosecution by the United States⁶ or with

⁵Although in this record there are indications that the U. S. Attorney was willing to submit the papers to the judge alone for his determination as to their materiality, the judge refused to accept the papers for examination on that basis. There is also in the record indication that the U. S. Attorney thought of submitting the papers to the court and opposing counsel in chambers but changed his mind. For our conclusion none of these facts are material, as the final order adjudging Mr. McSwain guilty of contempt was based, as above indicated, on a refusal by Mr. McSwain to produce, as instructed by the Attorney General in accordance with Department Order No. 3229.

⁶Cf. *United States v. Andolschek*, 142 F. 2d 503.

the right of a custodian of government papers to refuse to produce them on the ground that they are state secrets⁷ or that they would disclose the names of informants.⁸

We think that Order No. 3229 is valid and that Mr. McSwain in this case properly refused to produce these papers. We agree with the conclusion of the Court of Appeals that since Mr. McSwain was not questioned on his willingness to submit the material "to the court for determination as to its materiality to the case" and whether it should be disclosed, the issue of how far the Attorney General could or did waive any claimed privilege against disclosure is not material in this case.

Department of Justice Order No. 3229, note 1, *supra*, was promulgated under the authority of 5 U. S. C. § 22. That statute appears in its present form in Revised Statutes § 161, and consolidates several older statutes relating to individual departments. See, *e. g.*, 16 Stat. 163. When one considers the variety of information contained in the files of any government department and the possibilities of harm from unrestricted disclosure in court, the usefulness, indeed the necessity, of centralizing determination as to whether subpoenas *duces tecum* will be willingly obeyed or challenged is obvious. Hence, it was appropriate for the Attorney General, pursuant to the authority given him by 5 U. S. C. § 22, to prescribe regulations not inconsistent with law for "the custody, use, and preservation of the records, papers, and property appertaining to" the Department of Justice, to promulgate Order 3229.

Petitioner challenges the validity of the issue of the order under a legal doctrine which makes the head of a department rather than a court the determinator of the admissibility of evidence. In support of his argument

⁷ See Wigmore, Evidence (3d ed.), § 2378.

⁸ See Wigmore, Evidence (3d ed.), § 2374.

that the Executive should not invade the Judicial sphere, petitioner cites Wigmore, *Evidence* (3d ed.), § 2379, and *Marbury v. Madison*, 1 Cranch 137. But under this record we are concerned only with the validity of Order No. 3229. The constitutionality of the Attorney General's exercise of a determinative power as to whether or on what conditions or subject to what disadvantages to the Government he may refuse to produce government papers under his charge must await a factual situation that requires a ruling.⁹ We think Order No. 3229 is consistent with law. This case is ruled by *Boske v. Comingore*, 177 U. S. 459.¹⁰

That case concerned a collector of internal revenue adjudged in contempt for failing to file with his deposition copies of a distiller's reports in his possession as a subordinate officer of the Treasury. The information was needed in litigation in a state court to collect a state tax. The regulation upon which the collector relied for his refusal was of the same general character as Order No. 3229.¹¹ After referring to the constitutional authority for the enactment of R. S. § 161, the basis, as 5 U. S. C.

⁹ *Rescue Army v. Municipal Court of Los Angeles*, 331 U. S. 549. For relatively recent consideration of the problem underlying governmental privilege against producing evidence, compare *Duncan v. Cammell, Laird & Co.*, [1942] A. C. 624, with *Robinson v. State of South Australia*, [1931] A. C. 704.

¹⁰ That case has been generally followed. See, e. g., *Ex parte Sackett*, 74 F. 2d 922; *In re Valecia Condensed Milk Co.*, 240 F. 310; *Harwood v. McMurtry*, 22 F. Supp. 572; *Stegall v. Thurman*, 175 F. 813; *Walling v. Comet Carriers, Inc.*, 3 F. R. D. 442, 443.

¹¹ The following excerpts will show the similarity:

"Whenever such subpoenas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this department. . . . In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of

§ 22, for the regulation now under consideration, this Court reached the question of whether the regulation centralizing in the Secretary of the Treasury the discretion to submit records voluntarily to the courts was inconsistent with law, p. 469. It concluded that the Secretary's reservation for his own determination of all matters of that character was lawful.

We see no material distinction between that case and this.

The judgment of the Court of Appeals is

Affirmed.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are of the opinion the judgment of the District Court should be affirmed.

MR. JUSTICE CLARK took no part in the consideration or decision of this case.

MR. JUSTICE FRANKFURTER, concurring.

Issues of far-reaching importance that the Government deemed to be involved in this case are now expressly left undecided. But they are questions that lie near the judicial horizon. To avoid future misunderstanding, I deem it important to state my understanding of the opinion of the Court—what it decides and what it leaves wholly open—on the basis of which I concur in it.

the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to carefully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which makes it necessary to decline, in the interest of the public service, to furnish such a copy.' " 177 U. S. 461.

"This case," the Court holds, "is ruled" by *Boske v. Comingore*, 177 U. S. 459. I agree. *Boske v. Comingore* decided that the Secretary of the Treasury was authorized, as a matter of internal administration in his Department, to require that his subordinates decline to produce Treasury records in their possession. In the case before us production of documents belonging to the Department of Justice was declined by virtue of an order of the Attorney General instructing his subordinates not to produce certain documents. The authority of the Attorney General to make such a regulation for the internal conduct of the Department of Justice is not less than the power of the Secretary of the Treasury to promulgate the order upheld in *Boske v. Comingore, supra*.

But in holding that that decision rules this, the context of the earlier decision and the qualifications which that context implies become important. The regulation in *Boske v. Comingore* provided: (1) that collectors should under no circumstances disclose tax reports or produce them in court, and (2) that reports could be obtained only "on a rule of the court upon the Secretary of the Treasury." 177 U. S. at 460-461. The regulation also stated that the reports would be disclosed by the Secretary of the Treasury "unless it should be found that circumstances or conditions exist which makes it necessary to decline, in the interest of the public service, to furnish such a copy." *Ibid.* This portion of the regulation was not in issue, however, for the Court was considering the failure of the collector to produce, not the failure of the Secretary of the Treasury. This is emphasized by the Government's suggestion that:

"[I]f the reports themselves were to be used this could be secured by a subpoena duces tecum to the head of the Treasury Department, or someone under his direction, who would produce the original papers

themselves in court for introduction as evidence in the trial of the cause." Brief for Appellee, p. 49, *Boske v. Comingore, supra.*

And the decision was strictly confined to the narrow issue before the Court. It is epitomized in the concluding paragraph of the *Boske* opinion:

"In our opinion the Secretary, under the regulations as to the custody, use and preservation of the records, papers and property appertaining to the business of his Department, may take from a subordinate, such as a collector, all discretion as to permitting the records in his custody to be used for any other purpose than the collection of the revenue, and reserve for his own determination all matters of that character." 177 U. S. at 470.

There is not a hint in the *Boske* opinion that the Government can shut off an appropriate judicial demand for such papers.

I wholly agree with what is now decided insofar as it finds that whether, when and how the Attorney General himself can be granted an immunity from the duty to disclose information contained in documents within his possession that are relevant to a judicial proceeding are matters not here for adjudication. Therefore, not one of these questions is impliedly affected by the very narrow ruling on which the present decision rests. Specifically, the decision and opinion in this case cannot afford a basis for a future suggestion that the Attorney General can forbid every subordinate who is capable of being served by process from producing relevant documents and later contest a requirement upon him to produce on the ground that procedurally he cannot be reached. In joining the Court's opinion I assume the contrary—that the Attorney General can be reached by legal process.

Though he may be so reached, what disclosures he may be compelled to make is another matter. It will of course be open to him to raise those issues of privilege from testimonial compulsion which the Court rightly holds are not before us now. But unless the Attorney General's amenability to process is impliedly recognized we should candidly face the issue of the immunity pertaining to the information which is here sought. To hold now that the Attorney General is empowered to forbid his subordinates, though within a court's jurisdiction, to produce documents and to hold later that the Attorney General himself cannot in any event be procedurally reached would be to apply a fox-hunting theory of justice that ought to make Bentham's skeleton rattle.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES**AT****OCTOBER TERM, 1952.**

UNITED STATES v. REYNOLDS ET AL.**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT.**

No. 21. Argued October 21, 1952.—Decided March 9, 1953.

A military aircraft on a flight to test secret electronic equipment crashed and certain civilian observers aboard were killed. Their widows sued the United States under the Tort Claims Act and moved under Rule 34 of the Federal Rules of Civil Procedure for production of the Air Force's accident investigation report and statements made by surviving crew members during the investigation. The Secretary of the Air Force filed a formal claim of privilege, stating that the matters were privileged against disclosure under Air Force regulations issued under R. S. § 161 and that the aircraft and its personnel were "engaged in a highly secret mission." The Judge Advocate General filed an affidavit stating that the material could not be furnished "without seriously hampering national security"; but he offered to produce the surviving crew members for examination by plaintiffs and to permit them to testify as to all matters except those of a "classified nature." *Held:* In this case, there was a valid claim of privilege under Rule 34; and a judgment based under Rule 37 on refusal to produce the documents subjected the United States to liability to which Congress did not consent by the Tort Claims Act. Pp. 2-12.

(a) As used in Rule 34, which compels production only of matters "not privileged," the term "not privileged" refers to "privileges" as that term is understood in the law of evidence. P. 6. "

(b) When the Secretary lodged his formal claim of privilege, he invoked a privilege against revealing military secrets which is well established in the law of evidence. Pp. 6-7.

(c) When a claim of privilege against revealing military secrets is invoked, the courts must decide whether the occasion for invoking the privilege is appropriate, and yet do so without jeopardizing the security which the privilege was meant to protect. Pp. 7-8.

(d) When the formal claim of privilege was filed by the Secretary, under circumstances indicating a reasonable possibility that military secrets were involved, there was a sufficient showing of privilege to cut off further demand for the documents on the showing of necessity for its compulsion that had been made. P. 10.

(e) In this case, the showing of necessity was greatly minimized by plaintiffs' rejection of the Judge Advocate General's offer to make the surviving crew members available for examination. P. 11.

(f) The doctrine in the criminal field that the Government can invoke its evidentiary privileges only at the price of letting the defendant go free has no application in a civil forum where the Government is not the moving party but is a defendant only on terms to which it has consented. P. 12.

192 F. 2d 987, reversed.

In a suit under the Tort Claims Act, the District Court entered judgment against the Government. 10 F. R. D. 468. The Court of Appeals affirmed. 192 F. 2d 987. This Court granted certiorari. 343 U. S. 918. *Reversed and remanded*, p. 12.

Samuel D. Slade argued the cause for the United States. With him on the brief were *Acting Solicitor General Stern* and *Assistant Attorney General Baldridge*.

Charles J. Biddle argued the cause for respondents. With him on the brief was *Francis Hopkinson*.

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

These suits under the Tort Claims Act¹ arise from the death of three civilians in the crash of a B-29 aircraft at

¹ 28 U. S. C. §§ 1346, 2674.

Waycross, Georgia, on October 6, 1948. Because an important question of the Government's privilege to resist discovery² is involved, we granted certiorari. 343 U. S. 918.

The aircraft had taken flight for the purpose of testing secret electronic equipment, with four civilian observers aboard. While aloft, fire broke out in one of the bomber's engines. Six of the nine crew members and three of the four civilian observers were killed in the crash.

The widows of the three deceased civilian observers brought consolidated suits against the United States. In the pretrial stages the plaintiffs moved, under Rule 34 of the Federal Rules of Civil Procedure,³ for production of the Air Force's official accident investigation report and the statements of the three surviving crew members, taken in connection with the official investigation. The Government moved to quash the motion, claiming that these matters were privileged against disclosure pursuant

² Federal Rules of Civil Procedure, Rule 34.

³ "Rule 34. *Discovery and Production of Documents and Things for Inspection, Copying, or Photographing.* Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30 (b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26 (b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 26 (b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just."

to Air Force regulations promulgated under R. S. § 161.⁴ The District Judge sustained plaintiffs' motion, holding that good cause for production had been shown.⁵ The claim of privilege under R. S. § 161 was rejected on the premise that the Tort Claims Act, in making the Government liable "in the same manner" as a private individual,⁶ had waived any privilege based upon executive control over governmental documents.

Shortly after this decision, the District Court received a letter from the Secretary of the Air Force, stating that "it has been determined that it would not be in the public interest to furnish this report. . . ." The court allowed a rehearing on its earlier order, and at the rehearing the Secretary of the Air Force filed a formal "Claim of Privilege." This document repeated the prior claim based generally on R. S. § 161, and then stated that the Government further objected to production of the documents "for the reason that the aircraft in question, together with the personnel on board, were engaged in a highly secret mission of the Air Force." An affidavit of the Judge Advocate General, United States Air Force, was also filed

*5 U. S. C. § 22:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Air Force Regulation No. 62-7 (5)(b) provides:

"Reports of boards of officers, special accident reports, or extracts therefrom will not be furnished or made available to persons outside the authorized chain of command without the specific approval of the Secretary of the Air Force."

⁴10 F. R. D. 468.

⁵28 U. S. C. § 2674:

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages."

with the court, which asserted that the demanded material could not be furnished "without seriously hampering national security, flying safety and the development of highly technical and secret military equipment." The same affidavit offered to produce the three surviving crew members, without cost, for examination by the plaintiffs. The witnesses would be allowed to refresh their memories from any statement made by them to the Air Force, and authorized to testify as to all matters except those of a "classified nature."

The District Court ordered the Government to produce the documents in order that the court might determine whether they contained privileged matter. The Government declined, so the court entered an order, under Rule 37 (b)(2)(i),⁷ that the facts on the issue of negligence would be taken as established in plaintiffs' favor.⁸ After a hearing to determine damages, final judgment was entered for the plaintiffs. The Court of Appeals affirmed,⁹ both as to the showing of good cause for production of the documents, and as to the ultimate disposition of the case as a consequence of the Government's refusal to produce the documents.

⁷ "Rule 37. Refusal to Make Discovery: Consequences.

"(b) Failure to Comply With Order.

"(2) *Other Consequences.* If any party or an officer or managing agent of a party refuses to obey . . . an order made under Rule 34 to produce any document . . . , the court may make such orders in regard to the refusal as are just, and among others the following:

"(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;"

⁸ 192 F. 2d 987.

We have had broad propositions pressed upon us for decision. On behalf of the Government it has been urged that the executive department heads have power to withhold any documents in their custody from judicial view if they deem it to be in the public interest.⁹ Respondents have asserted that the executive's power to withhold documents was waived by the Tort Claims Act. Both positions have constitutional overtones which we find it unnecessary to pass upon, there being a narrower ground for decision. *Touhy v. Ragen*, 340 U. S. 462 (1951); *Rescue Army v. Municipal Court of Los Angeles*, 331 U. S. 549, 574-585 (1947).

The Tort Claims Act expressly makes the Federal Rules of Civil Procedure applicable to suits against the United States.¹⁰ The judgment in this case imposed liability upon the Government by operation of Rule 37, for refusal to produce documents under Rule 34. Since Rule 34 compels production only of matters "not privileged," the essential question is whether there was a valid claim of privilege under the Rule. We hold that there was, and that, therefore, the judgment below subjected the United States to liability on terms to which Congress did not consent by the Tort Claims Act.

We think it should be clear that the term "not privileged," as used in Rule 34, refers to "privileges" as that term is understood in the law of evidence. When the Secretary of the Air Force lodged his formal "Claim of Privilege," he attempted therein to invoke the privilege against revealing military secrets, a privilege which is well

⁹ While claim of executive power to suppress documents is based more immediately upon R. S. § 161 (see *supra*, note 4), the roots go much deeper. It is said that R. S. § 161 is only a legislative recognition of an inherent executive power which is protected in the constitutional system of separation of power.

¹⁰ 28 U. S. C. (1946 ed.) § 932; *United States v. Yellow Cab Co.*, 340 U. S. 543, 553 (1951).

established in the law of evidence.¹¹ The existence of the privilege is conceded by the court below,¹² and, indeed, by the most outspoken critics of governmental claims to privilege.¹³

Judicial experience with the privilege which protects military and state secrets has been limited in this country.¹⁴ English experience has been more extensive, but still relatively slight compared with other evidentiary privileges.¹⁵ Nevertheless, the principles which control the application of the privilege emerge quite clearly from the available precedents. The privilege belongs to the Government and must be asserted by it; it can neither be claimed¹⁶ nor waived¹⁷ by a private party. It is not to be lightly invoked.¹⁸ There must be a formal claim

¹¹ *Totten v. United States*, 92 U. S. 105, 107 (1875); *Firth Sterling Steel Co. v. Bethlehem Steel Co.*, 199 F. 353 (D. C. E. D. Pa. 1912); *Pollen v. Ford Instrument Co.*, 26 F. Supp. 583 (D. C. E. D. N. Y. 1939); *Cresmer v. United States*, 9 F. R. D. 203 (D. C. E. D. N. Y. 1949); see *Bank Line v. United States*, 68 F. Supp. 587 (D. C. S. D. N. Y. 1946), 163 F. 2d 133 (C. A. 2d Cir. 1947). 8 Wigmore on Evidence (3d ed.) § 2212a, p. 161, and § 2378 (g)(5), at pp. 785 *et seq.*; 1 Greenleaf on Evidence (16th ed.) §§ 250-251; Sanford, Evidentiary Privileges Against the Production of Data Within the Control of Executive Departments, 3 Vanderbilt L. Rev. 73, 74-75 (1949).

¹² 192 F. 2d 987, 996.

¹³ See Wigmore, *op. cit. supra*, note 11.

¹⁴ See cases cited *supra*, note 11.

¹⁵ Most of the English precedents are reviewed in the recent case of *Duncan v. Cammell, Laird & Co.*, [1942] A. C. 624.

¹⁶ *Firth Sterling Steel Co. v. Bethlehem Steel Co.*, 199 F. 353 (D. C. E. D. Pa. 1912).

¹⁷ *In re Grove*, 180 F. 62 (C. A. 3d Cir. 1910).

¹⁸ Marshall, C. J., in the *Aaron Burr* trial, I Robertson's Reports 186: "That there may be matter, the production of which the court would not require, is certain What ought to be done, under such circumstances, presents a delicate question, the discussion of which, it is hoped, will never be rendered necessary in this country."

of privilege, lodged by the head of the department which has control over the matter,¹⁹ after actual personal consideration by that officer.²⁰ The court itself must determine whether the circumstances are appropriate for the claim of privilege,²¹ and yet do so without forcing a disclosure of the very thing the privilege is designed to protect.²² The latter requirement is the only one which presents real difficulty. As to it, we find it helpful to draw upon judicial experience in dealing with an analogous privilege, the privilege against self-incrimination.

The privilege against self-incrimination presented the courts with a similar sort of problem. Too much judicial inquiry into the claim of privilege would force disclosure of the thing the privilege was meant to protect, while a complete abandonment of judicial control would lead to intolerable abuses. Indeed, in the earlier stages

¹⁹ *Firth case, supra*, note 16.

²⁰ "The essential matter is that the decision to object should be taken by the minister who is the political head of the department, and that he should have seen and considered the contents of the documents and himself have formed the view that on grounds of public interest they ought not to be produced" *Duncan v. Cammell, Laird & Co.*, [1942] A. C. 624, 638.

²¹ *Id.*, at p. 642:

"Although an objection validly taken to production, on the ground that this would be injurious to the public interest, is conclusive, it is important to remember that *the decision ruling out such documents is the decision of the judge*. . . . It is the judge who is in control of the trial, not the executive" (Emphasis supplied.)

²² *Id.*, at pp. 638-642; cf. the language of this Court in *Hoffman v. United States*, 341 U. S. 479, 486 (1951), speaking of the analogous hazard of probing too far in derogation of the claim of privilege against self-incrimination:

"However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, *he would be compelled to surrender the very protection which the privilege is designed to guarantee*." (Emphasis supplied.)

of judicial experience with the problem, both extremes were advocated, some saying that the bare assertion by the witness must be taken as conclusive, and others saying that the witness should be required to reveal the matter behind his claim of privilege to the judge for verification.²³ Neither extreme prevailed, and a sound formula of compromise was developed. This formula received authoritative expression in this country as early as the *Burr* trial.²⁴ There are differences in phraseology, but in substance it is agreed that the court must be satisfied from all the evidence and circumstances, and "from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Hoffman v. United States*, 341 U. S. 479, 486-487 (1951).²⁵ If the court is so satisfied, the claim of the privilege will be accepted without requiring further disclosure.

Regardless of how it is articulated, some like formula of compromise must be applied here. Judicial control over the evidence in a case cannot be abdicated to the

²³ Compare the expressions of Rolfe, B. and Wilde, C. J. in *Regina v. Garbett*, 2 Car. & K. 474, 492 (1847); see S Wigmore on Evidence (3d ed.) § 2271.

²⁴ I Robertson's Reports 244:

"When a question is propounded, it belongs to the court to consider and to decide, whether any direct answer to it can implicate the witness. If this be decided in the negative, then he may answer it without violating the privilege which is secured to him by law. If a direct answer to it *may* criminate himself, then he must be the sole judge what his answer *would* be. The court cannot participate with him in this judgment, because they cannot decide on the effect of his answer without knowing what it *would* be; and a disclosure of that fact to the judges *would* strip him of the privilege which the law allows, and which he claims."

²⁵ *Brown v. United States*, 276 U. S. 134 (1928); *Mason v. United States*, 244 U. S. 362 (1917).

caprice of executive officers. Yet we will not go so far as to say that the court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted in any case. It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.

In the instant case we cannot escape judicial notice that this is a time of vigorous preparation for national defense. Experience in the past war has made it common knowledge that air power is one of the most potent weapons in our scheme of defense, and that newly developing electronic devices have greatly enhanced the effective use of air power. It is equally apparent that these electronic devices must be kept secret if their full military advantage is to be exploited in the national interests. On the record before the trial court it appeared that this accident occurred to a military plane which had gone aloft to test secret electronic equipment. Certainly there was a reasonable danger that the accident investigation report would contain references to the secret electronic equipment which was the primary concern of the mission.

Of course, even with this information before him, the trial judge was in no position to decide that the report was privileged until there had been a formal claim of privilege. Thus it was entirely proper to rule initially that petitioner had shown probable cause for discovery of the documents. Thereafter, when the formal claim of privilege was filed by the Secretary of the Air Force, under

circumstances indicating a reasonable possibility that military secrets were involved, there was certainly a sufficient showing of privilege to cut off further demand for the documents on the showing of necessity for its compulsion that had then been made.

In each case, the showing of necessity which is made will determine how far the court should probe in satisfying itself that the occasion for invoking the privilege is appropriate. Where there is a strong showing of necessity, the claim of privilege should not be lightly accepted, but even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that military secrets are at stake.²⁶ *A fortiori*, where necessity is dubious, a formal claim of privilege, made under the circumstances of this case, will have to prevail. Here, necessity was greatly minimized by an available alternative, which might have given respondents the evidence to make out their case without forcing a showdown on the claim of privilege. By their failure to pursue that alternative, respondents have posed the privilege question for decision with the formal claim of privilege set against a dubious showing of necessity.

There is nothing to suggest that the electronic equipment, in this case, had any causal connection with the accident. Therefore, it should be possible for respondents to adduce the essential facts as to causation without resort to material touching upon military secrets. Respondents were given a reasonable opportunity to do just that, when petitioner formally offered to make the surviving crew members available for examination. We think that offer should have been accepted.

²⁶ See *Totten v. United States*, 92 U. S. 105 (1875), where the very subject matter of the action, a contract to perform espionage, was a matter of state secret. The action was dismissed on the pleadings without ever reaching the question of evidence, since it was so obvious that the action should never prevail over the privilege.

Respondents have cited us to those cases in the criminal field, where it has been held that the Government can invoke its evidentiary privileges only at the price of letting the defendant go free.²⁷ The rationale of the criminal cases is that, since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense. Such rationale has no application in a civil forum where the Government is not the moving party, but is a defendant only on terms to which it has consented.

The decision of the Court of Appeals is reversed and the case will be remanded to the District Court for further proceedings consistent with the views expressed in this opinion.

Reversed and remanded.

MR. JUSTICE BLACK, MR. JUSTICE FRANKFURTER, and MR. JUSTICE JACKSON dissent, substantially for the reasons set forth in the opinion of Judge Maris below. 192 F. 2d 987.

²⁷ *United States v. Andolschek*, 142 F. 2d 503 (C. A. 2d Cir. 1944); *United States v. Beekman*, 155 F. 2d 580 (C. A. 2d Cir. 1946).

EXHIBIT No. 6

EXECUTIVE ORDER 10450**SECURITY REQUIREMENTS FOR
GOVERNMENT EMPLOYMENT**

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, *et seq.*); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118 j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22-1, *et seq.*), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237¹ of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

Sec. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Sec. 3. (a) The appointment of each civilian officer or employee in any depart-

ment or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: *Provided*, that upon request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: *Provided*, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: *And provided further*, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such ac-

¹ 3 CFR, 1951 Supp., p. 430.

tion is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835¹ of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accord-

ance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: *Provided*, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications, or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, sexual perversion, or financial irresponsibility.

(iv) An adjudication of insanity, or treatment for serious mental or neurological disorder without satisfactory evidence of cure.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts therat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt

¹ 3 CFR, 1947 Supp.

to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means.

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the

responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Civil Service Commission, and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (7) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

SEC. 9. (a) There shall be established and maintained in the Civil Service Commission a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Commission under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Civil Service Commission information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such

reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

SEC. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Civil Service Commission on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: *Provided*, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked. For the purposes described in

section 11 hereof the Loyalty Review Board and the regional loyalty boards of the Civil Service Commission shall continue to exist and function for a period of one hundred and twenty days from the effective date of this order, and the Department of Justice shall continue to furnish the information described in paragraph 3 of Part III of the said Executive Order No. 9835, but directly to the head of each department and agency.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Civil Service Commission, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Civil Service Commission shall report to the National Security Council, at least semiannually, on the results of such study, and shall recommend means to correct any such deficiencies or tendencies.

(b) All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

SEC. 15. This order shall become effective thirty days after the date hereof.

DWIGHT D. EISENHOWER
THE WHITE HOUSE,
April 27, 1953.

EXHIBIT No. 7

EXECUTIVE ORDER 10501**SAFEGUARDING OFFICIAL INFORMATION IN THE INTERESTS OF THE DEFENSE OF THE UNITED STATES**

WHEREAS it is essential that the citizens of the United States be informed concerning the activities of their government; and

WHEREAS the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action; and

WHEREAS it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

SECTION 1. Classification Categories. Official information which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations: Top Secret, Secret, or Confidential. No other designation shall be used to classify defense information, including military information, as requiring protection in the interests of national defense, except as expressly provided by statute. These categories are defined as follows:

(a) **Top Secret.** Except as may be expressly provided by statute, the use of the classification Top Secret shall be authorized, by appropriate authority, only for defense information or material which requires the highest degree of protection. The Top Secret classification shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense.

(b) **Secret.** Except as may be expressly provided by statute, the use of the classification Secret shall be authorized, by appropriate authority, only for defense information or material the

unauthorized disclosure of which could result in serious damage to the Nation, such as by jeopardizing the international relations of the United States, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense, or information revealing important intelligence operations.

(c) **Confidential.** Except as may be expressly provided by statute, the use of the classification Confidential shall be authorized, by appropriate authority, only for defense information or material the unauthorized disclosure of which could be prejudicial to the defense interests of the nation.

Sec. 2. Limitation of Authority to Classify. The authority to classify defense information or material under this order shall be limited in the departments and agencies of the executive branch as hereinafter specified. Departments and agencies subject to the specified limitations shall be designated by the President:

(a) In those departments and agencies having no direct responsibility for national defense there shall be no authority for original classification of information or material under this order.

(b) In those departments and agencies having partial but not primary responsibility for matters pertaining to national defense the authority for original classification of information or material under this order shall be exercised only by the head of the department or agency, without delegation.

(c) In those departments and agencies not affected by the provisions of subsection (a) and (b), above, the authority for original classification of information or material under this order shall be exercised only by responsible officers or employees, who shall be specifically designated for this purpose. Heads of such departments and agencies shall limit the delegation of authority to classify as severely as is consistent with the orderly and expeditious transaction of Government business.

Sec. 3. Classification. Persons designated to have authority for original classification of information or material which requires protection in the interests of national defense under this order shall be held responsible for its proper classification in accordance with the definitions of the three categories in section 1, hereof. Unnecessary classification and over-classification shall be scrupulously avoided. The following special rules shall be observed in clas-

sification of defense information or material:

(a) *Documents in General.* Documents shall be classified according to their own content and not necessarily according to their relationship to other documents. References to classified material which do not reveal classified defense information shall not be classified.

(b) *Physically Connected Documents.* The classification of a file or group of physically connected documents shall be at least as high as that of the most highly classified document therein. Documents separated from the file or group shall be handled in accordance with their individual defense classification.

(c) *Multiple Classification.* A document, product, or substance shall bear a classification at least as high as that of its highest classified component. The document, product, or substance shall bear only one over-all classification, notwithstanding that pages, paragraphs, sections, or components thereof bear different classifications.

(d) *Transmittal Letters.* A letter transmitting defense information shall be classified at least as high as its highest classified enclosure.

(e) *Information Originated by a Foreign Government or Organization.* Defense information of a classified nature furnished to the United States by a foreign government or international organization shall be assigned a classification which will assure a degree of protection equivalent to or greater than that required by the government or international organization which furnished the information.

Sec. 4. Declassification, Downgrading, or Upgrading. Heads of departments or agencies originating classified material shall designate persons to be responsible for continuing review of such classified material for the purpose of declassifying or downgrading it whenever national defense considerations permit, and for receiving requests for such review from all sources. Formal procedures shall be established to provide specific means for prompt review of classified material and its declassification or downgrading in order to preserve the effectiveness and integrity of the classification system and to eliminate accumulation of classified material which no longer requires protection in the defense interest. The following special rules shall be observed with respect to changes of classification of defense material:

(a) *Automatic Changes.* To the fullest extent practicable, the classifying authority shall indicate on the material (except telegrams) at the time of original classification that after a specified event or date, or upon removal of classified enclosures, the material will be downgraded or declassified.

(b) *Non-Automatic Changes.* The persons designated to receive requests for review of classified material may downgrade or declassify such material when circumstances no longer warrant its retention in its original classification provided the consent of the appropriate classifying authority has been obtained. The downgrading or declassification of extracts from or paraphrases of classified documents shall also require the consent of the appropriate classifying authority unless the agency making such extracts knows positively that they warrant a classification lower than that of the document from which extracted, or that they are not classified.

(c) *Material Officially Transferred.* In the case of material transferred by or pursuant to statute or Executive order from one department or agency to another for the latter's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, the receiving department or agency shall be deemed to be the classifying authority for all purposes under this order, including declassification and downgrading.

(d) *Material Not Officially Transferred.* When any department or agency has in its possession any classified material which has become five years old, and it appears (1) that such material originated in an agency which has since become defunct and whose files and other property have not been officially transferred to another department or agency within the meaning of subsection (c), above, or (2) that it is impossible for the possessing department or agency to identify the originating agency, and (3) a review of the material indicates that it should be downgraded or declassified, the said possessing department or agency shall have power to declassify or downgrade such material. If it appears probable that another department or agency may have a substantial interest in whether the classification of any particular information should be maintained, the possessing department or agency shall not exercise the power conferred upon it by this subsection, except with the consent of the other department or agency, until thirty days after it has notified such other department or agency of the nature of the material and of its intention to declassify or downgrade the same. During such thirty-day period the other department or agency may, if it so desires, express its objections to declassifying or downgrading the particular material, but the power to make the ultimate decision shall reside in the possessing department or agency.

(e) *Classified Telegrams.* Such telegrams shall not be referred to, extracted

from, paraphrased, downgraded, declassified, or disseminated, except in accordance with special regulations issued by the head of the originating department or agency. Classified telegrams transmitted over cryptographic systems shall be handled in accordance with the regulations of the transmitting department or agency.

(f) *Downgrading*. If the recipient of classified material believes that it has been classified too highly, he may make a request to the reviewing official who may downgrade or declassify the material after obtaining the consent of the appropriate classifying authority.

(g) *Upgrading*. If the recipient of unclassified material believes that it should be classified, or if the recipient of classified material believes that its classification is not sufficiently protective, it shall be safeguarded in accordance with the classification deemed appropriate and a request made to the reviewing official, who may classify the material or upgrade the classification after obtaining the consent of the appropriate classifying authority.

(h) *Notification of Change in Classification*. The reviewing official taking action to declassify, downgrade, or upgrade classified material shall notify all addressees to whom the material was originally transmitted.

Sec. 5. Marking of Classified Material. After a determination of the proper defense classification to be assigned has been made in accordance with the provisions of this order, the classified material shall be marked as follows:

(a) *Bound Documents*. The assigned defense classification on bound documents, such as books or pamphlets, the pages of which are permanently and securely fastened together, shall be conspicuously marked or stamped on the outside of the front cover, on the title page, on the first page, on the back page and on the outside of the back cover. In each case the markings shall be applied to the top and bottom of the page or cover.

(b) *Unbound Documents*. The assigned defense classification on unbound documents, such as letters, memoranda, reports, telegrams, and other similar documents, the pages of which are not permanently and securely fastened together, shall be conspicuously marked or stamped at the top and bottom of each page, in such manner that the marking will be clearly visible when the pages are clipped or stapled together.

(c) *Charts, Maps, and Drawings*. Classified charts, maps, and drawings shall carry the defense classification marking under the legend, title block, or scale in such manner that it will be re-

produced on all copies made therefrom. Such classification shall also be marked at the top and bottom in each instance.

(d) *Photographs, Films and Recordings*. Classified photographs, films, and recordings, and their containers, shall be conspicuously and appropriately marked with the assigned defense classification.

(e) *Products or Substances*. The assigned defense classification shall be conspicuously marked on classified products or substances, if possible, and on their containers, if possible, or, if the article or container cannot be marked, written notification of such classification shall be furnished to recipients of such products or substances.

(f) *Reproductions*. All copies or reproductions of classified material shall be appropriately marked or stamped in the same manner as the original thereof.

(g) *Unclassified Material*. Normally, unclassified material shall not be marked or stamped *Unclassified* unless it is essential to convey to a recipient of such material that it has been examined specifically with a view to imposing a defense classification and has been determined not to require such classification.

(h) *Change or Removal of Classification*. Whenever classified material is declassified, downgraded, or upgraded, the material shall be marked or stamped in a prominent place to reflect the change in classification, the authority for the action, the date of action, and the identity of the person or unit taking the action. In addition, the old classification marking shall be cancelled and the new classification (if any) substituted therefor. Automatic change in classification shall be indicated by the appropriate classifying authority through marking or stamping in a prominent place to reflect information specified in subsection 4 (a) hereof.

(i) *Material Furnished Persons not in the Executive Branch of the Government*. When classified material affecting the national defense is furnished authorized persons, in or out of Federal service, other than those in the executive branch, the following notation, in addition to the assigned classification marking, shall whenever practicable be placed on the material, on its container, or on the written notification of its assigned classification:

This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U. S. C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

Use of alternative marking concerning "Restricted Data" as defined by the Atomic Energy Act is authorized when appropriate.

SEC. 6. Custody and Safekeeping. The possession or use of classified defense information or material shall be limited to locations where facilities for secure storage or protection thereof are available by means of which unauthorized persons are prevented from gaining access thereto. Whenever such information or material is not under the personal supervision of its custodian, whether during or outside of working hours, the following physical or mechanical means shall be taken to protect it:

(a) *Storage of Top Secret Material.* Top Secret defense material shall be protected in storage by the most secure facilities possible. Normally it will be stored in a safe or a safe-type steel file container having a three-position, dial-type, combination lock, and being of such weight, size, construction, or installation as to minimize the possibility of surreptitious entry, physical theft, damage by fire, or tampering. The head of a department or agency may approve other storage facilities for this material which offer comparable or better protection, such as an alarmed area, a vault, a secure vault-type room, or an area under close surveillance of an armed guard.

(b) *Secret and Confidential Material.* These categories of defense material may be stored in a manner authorized for Top Secret material, or in metal file cabinets equipped with steel lockbar and an approved three combination dial-type padlock from which the manufacturer's identification numbers have been obliterated, or in comparably secure facilities approved by the head of the department or agency.

(c) *Other Classified Material.* Heads of departments and agencies shall prescribe such protective facilities as may be necessary in their departments or agencies for material originating under statutory provisions requiring protection of certain information.

(d) *Changes of Lock Combinations.* Combinations on locks of safekeeping equipment shall be changed, only by persons having appropriate security clearance, whenever such equipment is placed in use after procurement from the manufacturer or other sources, whenever a person knowing the combination is transferred from the office to which the equipment is assigned, or whenever the combination has been subjected to compromise, and at least once every year. Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest category of classified defense material authorized for storage in the safekeeping equipment concerned.

(e) *Custodian's Responsibilities.* Custodians of classified defense material

shall be responsible for providing the best possible protection and accountability for such material at all times and particularly for securely locking classified material in approved safekeeping equipment whenever it is not in use or under direct supervision of authorized employees. Custodians shall follow procedures which insure that unauthorized persons do not gain access to classified defense information or material by sight or sound, and classified information shall not be discussed with or in the presence of unauthorized persons.

(f) *Telephone Conversations.* Defense information classified in the three categories under the provisions of this order shall not be revealed in telephone conversations, except as may be authorized under section 8 hereof with respect to the transmission of Secret and Confidential material over certain military communications circuits.

(g) *Loss or Subjection to Compromise.* Any person in the executive branch who has knowledge of the loss or possible subjection to compromise of classified defense information shall promptly report the circumstances to a designated official of his agency, and the latter shall take appropriate action forthwith, including advice to the originating department or agency.

SEC. 7. Accountability and Dissemination. Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy. Proper control of dissemination of classified defense information shall be maintained at all times, including good accountability records of classified defense information documents, and severe limitation on the number of such documents originated as well as the number of copies thereof reproduced. The number of copies of classified defense information documents shall be kept to a minimum to decrease the risk of compromise of the information contained in such documents and the financial burden on the Government in protecting such documents. The following special rules shall be observed in connection with accountability for and dissemination of defense information or material:

(a) *Accountability Procedures.* Heads of departments and agencies shall prescribe such accountability procedures as are necessary to control effectively the dissemination of classified defense information, with particularly severe control on material classified Top Secret under this order. Top Secret Control Officers shall be designated, as required, to receive, maintain accountability reg-

isters of, and dispatch Top Secret material.

(b) *Dissemination Outside the Executive Branch.* Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.

(c) *Information Originating in Another Department or Agency.* Except as otherwise provided by section 102 of the National Security Act of July 26, 1947, c. 343, 61 Stat. 498, as amended, 50 U. S. C. sec. 403, classified defense information originating in another department or agency shall not be disseminated outside the receiving department or agency without the consent of the originating department or agency. Documents and material containing defense information which are classified Top Secret or Secret shall not be reproduced without the consent of the originating department or agency.

Sec. 8. Transmission. For transmission outside of a department or agency, classified defense material of the three categories originated under the provisions of this order shall be prepared and transmitted as follows:

(a) *Preparation for Transmission.* Such material shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and address. The outer cover shall be sealed and addressed with no indication of the classification of its contents. A receipt form shall be attached to or enclosed in the inner cover, except that Confidential material shall require a receipt only if the sender deems it necessary. The receipt form shall identify the addressor, addressee, and the document, but shall contain no classified information. It shall be signed by the proper recipient and returned to the sender.

(b) *Transmitting Top Secret Material.* The transmission of Top Secret material shall be effected preferably by direct contact of officials concerned, or, alternatively, by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system especially created for that purpose, or by electric means in encrypted form; or in the case of information transmitted by the Federal Bureau of Investigation, such means of transmission may be used as are currently approved by the Director, Federal Bureau of Investigation, unless express reservation to the contrary is made in exceptional cases by the originating agency.

(c) *Transmitting Secret Material.* Secret material shall be transmitted within the continental United States by one of the means established for Top Secret material, by an authorized courier, by United States registered mail, or by protected commercial express, air or surface. Secret material may be transmitted outside the continental limits of the United States by one of the means established for Top Secret material, by commanders or masters of vessels of United States registry, or by United States Post Office registered mail through Army, Navy, or Air Force postal facilities, provided that the material does not at any time pass out of United States Government control and does not pass through a foreign postal system. Secret material may, however, be transmitted between United States Government and/or Canadian Government installations in continental United States, Canada, and Alaska by United States and Canadian registered mail with registered mail receipt. In an emergency, Secret material may also be transmitted over military communications circuits in accordance with regulations promulgated for such purpose by the Secretary of Defense.

(d) *Transmitting Confidential Material.* Confidential defense material shall be transmitted within the United States by one of the means established for higher classifications, by registered mail, or by express or freight under such specific conditions as may be prescribed by the head of the department or agency concerned. Outside the continental United States, Confidential defense material shall be transmitted in the same manner as authorized for higher classifications.

(e) *Within an Agency.* Preparation of classified defense material for transmission, and transmission of it, within a department or agency shall be governed by regulations, issued by the head of the department or agency, insuring a degree of security equivalent to that outlined above for transmission outside a department or agency.

Sec. 9. Disposal and Destruction. Documentary record material made or received by a department or agency in connection with transaction of public business and preserved as evidence of the organization, functions, policies, operations, decisions, procedures or other activities of any department or agency of the Government, or because of the informational value of the data contained therein, may be destroyed only in accordance with the act of July 7, 1943, c. 192, 57 Stat. 380, as amended, 44 U. S. C. 366-380. Non-record classified material, consisting of extra copies and duplicates including shorthand notes, preliminary drafts, used carbon paper, and other ma-

terial of similar temporary nature, may be destroyed, under procedures established by the head of the department or agency which meet the following requirements, as soon as it has served its purpose:

(a) *Methods of Destruction.* Classified defense material shall be destroyed by burning in the presence of an appropriate official or by other methods authorized by the head of an agency provided the resulting destruction is equally complete.

(b) *Records of Destruction.* Appropriate accountability records maintained in the department or agency shall reflect the destruction of classified defense material.

Sec. 10. Orientation and Inspection. To promote the basic purposes of this order, heads of those departments and agencies originating or handling classified defense information shall designate experienced persons to coordinate and supervise the activities applicable to their departments or agencies under this order. Persons so designated shall maintain active training and orientation programs for employees concerned with classified defense information to impress each such employee with his individual responsibility for exercising vigilance and care in complying with the provisions of this order. Such persons shall be authorized on behalf of the heads of the departments and agencies to establish adequate and active inspection programs to the end that the provisions of this order are administered effectively.

Sec. 11. Interpretation of Regulations by the Attorney General. The Attorney General, upon request of the head of a department or agency or his duly designated representative, shall personally or through authorized representatives of the Department of Justice render an interpretation of these regulations in connection with any problems arising out of their administration.

Sec. 12. Statutory Requirements. Nothing in this order shall be construed to authorize the dissemination, handling or transmission of classified information contrary to the provisions of any statute.

Sec. 13. "Restricted Data" as Defined in the Atomic Energy Act. Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 1, 1946, as amended. "Restricted Data" as defined by the said act shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1946, as amended, and the regulations of the Atomic Energy Commission.

Sec. 14. Combat Operations. The provisions of this order with regard to dis-

semination, transmission, or safekeeping of classified defense information or material may be so modified in connection with combat or combat-related operations as the Secretary of Defense may by regulations prescribe.

Sec. 15. Exceptional Cases. When, in an exceptional case, a person or agency not authorized to classify defense information originates information which is believed to require classification, such person or agency shall protect that information in the manner prescribed by this order for that category of classified defense information into which it is believed to fall, and shall transmit the information forthwith, under appropriate safeguards, to the department, agency, or person having both the authority to classify information and a direct official interest in the information (preferably, that department, agency, or person to which the information would be transmitted in the ordinary course of business), with a request that such department, agency, or person classify the information.

Sec. 16. Review to Insure That Information is Not Improperly Withheld Hereunder. The President shall designate a member of his staff who shall receive, consider, and take action upon, suggestions or complaints from non-Governmental sources relating to the operation of this order.

Sec. 17. Review to Insure Safeguarding of Classified Defense Information. The National Security Council shall conduct a continuing review of the implementation of this order to insure that classified defense information is properly safeguarded, in conformity herewith.

Sec. 18. Review Within Departments and Agencies. The head of each department and agency shall designate a member or members of his staff who shall conduct a continuing review of the implementation of this order within the department or agency concerned to insure that no information is withheld hereunder which the people of the United States have a right to know, and to insure that classified defense information is properly safeguarded in conformity herewith.

Sec. 19. Revocation of Executive Order No. 10290. Executive Order No. 10290 of September 24, 1951 is revoked as of the effective date of this order.

Sec. 20. Effective Date. This order shall become effective on December 15, 1953.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
November 5, 1953.

EXHIBIT NO. 8

OPINIONS OF THE ATTORNEY GENERAL, VOL. 40, P. 45.

**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.

EXHIBIT NO. 9

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Congressional Investigations and Judicial Review: Kilbourn v. Thompson Revisited

*Gerald D. Morgan**

A legislative committee of inquiry vested with power to summon witnesses and compel the production of records and papers is an institution rivaling most legislative institutions in the antiquity of its origin. . . . Prior to the adoption of our Constitution colonial assemblies frequently assumed authority to punish for contempt any person who refused to appear in answer to a summons or who failed to disclose information required for the effective administration of Government.¹

For almost 100 years following the adoption of the Constitution this institution of inquiry flourished virtually free from judicial supervision or control. Indeed, in 1821, Chief Justice Marshall's court, in *Anderson v. Dunn*,² intimated that the institution was not subject to control by the judiciary, and a similar intimation is found in *Ex parte Nugent*,³ decided in 1848 by the circuit court of the District of Columbia, in which it was held by the court, after an exhaustive review of the English authorities, that the court had no power in a habeas corpus proceeding to go behind a warrant of the Senate ordering a witness committed for contempt.

It was not until 1881 in *Kilbourn v. Thompson*⁴ that the Supreme Court undertook to pass upon the validity of a "judgment" of the House of Representatives adjudicating a witness to be in contempt of the authority of the House,⁵ and to do so in a proceeding (false

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¹ *Fields v. United States* (App. D. C. 1947) 164 F. (2d) 97, 99, cert. denied, (1948) 332 U. S. 851.

² (U. S. 1821) 6 Wheat. 204.

³ (N. D. Ill. 1871) 18 Fed. Cas. 483, No. 10,377.

⁴ (1881) 103 U. S. 168.

⁵ Because the power of legislative bodies to punish for contempt is like the power of the courts to do the same thing, the power in legislative bodies has sometimes been characterized as "judicial" in nature. Landis, *Constitutional Limitations on Congressional Power of Investigation* (1926) 40 HARV. L. REV. 153. Calling it that may have had some influence on the assumption of judicial control over it. Whatever its character, it seems to be a power that legislative bodies exercised for several centuries before the adoption of our Constitution, and for over half of our own Constitutional history, without judicial interference.

imprisonment) that constituted a collateral attack upon that judgment. The "judgment" was held void on the ground that the subject matter of the inquiry was one on which Congress could not validly legislate. Thus began the doctrine whose effect was to treat the Senate and House of Representatives, when exercising an inherent power at the very threshold of the legislative process, as having a status analogous to that of an inferior court of limited or special jurisdiction.⁶

Indeed for some 46 years following *Kilbourn v. Thompson*, because of the broad sweep of its reasoning (and also, as has since been shown,⁷ by reason of an incorrect view taken by the Court as to the origin of the inquisitorial power possessed by the British Parliament), the very existence in this country of a power in the Senate and House of Representatives to compel testimony and punish for contempt in aid of the legislative function was in grave doubt. And this doubt was not finally resolved until a short 22 years ago when the Court in *McGrain v. Daugherty*⁸—upon review of a decision of a district court in a habeas corpus proceeding—held that the Senate was acting within its lawful authority in arresting the brother of former Attorney General Daugherty for refusing to respond to a subpoena directed to him by a Senate committee investigating the administration of the Department of Justice.

While much has been written on the subject of "judicial supremacy" as applied to the power of the courts to invalidate laws after the legislative process has been completed, little attention has been paid to the proper relationship of the courts to the legislative branch of the Government at the beginning of the legislative process—*i.e.*, in the field of legislative inquiries. It seems desirable that a preliminary analysis, at least, be made of that relationship,⁹ since legislative inquiries sometimes determine whether the lawmaking process shall begin at all, and judicial intrusion into such inquiries can have the effect

⁶ *Infra* note 12.

⁷ Landis, *op. cit. supra* note 5; Potts, *Power of Legislative Bodies to Punish for Contempt* (1926) 74 U. OF PA. L. REV. 691.

⁸ (1927) 273 U. S. 135.

⁹ Such an analysis seems particularly apt in view of the decision of the Supreme Court this past term in *Christoffel v. United States* (1949) 338 U. S. 84. For the Court in holding in that case that (1) the status of a standing committee of the House of Representatives as a "competent tribunal" within the meaning of the District of Columbia perjury statute, and (2) the integrity of the committee's records as to the presence of a quorum, could be impeached by parol evidence, has opened up a veritable Pandora's box of new implications of vastly extended judicial supervision and control over every step of the legislative process.

of stopping that process before it can ever get started. After it starts, courts uniformly maintain a hands-off attitude until a finished product in the form of a law comes into being.¹⁰ Why do they intrude when the exercise of the power of investigation is involved—and do it, as they necessarily must, in collateral proceedings?

*Kilbourn v. Thompson*¹¹ started the practice. But while the Court was aware in that case that a collateral attack was being pressed against a "judgment" of the House of Representatives, it evidently did not consider that it was exercising any greater jurisdiction to allow such attack than it would have exercised in the case of a judgment of contempt by a court of general jurisdiction. For even courts of general jurisdiction must have "jurisdiction" over the person and the subject matter in order to immunize their judgments from collateral attacks.¹² The Court in *Kilbourn v. Thompson* merely held that Congress had no jurisdiction to legislate on the subject matter into which the committee of the House of Representatives was inquiring, and that hence the committee had no jurisdiction to inquire on that subject matter. In so holding, however, the Court could have had but little appreciation of the implications of its assuming jurisdiction to determine the limits of the power of Congress to enact legislation before that power had ever been exercised. Certainly at the time of *Kilbourn v. Thompson*, there was no appreciation at all of the role that facts can play in marking out the scope of the legislative power of the United States.¹³

¹⁰ *Goodland v. Zimmerman* (1943) 243 Wisc. 459, 10 N. W. (2d) 180; *The People v. Mills* (1902) 30 Colo. 262, 70 Pac. 322; *State ex rel. Carson v. Kozer* (1928) 126 Ore. 641, 270 Pac. 513; *Bowe v. Secy. of the Commonwealth* (1946) 320 Mass. 330, 69 N. E. (2d) 115.

¹¹ *Supra* note 4.

¹² *Chicot County Dist. v. Bank* (1940) 308 U. S. 371, and cases cited therein. "Jurisdiction," as applied to the courts, however, includes jurisdiction to decide whether jurisdiction exists. *Swift & Co. v. United States* (1928) 276 U. S. 311; *United States v. United Mine Workers of America* (1947) 330 U. S. 258. A judgment adjudicating a criminal contempt cannot be successfully attacked even directly on the ground that the Court had no jurisdiction, if the Court had jurisdiction to decide whether it did or did not have jurisdiction. *United States v. Shipp* (1906) 203 U. S. 563; *United States v. United Mine Workers of America*, *supra*, opinion of Frankfurter, J. It is believed that *Kilbourn v. Thompson* fell into error in its failure to recognize that the legislative power must necessarily include the power (1) to decide in the course of the legislative process whether "jurisdiction" exists to exercise the power, and (2) to adduce facts for that purpose.

¹³ Cf. *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937) 301 U. S. 1; *Home Building & Loan Ass'n. v. Blaisdell* (1934) 290 U. S. 398; *Lockner v. New York* (1905) 198 U. S. 45; the influence of the factual brief of Mr. Louis D. Brandeis filed in *Muller v. Oregon* (1908) 208 U. S. 412.

But more important, *Kilbourn v. Thompson* indicates a lack of understanding as to just what the legislative function is. Legislatures exist not merely to enact laws. They have the equally important function of determining that laws should not be enacted¹⁴ and their decisions in the performance of this latter function must in the nature of things frequently be influenced by consideration of whether or not the power to legislate exists. Yet *Kilbourn v. Thompson* would prevent the legislature from gathering the information that it believes will enable it to make such decisions, to make them intelligently, and to persuade others that such decisions are correct.¹⁵

To be sure there has been criticism—much of it justified—of the manner in which committees of Congress have exercised the inquisitorial power, but there has likewise been criticism of the attempts that have been made to restrict the power.¹⁶ Desire to punish a blackguard or rescue a saint, however, should not affect decisions on such great questions as the distribution of governmental powers under our Constitution.¹⁷ It “must be remembered that legislatures are ultimate guardians of the liberties of the people in quite as great a degree as the courts.”¹⁸

Since *Kilbourn v. Thompson* there have been only four cases¹⁹ in the Supreme Court in which attacks have been pressed against “judgments” of the Senate or House of Representatives, and only one in which the attack was successful,²⁰ so there may yet be time for the Court to re-examine the basis for its assumption of the power of

¹⁴ In many legislative bodies, the rules of procedure require the standing committees to consider every bill or resolution referred to them and to report either favorably or adversely thereon. Does *Kilbourn v. Thompson* mean that a legislature has no Constitutional power to compel its committees even to consider what perchance the legislature itself might lack power to enact? Cf. *Bowe v. Secy. of the Commonwealth*, *supra* note 10, involving an attempt to seek an injunction against an initiative on the ground that the law if enacted by the people would contravene the Constitution.

¹⁵ *Supra* note 12.

¹⁶ Gellhorn, *Report on a Report of the House Committee on Un-American Activities* (1947) 60 HARV. L. REV. 1193; Frankfurter, *Hands Off Investigations*, May 1924 NEW REPUBLIC; Coudert, *Congressional Inquisition vs. Individual Liberty* (1929) 15 VA. L. REV. 537.

¹⁷ Cf. Frankfurter dissenting in *Davis v. United States* (1946) 328 U. S. 582, 597.

¹⁸ Missouri Kansas, & Texas Ry. v. May (1904) 194 U. S. 267.

¹⁹ Marshall v. Gordon (1917) 243 U. S. 521; McGrain v. Daugherty, *supra* note 8; *Barry v. U. S. ex rel. Cunningham* (1929) 279 U. S. 597; *Jurney v. McCracken* (1935) 294 U. S. 125. Cases involving prosecutions under section 102 of the Revised Statutes (2 U. S. C. 192) are in this paper regarded differently. See *infra* note 21.

²⁰ Marshall v. Gordon, *supra* note 19. For a discussion of this case see Potts, *op. cit.* *supra* note 7.

judicial review. A distinction must be made between these four cases, involving, as they do, "judgments" of the Senate or of the House of Representatives itself—*i.e.*, where the Senate or House adjudicates and punishes a contempt—and the cases²¹ arising out of prosecutions under section 102 of the Revised Statutes²² for refusing to answer "pertinent" questions before a duly authorized committee of the Senate or House. Where section 102 of the Revised Statutes is invoked, neither the Senate nor the House as such is required to make any determination or adjudication, or render any "judgment," at all. Whether its committee was inquiring on the particular subject that was referred to it, or whether the questions propounded by the committee to the particular witness were pertinent, are matters that the legislative body as a whole may never even have considered.²³ Moreover, insofar as the question of pertinency is concerned, section 102 of the Revised Statutes (by reason of the form in which it is drafted) makes this a question of law rather than one for legislative determination—that is to say, the crime defined in that section is the refusal to answer questions that *as a matter of law* are pertinent to the inquiry. Thus, in prosecutions under that section, what is or is not pertinent can only be determined judicially.

Because of the different problem—at least as respects the question of pertinency—involved in the cases arising under section 102

²¹ *In re Chapman* (1895) 156 U.S. 211. *In re Chapman* (1897) 166 U.S. 661; *Henry v. Henkel* (1914) 235 U.S. 219; *Sinclair v. United States* (1929) 279 U.S. 263; *Christoffel v. United States*, *supra* note 9.

²² Sec. 102. Refusal of Witness to Testify. Every person who having been summoned as a witness by the authority of either House of Congress, to give testimony or to produce papers upon any matter under inquiry before either House, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars nor less than one hundred dollars, and imprisonment in a common jail for not less than one month nor more than 12 months. REV. STAT. § 102 (1878), 2 U.S.C. § 192 (1946).

²³ Section 104 of the Revised Statutes (1878), 2 U.S.C. § 194 (1946) provides that when an investigating committee reports a witness' contumacy to the Senate or House, the President of the Senate or the Speaker of the House, as the case may be, *shall* certify that fact to the district attorney for the District of Columbia, whose duty it is to bring the matter before the grand jury. It has been the practice in the House for the Speaker, *if the House is in session* when such a report is made, to lay the matter before the House in the form of a resolution authorizing him, should the resolution be adopted, to certify the facts to the district attorney. It does not seem to be the practice, however, to hear the witness himself in such cases, as would be done were the House itself trying and adjudicating a contempt. If the House is not in session when such a report is made by an investigating committee, the Speaker certifies the facts to the district attorney as a ministerial act under the statute, without any prior authorization from the House.

of the Revised Statutes, those cases will be put to one side temporarily and the discussion confined to the case in which an individual's liberty is restrained by the legislative body itself, either by subpoena, arrest, or confinement for contempt. Such a case might have a history somewhat as follows.

Let us suppose that in June of 1947 there was adopted by the House of Representatives a resolution (that had been introduced several months earlier by Congressman Doakes of Minnesota) providing for the creation of a special committee to investigate a group in Minnesota called the Liberty Bund. It was the purpose of the proposed investigation, according to the terms of the resolution, to determine what the Bund was, who were its members, what were its principles, what its connections, etc. The resolution contained the usual provisions giving the committee subpoena powers, and directing the committee in its report to make recommendations for such legislation, if any, as the committee deemed advisable.

Congressman Doakes had originally introduced the resolution because of a series of articles in one of the Minnesota newspapers alleging that the Bund was a secret political organization, dominated by a parent organization abroad, and existing for the purpose of seeking to establish, at the propitious moment, a fascist dictatorship in the United States. The articles that had appeared in the Minnesota newspaper were reprinted in many other newspapers throughout the United States, and voters were demanding of their Congressmen that Congress "outlaw" the Bund. The House decided upon an investigation first.

When the investigation was concluded, it became very clear that the Bund was not the sinister organization that it had been alleged to be, but was an association of persons of German descent in Minnesota who had associated themselves together for the purpose of preserving old German customs, folklore and traditions. In the committee's report to the House, the committee set forth these facts, stated that it was the committee's opinion that Congress was without any power to legislate respecting the Bund, and recommended that even if such power existed no legislation be enacted.

Immediately after the committee was constituted, it issued and served a subpoena upon *A*, who the committee had reason to believe was a member of the Bund. *A* appeared in response to the subpoena and was asked:

- (1) "Are you a member of the Liberty Bund?"
- (2) "Do you believe in a political system in which there is only one political party?"
- (3) "Did you not in August of 1945 discharge ten of your employees for having joined a labor union?"

A refused to answer the first question on the ground that the committee had no authority under the Constitution to legislate with respect to the Liberty Bund, since that organization was an educational and historical organization, whose activities were confined to the State of Minnesota, and that Congress having no power to legislate, the committee had no power to investigate. He refused to answer the second question on the ground of an asserted right of privacy of political beliefs guaranteed by the First and Fourth Amendments of the Constitution. And he refused to answer the third question on the ground that it was not pertinent to the inquiry.

The committee reported the contumacy of *A* to the House forthwith, for such action as the House might deem appropriate. *A* was brought before the House, was asked the same questions by the Speaker (pursuant to the order of the House) and was informed that the House directed him to answer. He still refused, and thereupon he was ordered by the House to be confined in jail until he should be willing to answer.

In order to show the weakness of the *Kilbourn* rule, the above hypothetical case is constructed upon the assumptions—

- (1) That if the Bund were a secret political organization, dominated by a political group in a foreign country and plotting a violent political revolution in this country, Congress had power to legislate with respect to it.
- (2) That if the Bund were merely an educational and historical association of persons in Minnesota who had associated themselves together for the purpose of preserving old German customs, folklore, and traditions, Congress had no power to legislate with respect to it.
- (3) That at the time of the contumacy of *A*, no facts had as yet been developed as to the character of the Bund.

Kilbourn v. Thompson tells us that unless the subject matter of the inquiry is one on which Congress may validly legislate, the power to inquire on that subject matter does not exist. Yet here we have a case—hypothetical to be sure but not beyond the realm of possibility—in which—under the doctrine of the *Kilbourn* case—the existence or non-existence of the power to inquire can only be determined by an inquiry itself.

Such a case shows that the auxiliary powers of the legislative branch of the Government—such as the power of inquiry—cannot be limited as set forth in the *Kilbourn* case; that the “jurisdiction” of the legislative branch must extend at least to determining whether

or not it does have jurisdiction; and that its auxiliary powers must be available to it to enable it to make that determination.

Now if the power of inquiry does extend to adducing facts for the purpose of enabling the legislative body to determine whether or not it has jurisdiction to legislate, then it is apparent that in our hypothetical case *A* had no right to remain silent when asked if he was a member of the Liberty Bund.²⁴ And since by hypothesis the inquiry was one that the House had the authority to conduct, *A* likewise had no right to remain silent when asked if he believed in a political system in which there is only one political party, for affairs are not private where their disclosure is pertinent to a lawful investigation.²⁵ The matter of *A*'s refusal to answer the third question will be discussed in a moment.

The Supreme Court three years ago gave indication it recognized that the limitations imposed upon the legislative power of inquiry by *Kilbourn v. Thompson*—as well as by the subsequent cases—are not realistic. The case was *Oklahoma Press Publishing Co. v. Walling*,²⁶ arising under the Fair Labor Standards Act.²⁷

Mr. Walling, the Administrator of the Wage and Hour Division of the Department of Labor, had issued and served on the Oklahoma Press Publishing Company, pursuant to his authority under the Fair Labor Standards Act to investigate violations of the Act, a subpoena directing the production by the company of certain of its records—including records which would indicate whether or not the company had a sufficient relationship to interstate commerce to bring it within the jurisdiction and coverage of that Act. The company, opposing the subpoena, contended, among other things, that at least "probable cause" for jurisdiction over it must be shown before it could be lawfully required by subpoena to produce its records. The Supreme Court regarded the case as involving not merely a narrow issue as to the application of the Fair Labor Standards Act, but as bringing into question *Congress' own power to make investigations*.²⁸ And it then held that "probable cause" for jurisdiction did *not* have to be shown

²⁴ *McGrain v. Daugherty*, *supra* note 8.

²⁵ *Sinclair v. United States* (1920) 279 U. S. 263. See text *infra* at note 40 and Nutting, *Freedom of Silence* (1948) 47 MICH. L. REV. 181, 213.

²⁶ (1946) 327 U. S. 186.

²⁷ 52 Stat. 1060 (1938), 29 U. S. C. §§ 201-210 (1946).

²⁸ "For to deny the validity of the orders would be in effect to deny not only Congress' power to enact the provisions sustaining them, but also its authority to delegate effective power to investigate violations of its own laws, if not perhaps also its own power to make such investigations." *Supra* note 26 at 201.

in order to validate the subpoena—that the Administrator had jurisdiction to compel production of documents in order that he might determine whether the facts showed a case within the jurisdiction of the Fair Labor Standards Act.

The Court thereupon proceeded to liken the powers of the Administrator (granted to him by Congress) to the inquisitorial power of a grand jury or the discovery powers of a court of equity, and in a footnote to its opinion stated that the investigating power of Congress itself was of the same character.²⁹ Now it seems reasonable to conclude that if Congress can vest in the Administrator of the Wage and Hour Division the power to make investigations, whose scope is limited only by the broad grant of his authority in section 11(a) of the Fair Labor Standards Act to make investigations of violations of the Act³⁰ and compel testimony therein without any prior showing, even of "probable cause," that the person whose testimony is required is subject to the jurisdiction and coverage of the Act under which the Administrator operates—or indeed is even subject to the jurisdiction of the legislative power of the United States under the Commerce clause of the Constitution—Congress itself may do the same in conducting its own investigations in aid of its own powers; and that the inquisitorial power of Congress extends to adducing facts which it can use as a basis for determining whether or not it has any power to legislate.

But does not the *Oklahoma Press* case do more? Consider for a moment the inquisitorial power of grand juries, to which the Court likened the inquisitorial power of Congress. The powers of a grand jury are vast. Some of them are described by the Court in *Blair v. United States*,³¹ cited with approval in the *Oklahoma Press* case.

He [a witness called to testify before a grand jury] is *not entitled to raise objections of incompetency or irrelevancy*, such as a party might

²⁹ *Supra* note 26 at 216, n. 55.

³⁰ Sec. 11. (a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcripts thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. 52 Stat. 1060 (1938), 29 U. S. C. § 211(a)(1946).

³¹ (1919) 250 U. S. 273, 282.

raise, for this is no concern of his. *Nelson v. United States*, 201 U. S. 92, 115.

On familiar principles, he is *not entitled to challenge the authority* of the court or of the grand jury, provided they have a *de facto* existence and organization.

He is not entitled to set limits to the investigation that the grand jury may conduct. The Fifth Amendment and the statutes relative to the organization of grand juries recognize such a jury as being possessed of the same powers that pertained to its British prototype, and in our system examination of witnesses by a grand jury need not be preceded by a formal charge against a particular individual It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime

And, for the same reasons, *witnesses are not entitled to take exception to the jurisdiction of the grand jury or the court over the particular subject-matter that is under investigation.* In truth it is in the ordinary case no concern of one summoned as a witness whether the offense is within the jurisdiction of the court or not. *At least, the court and grand jury have authority and jurisdiction to investigate the facts in order to determine the question whether the facts show a case within their jurisdiction.*^{31a}

The practice of conducting Congressional inquiries through investigating committees can make us lose sight of the fact that the *power* of inquiry exists in the Senate and House itself, that an investigating committee is merely an agent of the Senate or the House, and that the prescription of the subject matter of the investigation is necessary only because it is necessary to inform the investigating committee of the scope of its agency. There is certainly no Constitutional requirement, however, that would prevent the Senate or House as a whole from conducting an inquiry, and doing so without in any way *defining in advance its scope or purpose*. Yet if that should be done, the inappropriateness of judicial review would at once become apparent. For the court would be faced with the following impossible alternatives:

- (1) Presuming that the legislative body did not have a bona fide legislative purpose in mind; or
- (2) Passing upon whether particular information sought by compulsory process was pertinent to *any one* of myriad subject

^{31a} Emphasis added.

matters with respect to which Congress might validly legislate, or, if not, whether it was pertinent to a determination by the Senate or House that Congress lacked power to legislate on *any one* of myriad other subject matters.

In any event under alternative (2), the court would hardly be exercising judicial power, for what is or is not pertinent to legislative decisions would seem to be essentially a question of legislative judgment.

If judicial review would be inappropriate if the Senate or House itself should conduct the inquiry and not define the scope or purpose thereof, is it nevertheless appropriate where the Senate or House exercises the inquisitorial power through a committee created by a resolution that sets forth the scope of the committee's powers?

Let us return for a moment to the hypothetical case of the investigation of the Liberty Bund. It will be recalled that the committee asked *A* if he had not at one time discharged ten of his employees for having joined a labor union—a question that does not appear to be pertinent to the matter into which the committee was authorized by the House to inquire. But it is a question dealing with a subject matter on which Congress may certainly lawfully legislate,³² if *A*'s business has a sufficient relationship to interstate or foreign commerce.

When *A* refused to answer this question, let us assume that the following transpired:

The committee reported *A*'s refusal to the House. Upon receiving the report of its committee, the House ordered the Sergeant-at-Arms to bring *A* before the House to show cause why he should not be punished for contempt. *A* appeared before the House in the custody of the Sergeant-at-Arms, and argued to the House that he had respectfully declined to answer the question because it was not pertinent to the committee's inquiry. Thereupon the House by its vote directed the Speaker to propound the same question to *A* and to inform him that the House ordered him to answer. When the Speaker propounded the question, *A* still refused to answer. The House then by its vote directed the Sergeant-at-Arms to confine *A* in jail until he should be willing to answer.

The above-described procedure has been assumed because it is substantially the same procedure followed when *Kilbourn* refused to answer the questions that were propounded to him by the House committee investigating the failure of Jay Cooke & Sons. It will be noted that when the committee made its report to the House, the House did not forthwith determine that *A* was in contempt for refusing to answer

³² National Labor Relations Board v. Jones & Laughlin Steel Corp., *supra* note 13.

before the committee. What the House did was itself to propound the question to *A*, and then, when *A* refused to answer to the House—but not before—to order him punished for contempt of the House. The question was asked by the House itself, not by a committee acting outside the scope of its authorized inquiry.

Let us assume first that *A* sought judicial relief by habeas corpus when the Sergeant-at-Arms of the House arrested him for the purpose of bringing him for the first time before the House—*i.e.*, the House has not as yet made any determination as to *A*'s duty to answer.³³ It seems fairly clear that at this stage of the proceeding, judicial review would be inappropriate if we are correct in our assumption that the House itself may exercise the legislative power of inquiry without defining the scope or purpose thereof. For at this stage of the proceeding all that has been done has been the ordering of *A* to be brought before the House.³⁴ And whether the court thinks the question propounded to *A* to be pertinent or not, up to this point there has been no determination by the House itself on the question of pertinency.³⁵ Judicial review at this stage would involve an assumption by the court either that (1) the House had no authority under any circumstances to cause *A* to be brought before it to give testimony, or (2) the House was going to compel *A* to give information that he had a right to withhold.

Let us next assume that when the Sergeant-at-Arms arrests *A* for the purpose of bringing him before the House, *A* decides to "go quietly." Now when the House (with *A* before it) directs the Speaker to ask *A* if he did not discharge ten of his employees for having joined a union, such vote could mean either (1) that the House considered the question pertinent to the investigation of the Liberty Bund, or (2) that, whether or not pertinent to that investigation, the House

³³ It was at this stage of the legislative procedure that Mr. Daugherty applied for a writ of habeas corpus. *McGrain v. Daugherty*, *supra* note 8. The question of pertinency was not involved in his case, however, although it would have been if the Senate had commanded him to produce the same records which he had been ordered to produce under the subpoena that had previously been issued and served upon him by the Senate investigating committee.

³⁴ Query whether an arrest may be made by the Senate or House where a previous subpoena has not been issued and disregarded. See *McGrain v. Daugherty*, *supra* note 8.

³⁵ The House Committee, of course, deemed the question pertinent, else it would not have reported *A*'s refusal to answer to the House. But the Committee has no powers of punishment—nor has it any powers of arrest. The rationale of the principle requiring a party injured by administrative action to exhaust his administrative remedies before seeking judicial relief would seem to be equally applicable in the case of a person claiming to be injured by legislative action who has not exhausted his legislative remedies.

desired the information in any event for some other legislative purpose. But in either case it is the *House*—not the committee—that is making the determination. And the House is punishing *A* not for refusing to answer before the committee, but for refusing to answer before the *House*—and for refusing to answer a question dealing with a subject matter with respect to which (in our hypothetical case) Congress admittedly has the power to legislate.

In such a case what is there to review? If the House considered the question pertinent to the investigation of the Liberty Bund, and for that reason directed *A* to answer, has not the House merely exercised a *legislative* judgment as to what information it—the legislative body—considered that it should have in order to enable it to make a *legislative* decision on a purely legislative matter? On the other hand, if the action of the House ordering *A* to answer meant that whether or not the question was pertinent to the investigation of the Liberty Bund, the House desired the information in any event for some other legislative purpose, is not the House in effect conducting an inquiry itself without defining the scope or purpose thereof?⁸⁶

Now if, as indicated in the *Oklahoma Press* case,⁸⁷ the Congressional power of investigation extends to investigating for the purpose of determining if the facts show whether or not Congress can legislate at all, if an investigation does not have to be preceded by the adoption of a resolution defining its scope and purpose, and if the Congressional power of investigation is like the inquisitorial power of a grand jury, then it becomes impossible for a court to exercise a power of review with respect to the lawfulness of such investigations, unless the court presumes bad faith on the part of a coordinate branch of the Government. And moreover, questions of "pertinency" in legislative inquiries become questions that by their very nature cannot be determined judicially—they become questions that courts cannot determine at all without in effect rendering advisory opinions as to what facts it would be appropriate for Congress to consider, for the Senate

⁸⁶ Even if the court is of the opinion that the House's decision on the question of pertinency is clearly and unmistakably erroneous, the House's error of decision should not affect its "jurisdiction" to decide so as to make its "judgment" subject to collateral attack. *Supra* note 12. *Craig v. Hecht* (1923) 263 U. S. 255. This case involved section 268 of the Judicial Code, which grants to district courts "jurisdiction" to punish as criminal contempts only those contempts, among others, as are committed in the presence of the court or so near thereto as to obstruct the administration of justice. The Court held that the decision of a district court that a contempt was of this character could not be attacked collaterally through a habeas corpus proceeding. Cf. *Craig v. Harney* (1947) 331 U. S. 367.

⁸⁷ *Supra* note 26.

or House to consider, in forming a legislative judgment first as to whether it may legislate, next as to whether it should legislate, and finally as to how it should legislate. The exercise of that judgment is made through the collective action of the members, upon their oath of office—substantially the same oath that judges take. And their decision as to what is or is not relevant to the exercise of that judgment should be binding and conclusive upon the world.

What has been the result of the assumption by the courts of the power of judicial review with respect to legislative inquiries? Since the contumacies of M. M. Daugherty and Harry Sinclair, if witnesses have received any comfort at all in the possibility of judicial shelter from persistent legislative inquisitors, such comfort can be a theoretical comfort at best. And since the *Oklahoma Press* case the possibility of judicial relief is remote indeed. Let us consider for a moment the "rights" that witnesses in legislative inquiries have. The general contours of those rights are set forth in the Sinclair case:

.... that case [the *Daugherty* case] shows that, while the power of inquiry is an essential and appropriate auxiliary to the legislative function, it must be exerted with due regard for the rights of witnesses, and that a witness rightfully may refuse to answer where the bounds of the power are exceeded or where the questions asked are not pertinent to the matter under inquiry.

It has always been recognized in this country, and it is well to remember, that few if any of the rights of the people guarded by fundamental law are of greater importance to their happiness and safety than the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of their personal and private affairs

But it is clear that neither the investigation authorized by the Senate resolution above mentioned nor the question under consideration related merely to appellant's private or personal affairs.³⁸

What of the right of privacy? *Kilbourn v. Thompson*³⁹ sought to give substance to that right by holding a Congressional investigating committee to be devoid of power to inquire into private affairs and compel their disclosure. The *Sinclair* case, however, without in any way indicating an intention to dilute the principle of the *Kilbourn* case seems to announce that private affairs are not private where their disclosure is pertinent to an investigation that the Senate is authorized to conduct. But the Court, out of respect for determina-

³⁸ *Supra* note 25 at 291, 294. Emphasis added.

³⁹ *Supra* note 4.

tions of a coordinate branch of the Government—plus, possibly, the necessity with which it would otherwise be faced of being required to pass upon the scope of the legislative powers of Congress in advance of their exercise—had previously developed the doctrine that the lawfulness of such an investigation will be presumed—or at least a bona fide legislative purpose will be presumed.⁴⁰ So unless the requirement that the testimony be “pertinent” affords a witness in a legislative inquiry some effective judicial protection of his right of privacy, he must, for all practical purposes, look exclusively to his inquisitors to respect that right.

The *Sinclair* case tells us that the question of pertinency is a question of law—at least insofar as the crime defined in section 102 of the Revised Statutes⁴¹ is concerned. But it is a question of law the decision of which in judicial proceedings is in practice left for the most part to the discretion of the trial judge.⁴² If an analogous practice is to govern in the case of legislative inquiries, decisions on questions of pertinency will be left for the most part to the discretion of the legislative inquisitors. That this is actually what is done is shown by *Townsend v. United States*,⁴³ wherein the United States Court of Appeals for the District of Columbia, in reviewing the conviction of Dr. Francis Townsend, under section 102 of the Revised Statutes, for refusing to answer questions put to him by a committee of the House of Representatives investigating old-age pension plans, and for “walking out” of the committee room and refusing to return while he was under subpoena, said:

A *legislative* inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress A *judicial* inquiry relates to a case, and the evidence to be admissible must be measured by the narrow limits of the pleadings. A *legislative* inquiry anticipates all possible cases which may arise thereunder, and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad. Many a witness in a judicial inquiry has, no doubt, been embarrassed and irri-

⁴⁰ *In re Chapman* (1897) *supra* note 21; *McGrain v. Daugherty*, *supra* note 8. As to conclusiveness of the presumption that inquiry has a lawful legislative purpose, *cf.* *United States v. Johnson* (1943) 319 U. S. 503, questioning whether a recital by grand jury that its indictment was based on an investigation begun during its original term and not on a prohibited investigation begun during an extended term, can ever raise a traversible issue.

⁴¹ *Supra* note 22.

⁴² Honorable Charles E. Wyzanski, Jr., *Congressional Investigations*, Record of the Association of the Bar of the City of New York, March 1948, reprinted in (1948) 94 CONG. REC., A1547.

⁴³ (App. D. C. 1938) 95 F. (2d) 352, 361.

tated by questions which to him seemed incompetent, irrelevant, immaterial, and impertinent. But that is not a matter for a witness finally to decide. Because a witness could not understand the purpose of cross-examination, he would not be justified in leaving a courtroom. The orderly processes of judicial determination do not permit the exercise of such discretion by a witness. *The orderly processes of legislative inquiry require that the committee shall determine such questions for itself. Within the realm of legislative discretion, the exercise of good taste and good judgment in the examination of witnesses must be entrusted to those who have been vested with authority to conduct such investigations.*⁴⁴

Thus even though the question of the pertinency of the information required of a witness is a question of law, and no presumption will be indulged in favor of its pertinency (at least in a criminal prosecution where the presumption of innocence prevails),⁴⁵ nevertheless, by reason of the necessarily wide range of legislative inquiries and the discretion that the courts (even for purposes of the crime defined in section 102 of the Revised Statutes) will entrust to the inquisitors, the witness must in practical effect look exclusively to the inquisitors themselves to protect him against being compelled to disclose private affairs that he regards as not being pertinent.

Moreover, whatever judicial protection exists in this regard involves the exercise by the witness of a Hobson's choice. Under the current legislative practice of citing contumacious witnesses for prosecution under section 102 of the Revised Statutes, rather than seeking to punish them by legislative processes, a witness must risk a fine or jail sentence, or both, in order to vindicate his position. For should the courts find that the witness was in error in his assertions of irrelevancy his mistake of law is no defense.⁴⁶

While the claim of the privilege against self-incrimination before a Congressional investigating committee has not as yet given rise to any judicial proceeding,⁴⁷ it might nevertheless be appropriate also to consider it at this time. Section 103 of the Revised Statutes⁴⁸ pro-

⁴⁴ *Ibid.* Emphasis added.

⁴⁵ *Sinclair v. United States*, *supra* note 21.

⁴⁶ *Ibid.*; *Townsend v. United States*, *supra* note 43.

⁴⁷ In *United States v. De Lorenzo* (C. C. A. 2d, 1945) 151 F. (2d) 122 the witness claimed his privilege, was told that he had no right to claim such privilege before a Congressional investigating committee, then answered incriminating questions, and was later prosecuted. The court found that it was not the witness' answers which had brought about his prosecution, but the information which Congressman Hebert already had and which prompted Congressman Hebert to ask the incriminating questions.

⁴⁸ 2 U. S. C. § 193 (1946).

vides that the privilege against self-incrimination will not be recognized in Congressional investigations. (Section 859 of the Revised Statutes⁴⁹ makes the testimony inadmissible in criminal proceedings but does not state that the witness shall be immune from prosecution for an offense to which the question relates.) However, despite this provision, during the last two or three years—particularly in the case of the investigations of the Committee on Un-American Activities—this privilege has been asserted by witnesses to a greater extent than any other alleged privilege or right.

Yet no instance has been found in which the claim of privilege was not respected by the committee, even where it appeared that there was lack of good faith in claiming the privilege.⁵⁰ In judicial proceedings, a witness who claims his privilege against self-incrimination is not the final arbiter of whether he has properly done so, and it is the function of the court to determine whether there is a reasonable possibility that incrimination may result from the testimony.⁵¹ If the court decides against the claim of privilege, the witness is bound to answer, else he subjects himself to punishment for contempt.⁵² Moreover the order of the court adjudging him in contempt for refusing to answer after being directed to do so, and imposing punishment of fine or imprisonment, or both, is not subject to collateral attack.⁵³

Judicial expression appears to be non-existent as to whether a Congressional committee has the same power that the courts have to deny the claim of privilege where the possibility of incrimination is so remote as to be wholly insubstantial. The need for such a power in legislative investigating committees is obvious, however. To require such a committee to accept the mere statement of a witness that his answer might incriminate him would convert a salutary protection into a means of abuse. Should errors be committed in the exercise of

⁴⁹ 28 U. S. C. § 634 (1946). This "immunity bath" provision contains precisely the same defects which were found by the Supreme Court in *Counselman v. Hitchcock* (1892) 142 U.S. 547, to render invalid section 860 of the Revised Statutes. Section 859 (like section 860) provides merely that the testimony itself which was given under compulsion cannot be used as evidence against the witness in a criminal proceeding. It does not prohibit prosecution on the basis of evidence discovered as a result of that testimony. *Counselman v. Hitchcock*, *supra*, held that the fifth amendment privilege against self-incrimination gives a witness a right to refuse to testify if his testimony could be used for the purpose of discovery of evidence of his crime, and that thus the immunity sought to be granted by section 860 did not extend to the limits of the privilege.

⁵⁰ Cf. *United States v. De Lorenzo*, *supra* note 47.

⁵¹ *Mason v. United States* (1917) 244 U. S. 362.

⁵² *Ibid.*

⁵³ *Ex parte Kearney* (U. S. 1822) 7 Wheat. 38.

such a power, it seems reasonably clear now that the testimony erroneously exacted from the witness under compulsion could not be used either directly or indirectly to convict him of crime even in the absence of a statute to this effect.⁵⁴

So the "rights" of a witness in a Congressional inquiry that are entitled to judicial protection under the doctrine of judicial review come down to these at most:

(1) A witness does not have to respond to questions in an investigation that the Congress has no Constitutional authority to make, but lawfulness of the investigation in this regard is presumed. Moreover, since the *Oklahoma Press* case, a greatly expanded scope of the Constitutional power of Congress to investigate seems to be recognized.

(2) A witness does not have to respond to questions that pry into his private affairs, but no affairs are private which are pertinent to a lawful investigation.

(3) While the question of pertinency is a question of law, a wide discretion must necessarily be, and in fact is, given to the inquiring body to determine this question for itself, and because of the wide scope of legislative investigations, the question of pertinency must necessarily be, and in fact is, determined by very broad standards.

(4) If a witness can claim his privilege against self-incrimination and refuse to answer, it is only because of the failure of Congress up to now to amend section 859 of the Revised Statutes in order to give the witness "absolute immunity against future prosecution for the offence to which the question relates."⁵⁵

(5) If a witness may not lawfully refuse to answer by claiming his privilege against self-incrimination, the investigating committee nevertheless usually gives him the right to do so.

(6) If a witness claims the privilege against self-incrimination in bad faith, or because of only extremely remote possibilities of incrimination, the investigating committee (even assuming the invalidity of section 859 of the Revised Statutes) may disallow the claim and compel the witness to answer.⁵⁶

⁵⁴ *Davis v. United States* (1946) 328 U. S. 582; *Bell v. Hood* (S. D. Cal. 1947) 71 F. Supp. 813. Cf. *Gibson v. United States* (App. D. C. 1945) 149 F. (2d) 381, *cert. denied*, 326 U. S. 708; *United States v. Johnson* (M. D. Pa. 1947) 76 F. Supp. 538, 542.

⁵⁵ *Counselman v. Hitchcock*, *supra* note 49 at 586.

⁵⁶ Witnesses before Congressional investigations have asserted other rights and privileges, but the rights and privileges so asserted have not received sympathetic consideration from the courts. For example, the privilege that an attorney has at common law to decline to reveal confidential communications from his client has been asserted in Congressional investigations, but asserted unsuccessfully. Cf. *Jurney v. McCracken*, *supra* note 19. Members of the Communist Party who are called to appear before Con-

Such are the results that have been brought forth from the labor of *Kilbourn v. Thompson*. Those results were inevitable, because legislative bodies do not deal with "a case" whose subject matter is confined by the narrow limits of formal pleading. They do not deal with merely a limited number of traditional "causes of action." They deal with countless ideas whose contours in the beginning, at least, are usually vague and shadowy—ideas put forth as a means of serving some public need. Those ideas must be investigated and developed in the light of countless facts in order to give them form so that their worth can be appraised. It is the job of legislative bodies to do these things, and they cannot do that job well if they are to be stopped at the threshold of their contemplations by judicial action.

Kilbourn v. Thompson sought to treat the legislative branch of the government, when exercising a power (punishment for contempt) like that which courts exercise, as if it were an inferior tribunal in the judicial hierarchy, confined in its jurisdiction to the consideration of a limited number of easily defined "cases" or subject matters. The *Oklahoma Press* case, as well as the nature of the legislative function itself, shows that the legislative power of inquiry cannot be so confined. Would dire consequences result if we should abandon *Kilbourn v. Thompson* and return the workings of the legislative process to the exclusive jurisdiction and control of the legislature? Perhaps the consequences would be beneficial. Legislators, like other members of the human race, are subject to the common human failing of being careless if someone else is available to review and correct their mistakes. "Interference by the courts is not conducive to the development of habits of responsibility."⁵⁷ Full and final responsibility for power, on the other hand, induces care in its exercise.

gressional investigating committees usually contend (if the committee includes Southern members) that the committee is illegally constituted in that the Southern members (1) were unlawfully elected because Negroes were not permitted to vote in the primary elections, or (2) are not legally members because, by reason of section 2 of the XIVth Amendment of the Constitution, the office to which they were purportedly elected is non-existent. Cf. *Dennis v. United States* (App. D. C. 1948) 171 F. (2d) 986, *cert. granted*, June 27, 1949, 337 U. S. 954. Witnesses, asked if they are members of the Communist Party, etc., frequently refuse to answer on the ground of an asserted right of privacy of political beliefs alleged to be guaranteed by the First Amendment of the Constitution. This asserted right, however, has been denied by the courts. *Lawson v. United States* (App. D. C. 1949) 176 F. (2d) 49. See also *Barsky v. United States* (App. D. C. 1948) 167 F. (2d) 241, *cert. denied*, (1948) 334 U. S. 843. For other asserted rights see *United States v. Josephson* (C. C. A. 2d 1947) 165 F. (2d) 82, *cert. denied* (1948) 333 U. S. 838.

⁵⁷ *Federal Communications Comm'n v. Pottsville Broadcasting Co.* (1940) 309 U. S. 134, 146.

EXHIBIT No. 10

**ADMINISTRATIVE REGULATIONS RESTRICTING DISCLOSURE
OF INFORMATION**

MEMORANDUM

April 28, 1958.

To: Hon. Thomas C. Hennings, Jr., chairman, Senate Subcommittee on Constitutional Rights (attention : Mr. Charles H. Slayman, Jr., counsel).

From: American Law Division, Legislative Reference Service, Library of Congress.

Subject: SELECT LIST OF ADMINISTRATIVE REGULATIONS RESTRICTING DISCLOSURE OF GOVERNMENT INFORMATION.

- C. F. R. 7: 1.2, 1.5, 1.6, 1.9, 1.10, 61.24, Agriculture, Department of.
61.42, 68.51; 17: 1.5.
- C. F. R. 7: 900.210, 909.115----- Agriculture, Department of: Agricultural Marketing Service.
- C. F. R. 9: 201.96----- Agriculture, Department of: Packers and Stockyards Division.
- C. F. R. 10: 2.790, 9.4, 9.7, 25.12, 25.15, Atomic Energy Commission.
95.31 (b).
- C. F. R. 14: 415.2----- Civil Aeronautics Administration.
- C. F. R. 14: 303.18, 311.2 (b, 2), 311.3 (e), 399.25. Civil Aeronautics Board.
- C. F. R. 5: 29.12----- Civil Service Commission.
- C. F. R. 15: 382.14----- Commerce, Department of: Bureau of Foreign Commerce.
- C. F. R. 15: 701.3----- Committee for Reciprocity Information,
- C. F. R. 19: 4.95, 26.2 (b), 26.3, 26.4 (f), 26.5 (b), 26.7. Customs Bureau.
- C. F. R. 32: 66.15 to 66.17, 66.26, 67.1-4, Defense, Department of.
71.2-402.
- C. F. R. 32: 805.1, 805.4 (a-d), 805.5, 805.6 to 805.8, 805.10 to 805.11. Defense, Department of: Air Force.
- C. F. R. 32: 504.12, 504.14, 504.15 (c), 505.7 to 505.12, 505.14, 505.17 (d, 3), 505.20. Defense, Department of: Army.
- C. F. R. 32: 701.1 (b, c, h, i), 701.2, 701.3 (b), 744.5 (b, d). Defense, Department of: Navy.
- C. F. R. 45: 320.3, 320.6----- Federal Credit Unions, Bureau of.
- C. F. R. 12: 309.1 (b, 2), 309.2 (a)----- Federal Deposit Insurance Corporation.
- C. F. R. 46: 201.167----- Federal Maritime Board.
- C. F. R. 12: 261.3----- Federal Reserve Board.
- C. F. R. 12: 271.2----- Federal Reserve System: Open Market Committee.
- C. F. R. 18: 1.36 (e, f)----- Federal Power Commission.
- C. F. R. 16: 1.133 to 1.134----- Federal Trade Commission.
- C. F. R. 21: 3.37 (b), 4.1 (c), 130.32---- Food and Drug Administration: Department of Health, Education, and Welfare.
- C. F. R. 42: 400.2----- Freedmen's Hospital: Department of Health, Education, and Welfare.
- C. F. R. 4: 3.2, 81.4----- General Accounting Office.
- C. F. R. 44: 1.2, 1.5, 4.3----- General Services Administration
- C. F. R. 45: 6.4----- Health, Education, and Welfare, Department of

- C. F. R. 42: 1.102 (b), 1.103, 1.104, 1.108. Public Health Service: Department of Health, Education, and Welfare.
- C. F. R. 24: 141.4 (b)----- Home Loan Bank Board.
- C. F. R. 24: 840.44----- Housing Expediter, Office of.
- C. F. R. 24: 300.1, 300.2, 300.4 (d, 3)--- Public Housing Administration: Housing and Home Finance Agency.
- C. F. R. 43: 2.1, 2.2 (c)----- Interior, Department of.
- C. F. R. 30: 302.20----- Interior, Department of: Oil and Gas Division.
- C. F. R. 26: 601.702 (a), (1, 6), (b, d)----- Internal Revenue Service.
- C. F. R. 28: 1.15, 12.40----- Justice, Department [See also: Departmental Orders Nos. 3329, 3464; Fed. Reg. 18: 1368; Syracuse L. R. (1956) 8:11]
- C. F. R. 8: 503.17----- Justice, Department of: Office of Alien Property.
- C. F. R. 29: 2.7----- Labor, Department of.
- C. F. R. 20: 1.21 to 1.22, 31.22, 41.21, 61.18 to 61.19. Labor, Department of: Bureau of Employees' Compensation.
- C. F. R. 29: 1401.2 to 1401.3----- Labor, Department of: Federal Mediation and Conciliation Service.
- C. F. R. 29: 511.14----- Labor, Department of: Wages and Hours Division.
- C. F. R. 5: 220.6 (b)----- Loyalty Review Board.
- C. F. R. 29: 102.89----- National Labor Relations Board.
- C. F. R. 20: 401.1 to 401.3----- Old Age and Survivors Insurance, Bureau of: Department of Health, Education, and Welfare.
- C. F. R. 37: 1.14, 2.7, 5.2, 100.67, 201.26----- Patent Office: Department of Commerce.
- C. F. R. 39: 3.1, 4.3, 4.4 (b, c)----- Post Office Department.
- C. F. R. 20: 262.16----- Railroad Retirement Board.
- C. F. R. 42: 300.2----- St. Elizabeth's Hospital; Department of Health, Education, and Welfare.
- C. F. R. 17: 201.13 (i, k), 230.122, 230.171 (c), 230.485, 230.486 (d), 240.0-4, 240.6 (c), 250.104 (c), 250.105 (c), 260.0-6. Securities and Exchange Commission.
- C. F. R. 32: 1606.31 to 1606.32, 1606.35, 1670.5, 1670.8, 1670.12. Selective Service System.
- C. F. R. 13: 105.3 to 105.5----- Small Business Administration.
- C. F. R. 31: 1.2 (a, c, e, g), 1.4----- Treasury, Department of
- C. F. R. 31: 92.27, 92.29----- Treasury, Department of: Bureau of the Mint.
- C. F. R. 31: 13.2 (c)----- Treasury, Department of: Committee on Practice.
- C. F. R. 31: 351.2----- Treasury, Department of: Office of the Treasurer.
- C. F. R. 38: 1.454, 1.500, 1.505, 1.507, 1.510, 1.511 (c), 1.514, 1.517, 1.520, 1.521, 1.525 (a, 2) (b, 3-4). Veterans' Administration.
- C. F. R. 45: 401.58----- Vocational Rehabilitation, Office of: Department of Health, Education, and Welfare.

*By Norman J. Small,
American Law Division.*

EXHIBIT No. 11

COMPILATION OF ADMINISTRATIVE REGULATIONS RESTRICTING DISCLOSURE OF GOVERNMENT INFORMATION

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DEPARTMENT OF AGRICULTURE

TITLE 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART I—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

§ 1.2 *Confidential records.* The following records are confidential and shall not be subject to examination, nor shall copies thereof be furnished upon any request except in proper cases from Federal official sources:

(a) All records and reports required by statutes to be held confidential by the Department.

(b) Blueprints of meat slaughtering or meat, poultry or dairy products processing plants and establishments.

(c) Producers' referendum ballots.

(d) Minutes of meetings (except resolutions extracted therefrom) of Boards of Directors of Corporations under administrative supervision of the Department of Agriculture or any of its agencies, and Agricultural Stabilization and Conservation State and County committees.

(e) Records of audits other than information with respect thereto authorized by the Secretary of Agriculture or the Board of Directors of Corporations to be made available and other than records of audits included under § 1.3 (b) (5).

(f) Reports furnished the Department confidentially by dealers, manufacturers, or associations thereof covering quantities of commodities processed, purchased or sold during prescribed periods and the price paid therefor.

(g) Documents, photographs or maps of other government agencies required to be held confidential under regulations or orders of the other government agency.

(h) Personnel investigative reports, or investigative data of any type, whether relating to loyalty or other aspects of an individual's record, shall not be furnished to any person, committee, or agency outside the Department, but the contents of such reports may be discussed with, or examined by those persons in the Executive Branch who are entitled thereto by reason of their official duties.

(i) Investigative or accounting reports (including such reports involving fiscal activities of employees) made to determine compliance with law or regulations, or reports of inspection operations.

(j) Records of research, experimentation and physical analysis of samples and other materials in the course of investigations, including patent records, prior to publication, release, or use of the results thereof.

(k) Records, reports and estimates of crops for consideration and release by Crop Reporting Board prior to formal release.

(l) Charges, complaints and other processes in adjudicative proceedings prior to publication or use.

[11 F. R. 177A-233, Sept. 11, 1946, as amended at 12 F. R. 1389, Feb. 27, 1947; 13 F. R. 1807, Apr. 2, 1948]

§ 1.5 *Records available to properly interested persons.* All other records of the Department and of corporations under the administrative supervision of the Department shall be made available if so determined by the administrative head of the bureau, agency, branch, or corporation having custody of same, to persons properly and directly concerned, and in making his determination he shall be guided by the following considerations:

(a) Whether the release of the record will jeopardize future government access to information.

(b) Whether the release of the record at the time is premature and will improperly affect a pending action.

(c) Whether the disclosure of the record will have the effect of hindering free administrative decisions in the same or similar matters in the future.

(d) Whether the purpose for which the record is sought is prejudicial to the public interest.

(e) Whether the record is already otherwise made public, such as reports of public hearings and conferences, recorded maps, plats and documents, records published for the information of the public, and material of a similar public nature.

§ 1.6 Other information. Any other information expressly or impliedly obtained or received in confidence, or relating to pending cases, or dealing with studies, inspections, or investigations of the Department or its collaborators, or otherwise confidential, shall not be available unless the head of the bureau, agency or branch concerned otherwise determines on the basis of the considerations prescribed in § 1.5.

§ 1.9 Denial of access to record. The administrative head of the bureau, agency or branch having custody of the record shall give prompt written notice of a denial, in whole or in part, of any written application, petition or other request of an interested party when made in the course of a departmental proceeding, and shall set forth a simple statement of the grounds for such refusal. In any other case, the reasons for refusal shall be available to the applicant.

§ 1.10 Compulsory process. Where it is sought to require by subpoena duces tecum or other compulsory process the production of any record of the Department enumerated under § 1.2, or any record enumerated under § 1.3 which subordinate officers of the Department have no discretion thereunder to disclose, the record shall not be disclosed except where it is determined by the Secretary that such disclosure will not be prejudicial to the public interest. Where the production of any record or other information within the purview of §§ 1.4, 1.5, or 1.6 or any record enumerated in § 1.3 not covered by the first sentence of this section is required by subpoena duces tecum or other compulsory process, it may be made available by the administrative head of the bureau, agency, branch or corporation having custody, upon making the determination prescribed in such paragraph; however, he must immediately notify the Secretary of the issuance of the subpoena and of the documents being disclosed. If the administrative head of the bureau, agency, or branch determines that the production of the record under such process should not be made, he will forward a full report of the matter promptly to the Secretary, and no disclosure shall be made except upon the determination of the Secretary. In any case of service of such compulsory process upon an officer or employee of the Department where the determination by the Secretary is required by this section, such officer or employee will appear in answer thereto and, unless otherwise expressly directed by the Secretary, respectfully decline to produce the records or information specified therein on the ground that the disclosure is prohibited by this section.

[13 F. R. 1807, Apr. 2, 1948]

CHAPTER I—STANDARDS, INSPECTIONS, PRACTICES

PART 61—COTTONSEED SOLD OR OFFERED

LICENSED COTTONSEED CHEMISTS

§ 61.24 Information on grading to be kept confidential. Every person licensed under the act as a licensed chemist shall keep confidential all information secured by him relative to cottonseed analyzed and graded by him. He shall not disclose such information to any person except to the owner or custodian of the seed in question, or to an authorized agent of the Department.

LICENSED COTTONSEED SAMPLERS

§ 61.42. Information on sampling to be kept confidential. Every person licensed under the act as a sampler of cottonseed shall keep confidential all information secured by him relative to shipments of cottonseed sampled by him. He shall not disclose such information to any person except an authorized representative of the Department.

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

§ 68.51 *Inspection records confidential.* Unless otherwise provided by the regulations in this part or, by other regulations of the Department, records of any inspections, including but not limited to, copies of any inspection, re-inspection, or appeal inspection certificates issued, records of such certificates, applicant's accounts, or other information relating to the work of any office of inspection shall not be made available to, or be opened for examination by, any person who is not connected with the inspection service provided by the regulations in this part, and such records shall be held strictly confidential and for reference only by the Director, the inspector in charge of such office of inspection, his assistants, and such inspector's supervising inspector. Summarized reports which do not disclose the operations of any individual grower, shipper, or other interested party and which are identified clearly as to source and contents may be released to the public: *Provided*, That, when so released, they shall be published in such manner and in such media as will make the information available alike to all interested parties.

TITLE 17—COMMODITY AND SECURITIES EXCHANGE**PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT**

§ 1.5 *Information confidential; disclosures to contract-market committees and officials.* No officer or employee of the Department of Agriculture shall publish, divulge, or make known in any manner, except insofar as may be required in the performance of his official duties or by a court of competent jurisdiction, any facts or information regarding the business of any person which may come to the knowledge of such officer or employee through any inspection or examination of the reports or records of, or through any information given by, any person pursuant to the Commodity Exchange Act or rules and regulations in this chapter: *Provided, however*, That this prohibition shall not apply to disclosures made in good faith to the Business Conduct Committee or other proper committee or official of a contract market of matters in respect to which such contract market has responsibility or duty under the Commodity Exchange Act, or which, in the judgment of the Act Administrator, adversely affect such market or are prejudicial to the interests of producers or consumers.

(Sec. 8, 42 Stat. 1003, as amended; 7 U. S. C. 12)

DEPARTMENT OF AGRICULTURE: AGRICULTURAL MARKETING SERVICE

TITLE 7—AGRICULTURE

CHAPTER 9—AGRICULTURAL MARKETING SERVICE

PART 900—GENERAL REGULATIONS

§ 900.210 *Disclosures of information.* All information in the possession of any official which relates to the business or property of any person, and which was furnished by, or obtained from, such person pursuant to the provisions of any marketing agreement or marketing order, shall be kept confidential and shall not be disclosed, divulged, or made public, unless otherwise expressly provided in said marketing agreement or marketing order, or unless said person authorizes said official, in writing, to disclose such information, except that:

(a) Such information may be disclosed, divulged, or made public if it has been obtained from or furnished by a person who is not the person to whose business or property such information relates or an employee of such latter person, or if such information is otherwise required by law to be furnished to an official;

(b) Such information may be furnished to other officials for use in the regular course of their official duties;

(c) Such information may be combined and published in the form of general statistical studies or data in which the identity of the person furnishing such information or from whom it was obtained shall not be disclosed;

(d) Such information may be disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or, if the Secretary determines that such disclosure is not contrary to the public interest, such information may be disclosed in response to a subpoena by any court of competent jurisdiction.

(e) Such information may be offered in evidence (whether or not it has been obtained from or furnished by the person against whom it is offered) by or on behalf of the Secretary, the United States, or the official who obtained it or to whom it was furnished, in any administrative hearing held pursuant to section 8c (15) (A) of the act or in any action, suit, or proceeding, civil or criminal, in which the Secretary or the United States or any such official is a party, and (1) which is instituted (i) for the purpose of enforcing or restraining the violation of any marketing agreement or marketing order, or (ii) for the purpose of collecting any penalty or forfeiture provided for in the act, or (iii) for the purpose of collecting any monies due under a marketing agreement or marketing order, or (2) in which the validity of any marketing agreement or marketing order, or any provision of either, is challenged or involved.

(f) Such information may be furnished to the duly constituted authorities of any State, pursuant to a written agreement made under authority of section 10 (i) of the act, to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities.

[13 F. R. 8596, Dec. 29, 1948, as amended at 17 F. R. 11429, Dec. 18, 1952]

PART 909—ALMONDS GROWN IN CALIFORNIA

§ 909.115 *Confidential information.* All reports and records furnished or submitted by handlers to the board which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received shall be received by and at all times kept in the custody and under the control of one or more employees of the board, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this paragraph, information may be disclosed to the board when necessary to enable the board to carry out its functions under this subpart.

**AGRICULTURAL MARKETING SERVICE, DEPARTMENT
OF AGRICULTURE (PACKERS AND STOCKYARDS
BRANCH)**

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

§ 201.96 *Packers, stockyard owners, registrants, or licensees; information concerning business not to be divulged.* No agent or employee of the United States shall, without the consent of the packer, stockyard owner, registrant, or licensee concerned, divulge or make known in any manner, except to such other agent or employee of the United States as may be required to have such knowledge in the regular course of his official duties or except insofar as he may be directed by the Secretary or by a court of competent jurisdiction, any facts or information regarding the business of any packer, stockyard owner, registrant, or licensee which may come to the knowledge of such agent or employee through any examination or inspection of the business or records of the packer, stockyard owner, registrant, or licensee or through any information given by the packer, stockyard owner, registrant, or licensee pursuant to the act and regulations in this part.

ATOMIC ENERGY COMMISSION

TITLE 10—ATOMIC ENERGY

AVAILABILITY OF OFFICIAL RECORDS

§ 2.790 Public inspection, exceptions, requests for withholding. (a) Except as provided in paragraph (b) of this section or as required to protect Restricted Data or defense information, matters of official record in any proceeding subject to this part (including applications for licenses, licenses, rules, regulations, orders, transcripts of hearings, exhibits received in evidence, and decisions) will be made available for public inspection.

(b) The AEC may withhold any document or part thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. Such withholding from public inspection shall not, however, affect the right of persons properly and directly concerned to inspect the document.

(c) Persons requesting that documents or information therein be withheld from public disclosure shall make prompt application identifying the material and giving the reasons. Where the applicant is responsible for the preparation of the document, he shall insofar as is possible segregate in a separate paper the information for which the special treatment is requested. The AEC may honor the request upon a finding that public inspection is not required in the public interest and would adversely affect the interest of the person concerned. If the request is denied, the applicant will be notified thereof with a statement of the reasons.

(d) Matters of official record in any proceedings subject to this part, which are classified as Restricted Data and are within a category specified in Appendix "A", Part 25 of this chapter, will be made available for inspection by access permittees in accordance with the regulations in Parts 25 and 95 of this chapter.

[Paragraph (d) added, 21 F. R. 9741, Dec. 8, 1956]

§9.4 Exceptions. The following are not included in the public records:

(a) Documents withheld in accordance with the provisions of § 2.790 (b) and (c) of this chapter.

(b) Documents relating to personnel matters and medical and other personal information, which, under general governmental personnel practices, are not normally made public.

(c) Intra-agency and inter-agency communications, including memoranda, reports, correspondence, and staff papers prepared by members of the Commission, AEC personnel, or by any other Government agency for use within the AEC or within the executive branch of the Government.

(d) Transcript or other records of Commission meetings except those Commission meetings which constitute public hearings.

(e) Correspondence between the AEC and any foreign government.

(f) Records and reports of investigations.

(g) Documents classified as Restricted Data under the Atomic Energy Act of 1954 or classified under Executive Order No. 10501, except that documents classified as Restricted Data which would otherwise be public records defined in § 9.3 and not excepted by this part will be made available in accordance with Part 25 of this chapter or will be made available to members of Congress upon authorization by the Commission.

(h) Correspondence received in confidence by the AEC relating to an alleged or possible violation of any statute, rule, regulation, order, license or permit.

(i) Correspondence with members of Congress or congressional committees, unless and until such correspondence is released by the member of Congress or congressional committee concerned.

(j) Any other document involving matters of internal agency management.

§9.7 Production or disclosure. (a) AEC personnel shall not produce or disclose the contents of any material that falls within the scope of § 9.4, except as provided in paragraph (b) of this section.

(b) AEC personnel served with the subpoena requiring the production or disclosure of any material that falls within the scope of § 9.4 shall appear in response thereto and shall respectfully decline to produce or disclose the material called for, basing refusal upon this section: *Provided, however,* That the Commission or the General Manager may authorize the production or disclosure of any material that falls within the scope of § 9.4 if it is deemed that such disclosure is not contrary to the public interest. Any person who is served with such a subpoena shall promptly advise the AEC thereof and of any relevant facts and the Commission or the General Manager will give such instructions as it is deemed advisable.

§ 25.12 *Non-eligibility.* The following persons are not eligible to apply for an access permit:

(a) Corporations not organized under the laws of the United States or a political subdivision thereof.

(b) Any individual who is not a citizen of the United States.

(c) Any partnership not including among the partners one or more citizens of the United States; or any other unincorporated association not including one or more citizens of the United States among its principal officers.

(d) Any organization which is owned, controlled or dominated by the Government of, a citizen of, or an organization organized under the laws or a country or area listed as a Subgroup A country or destination in § 371.3 (15 CFR 371.3) of the Comprehensive Export Schedule of the United States Department of Commerce.

§ 25.15 *Requirements for approval of applications.* (a) An application for access to Confidential Restricted Data in all the categories set forth in Appendix A, will be approved only if the application demonstrates that the applicant has a potential use or application for such data in his business, trade or profession.

(b) (1) An application for access to Secret Restricted Data in any of the categories will be approved only if the application demonstrates that the applicant has a need for such data in his business, trade or profession. Such need must be demonstrated as to each of the categories to which such access is requested.

(2) An application for access to Secret Restricted Data in category C-20, Controlled thermonuclear processes, will be approved only if the application demonstrates also that the applicant:

(i) Is directly engaged in a substantial effort to develop, design, build or operate a fission power reactor that is planned for construction and is making or proposes to make, a comparative evaluation of fission and controlled thermonuclear processes for production of power; or

(ii) Possesses qualifications demonstrating that he is capable of making a significant contribution to research and development in the controlled thermonuclear field and is directly engaged in, or proposes to engage in, a substantial study program, or a substantial research and development program, in this field; or

(iii) Is furnishing to a permittee having access to C-20 under subdivision (i) of this subparagraph substantial financial assistance or substantial scientific, engineering, or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to category C-20; or

(iv) Is furnishing to a permittee having access to C-20 under subdivision (ii) of this subparagraph substantial financial assistance or substantial scientific, engineering, or other professional services to be used by said permittee in the study or research and development program for which said permittee received access to category C-20.

CODIFICATION: In § 25.15 (b), the existing text was designated subparagraph (1) and subparagraph (2) was added, 21 F. R. 5734, Aug. 1, 1956. Subsequently, subparagraph (2) was amended to read as set forth above, 22 F. R. 6568, Aug. 15, 1957.

CONTROL OF INFORMATION

§ 95.31 *Access to restricted data.* (b) In addition, no person subject to the regulations in this part who possesses Secret Restricted Data, shall permit any individual in his employ to have access to such Restricted Data unless he has determined that the employee needs access to such Restricted Data in the performance of his duties; or permit any other permittee or Commission contractor to have access to such data unless such permittee or contractor is authorized by his access permit or pursuant to his Commission contract to receive access to Restricted Data in the particular categories and classifications involved.

CIVIL AERONAUTICS ADMINISTRATION

TITLE 14—CIVIL AVIATION

PART 415—TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

§ 415.2 *Production of records.* Records of the Civil Aeronautics Administration, the release of which is prohibited by General Order 51¹ are in the custody and control of employees for purposes relating to the performance of their official duties only. They have no control over them and no discretion with regard to permitting their use for any other purpose. Employees are prohibited from giving out any copies thereof and from producing them in court whether in answer to subpoena ordering that they be produced or otherwise.

¹ Not filed for publication in the Federal Register.

CIVIL AERONAUTICS BOARD

TITLE 14—CIVIL AVIATION

PART 303—RULES OF PRACTICE IN AIRCRAFT ACCIDENT INQUIRIES

§ 303.18 *Withholding of information.* Any person may make written objection to the public disclosure of information contained in any report or document filed pursuant to this part or the provisions of the Civil Aeronautics Act of 1938, as amended, or of information obtained by the Board pursuant to the provisions of this part or the act, stating the grounds for such objection. Whenever such objection is made, the Board shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public.

PART 311—DISCLOSURE OF AIRCRAFT ACCIDENT INVESTIGATION INFORMATION

§ 311.2 *Release of information concerning accidents.* Information secured by the Board concerning accidents involving aircraft may be released only as follows:

(b) *The Washington office.* The Director of the Bureau of Safety Investigation or such person in the Washington office as he may designate shall, upon request, release the information described in paragraph (a) of this section. In addition, the Director or such designee shall, upon request:

(1) Release the names of witnesses and their addresses;

(2) Make replies as to facts in answer to specific inquiries, either verbal or written, concerning aircraft accidents, and shall furnish copies of documents in accident files, provided the expense of making such copies is borne by the recipient. In both instances, however, any suggestion, opinion, or recommendation made by any employee of the Board or any employee of the Civil Aeronautics Administration, when acting on behalf of the Board, shall be omitted;

§ 311.3 (e) *Procedure in the event of a subpoena.* If any employee receives a subpoena to produce accident reports or underlying papers or to testify in court as to accident information, the employee shall immediately notify the Director, Bureau of Safety Investigation by telegram. He shall give the title of the case, and identify the accident by name; the name of the judge, if available, and the title and address of the court; the date on which he is directed to appear; the name, address and telephone number, if available, of the attorney representing the party initiating the request; the scope of the testimony, if known, and whether or not the evidence is available elsewhere. The Director will immediately, upon receipt of notice that an employee has been subpoenaed, inform the General Counsel of the Board. The General Counsel will either give the employee permission to testify or make arrangements with the court to have him excused from testifying. Until one of these actions is taken, the employee shall appear in court in response to the subpoena and respectfully decline to testify or to produce the records called for, on the grounds that this part prohibits such conduct.

§ 399.25 *Confidential treatment of preliminary year-end reports.* It is the policy of the Board to accord confidential treatment to preliminary year-end carrier reports upon request of individual carriers, with the proviso that such confidential treatment will be accorded the preliminary reports only until final reports are filed or until the date such reports are due, whichever occurs first.

CIVIL SERVICE COMMISSION
TITLE 5—ADMINISTRATIVE PERSONNEL
CHAPTER 1—CIVIL SERVICE COMMISSION

PART 29—RETIREMENT

§ 29.12 *Disclosure of information.* (a) (1) Files, records, reports, and other papers and documents pertaining to any claim filed with the Commission, whether pending or adjudicated, will be deemed privileged and in confidence, and no disclosure thereof will be made except as provided herein.

(2) Except as provided in subparagraphs (3) and (4) of this paragraph, disclosure of information from the files, records, reports, and other papers and documents shall be made to a claimant or to his duly authorized representative in matters concerning himself alone. The term "duly authorized representative" of a claimant shall mean any person who has satisfied the Commission of his authority to act.

(3) Where an individual contests the Commission's action in approving an employing agency's application for his retirement on disability and where the nature of the reported disability is physical (as distinguished from mental) and of a type concerning which the individual involved could be fully informed without the probability of such knowledge affecting him adversely he shall, upon written request, be furnished a summary of medical evidence which has been submitted to the Commission in his case.

(4) Where the nature of the disability is reported to be a mental condition or other condition of such a nature that a prudent physician would hesitate to inform an individual found to be suffering from such a condition of its exact nature and probable outcome, a complete summary of the medical evidence in his case, including copy of the résumé of the reported behavior irregularities or manifestations of unsatisfactory service which is ordinarily furnished as background factual evidence to government medical facilities or psychiatrists or other physicians who conduct the official retirement medical examination, shall be made available for review only by a duly licensed physician designated in writing for that purpose by the individual concerned.

(5) The name or address of a beneficiary designated by an employee or annuitant will, during the life of the employee or annuitant, be furnished only to the designator when request therefor is made in writing over the signature of the designator.

(6) Such information as may properly be disclosed to a claimant personally shall, in the event of his death, be disclosed upon proper request to the duly appointed representative of his estate, or to such person as may be designated by such representative, or to a duly designated beneficiary. Where no representative of the claimant's estate has been appointed, the claimant's next of kin shall be recognized as the representative of his estate.

(7) Where copies of documents or other records are desired by or in behalf of parties to a suit, whether in a court of the United States or in any other court, such copies shall be furnished to the court only, and on an order of the court or subpoena duces tecum, addressed to the Chairman, U. S. Civil Service Commission, requesting the same.

(8) Where a process of a United States court or other court requires the production of documents or records contained in the retirement files of a claimant, such documents will be produced in the court out of which the process has issued. Where original records are produced, they must remain at all times in the custody of a representative of the Commission, and if offered or received in evidence, permission should be obtained to substitute a copy so that the original record may remain intact in the file.

(9) The address of a claimant as shown by the Commission records may be furnished to duly constituted police or court officials upon proper request or the

submission of a certified copy either of the indictment returned against the claimant or of the warrant for his arrest.

(10) Disclosure of the amount of annuity or refund to any claimant may be made to any National, State, county, municipal, or other publicly recognized charitable or social-security administrative agency.

(11) Subject to the limitation regarding name or address of a beneficiary, all records or documents officially required by any department or other agency of the United States Government shall be furnished in response to a proper request, and Senators and Representatives of the United States in their capacity as Members of Congress of the United States shall be furnished for their official use with such records, documents, or other information as may be requested for such use.

(12) If the claimant gives his consent, the amount of annuity or refund paid to him, and the factors used in determining such payment, may be disclosed to any person who makes proper inquiry. An inquiry will be deemed proper if it is in writing and includes the name of the claimant and sufficient information to make positive identification of his records, except that the Commission may, in any case, waive the requirement that the inquiry be in writing. Upon receipt of a proper inquiry, the Commission will ask the claimant whether he consents to release of the information sought, and will then advise the inquirer of the decision of the claimant. A copy of any information released may be furnished to the claimant.

(b) Certificates of discharge, adoption papers, marriage certificates, decrees of divorce, letters testamentary or of administration, birth or baptismal records, family records, personal letters, diaries, and other personal papers or articles which may have been filed in a claim, shall, when no longer needed in the settlement of such claim, be returned to the persons entitled thereto upon written request therefor; and whenever papers so returned constitute part of the material and essential evidence in a claim, photo or other copies of the same, or of such parts thereof as may appear to possess evidential value, shall be retained in the case.

**DEPARTMENT OF COMMERCE, BUREAU OF FOREIGN
COMMERCE**

TITLE 15—COMMERCE AND FOREIGN TRADE

PART 382—DENIAL OR SUSPENSION OF EXPORT PRIVILEGES

§ 382.14 *Proceedings confidential.* Compliance proceedings shall be confidential, excepting any orders issued therein. Reports of the Compliance Commissioner, and copies of transcripts of hearings shall be available only to parties to the proceedings and, to the extent of their own testimony as contained in transcripts, to witnesses therein. Any such matters may, however, be made available to any Government agency having a proper interest therein.

COMMITTEE FOR RECIPROCITY INFORMATION

TITLE 15—COMMERCE AND FOREIGN TRADE

§ 701.3. *Matters of official record not available to the public.* The following information is not available for public inspection:

(a) Information and business data submitted for official use only of Committee. (Title 18, U. S. C., sec. 1905 (62 Stat. 791) imposes criminal penalties upon an officer or employee of the United States or of any department or agency thereof who discloses "in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style or work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association * * *".)

(b) Information and business data submitted to the Committee for its official use only shall be submitted on separate pages clearly marked "For official use only of Committee for Reciprocity Information". The Committee may refuse to accept any particular information or data so marked which it determines is not entitled to exemption from inspection under § 701.2.

BUREAU OF CUSTOMS, DEPARTMENT OF THE TREASURY

TITLE 19—CUSTOMS DUTIES

§ 4.95. *Records of entry and clearance of vessels.* Permanent records shall be prepared at each customhouse of all entries of vessels on customs Form 1400 and of all clearances and permits to proceed on customs Form 1401.¹²⁰

¹²⁰ For regulations of the Bureau of the Census relating to statistics from these records see 15 CFR Part 30.

When the number of transactions is small, such records may be prepared on the short forms (customs Forms 1400-A and 1401-A). Whenever a vessel is diverted, as provided for in § 4.91 (a) or (b), customs Form 1401 or 1401-A shall be amended to show the new destination. These records shall be open to public inspection, except that during any period covered by a finding by the President under section 1 of the Act of August 9, 1950, as amended (50 U. S. C. 191), that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, no such record shall be disclosed to other than a party in interest without written authorization from the Commissioner of Customs.

[13 F. R. 7944, Dec. 18, 1948, as amended by T. D. 52258, 14 F. R. 3704, July 6, 1949; T. D. 52583, 15 F. R. 7295, Oct. 31, 1950; T. D. 52958, 17 F. R. 2749, Mar. 29, 1952; T. D. 53386, 18 F. R. 5406, Sept. 9, 1953.]

NOTE: Treasury Decision 52608, 15 F. R. 7994, Nov. 22, 1950, provided that the prohibition in § 4.95 shall be limited to information concerning the clearance of vessels and the exportation of merchandise, until further notice. Subsequently Treasury Decision 52681, 16 F. R. 2164, Mar. 8, 1951, provided that the prohibitions in § 4.95 shall not apply to information concerning the entry and clearance of vessels.

§ 26.2 *Public records.* (a) In general, the types of official records at the headquarters of field offices of the Customs Service include the following:

(1) Entry records.

(2) Warehouse records.

(3) Appraisement records.

(4) Certificates of weight, measure, and gauge.

(5) Vessel manifests, crew lists, and passenger lists.

(6) Statistical information relative to the volume, source, and destination of commodities in foreign trade.

(7) Bulletin notice of liquidation, which is posted or lodged in the customhouse and is available for public inspection.

(8) Record of entry and clearance of vessels.

(9) Record of vessels of the United States belonging to the merchant marine. This information is published annually in a bound volume entitled "Merchant Vessels of the United States," for sale through the office of the Superintendent of Documents.

(10) Records of documents of vessels of the United States.

(11) Records of bills of sales, conveyances, mortgages, and hypothecations pertaining to vessels of the United States.

(12) Statistical information relative to the merchant marine.

(b) Some of the information contained in the documents mentioned in paragraph (a) of this section is held to be confidential for one or more of the following good causes and in accordance with the standards prescribed in §§ 26.2 to 26.7 and is not available to the public:

(1) It relates to the details of business transactions of private parties, the disclosure of which details would be detrimental to the interests of the parties involved, without furthering the public interest.

(2) It is submitted in reliance upon the long-established assurance that such information will be kept in confidence and used only for official purposes.

(3) Its disclosure would be inimical to the public interest.

§ 26.3 Confidential information. (a) Except as authorized hereafter in this section, no collector, appraiser, customs agent, or other customs officer or employee shall disclose details of any customs activity for publication, except under special authority from the Bureau.

(b) Collectors and other customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases of public interest until the matter is completed. The collector may give the press information concerning any case involving an offense against the customs laws after he has completed his investigation and the case has been closed by final customs action, such as settlement of a civil liability or reference of a case to the United States attorney for handling. Field officers shall exercise proper restraint and judgment in disclosing local transactions. Unless specifically authorized so to do, they shall not disclose to any person not immediately concerned the text or substance of any communication from the Bureau or the Treasury involving any matter of policy.

(c) Insofar as administrative matters in Washington are concerned, statements will be issued only through the office of the Secretary for the Assistant Secretary in charge of the Customs Service.

(d) The disclosure of the confidential information contained in customs documents or the disclosure to one importer or exporter of information relative to the business of another importer or exporter acquired by the officer or employee by reason of his official employment shall constitute grounds for dismissal from the Service; and if done for a valuable consideration will subject such person to criminal prosecution.

§ 26.4 Confidential treatment of customs records and documents.

(f) The authority granted in paragraphs (c), (d), and (e) of this section is subject to the restriction that no matters of a confidential nature or the disclosure of which would be prejudicial to the public interest shall be disclosed to any person.

§ 26.5 Information for the press and associations. Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessels' manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data not of a confidential nature, subject to the following rules:

(b) Confidential information, such as the names of the shippers and consignees, marks and numbers, and both quantities and values of commodities shall not be copied from outward manifests or any other papers.

§ 26.7 Suspension of disclosure. (a) Upon written application of any importer or exporter, or master or owner of any vessel, the collector of customs shall refuse to permit any person, except as provided for in § 26.4 to copy from manifests any information or data concerning merchandise imported or exported by the applicant, or carried by the vessel or vessels controlled by the applicant, provided in each case that the collector is satisfied by evidence presented to him that publication of the information or data has been or will be detrimental or prejudicial to the applicant.

[Paragraph (a) amended by Treasury Decision 54186, 21 F. R. 6951, Sept. 14, 1956]

(b) If any individual shall abuse the privilege granted him of examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

(c) During any period covered by a finding by the President under section 1 of Title II of the act of June 15, 1917 as amended (50 U. S. C. 191), that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, information concerning imports and exports shall not be disclosed except as provided for in § 26.4.

[13 F. R. 7465, Dec. 8, 1948; 13 F. R. 8116, Dec. 18, 1948, as amended by T. D. 52583, 15 F. R. 7295, Oct. 31, 1950; T. D. 53399, 18 F. R. 8691, Dec. 24, 1953]

Note: Treasury Decision 52608, 15 F. R. 7994, Nov. 22, 1950, provided that the prohibitions in § 26.7 (c) shall be limited to information concerning the clearance of vessels and the exportation of merchandise, until further notice. Subsequently Treasury Decision 52681, 16 F. R. 2164, Mar. 8, 1951, provided that the prohibitions in § 26.7 (c) shall not apply to information concerning the entry and clearance of vessels.

DEPARTMENT OF DEFENSE

TITLE 32—NATIONAL DEFENSE

CHAPTER 1—OFFICE OF THE SECRETARY OF DEFENSE

PART 66—INDUSTRIAL SECURITY MANUAL FOR SAFEGUARDING CLASSIFIED INFORMATION [REVOKE, 21 F. R. 2814, MAY 1, 1956]

Prior Amendments

1955: 20 F. R. 6213, Aug. 23; 20 F. R. 7139, Sept. 23.

PART 67—INDUSTRIAL PERSONNEL SECURITY REVIEW REGULATION

§ 67.1-4 *Release of information.* All personnel in the Program will comply with applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, will be disclosed to any contractor or contractor employee, or to his lawyer or representatives, or to any other person not authorized to have access to such information. In addition, in a case involving a contractor employee the contractor concerned will be advised only of the final determination in the case to grant, deny, or revoke clearance, and of any decision to suspend a clearance granted previously pending final determination in the case. The contractor will not be given a copy of the Statement of Reasons issued to the contractor employee except at the written request of the contractor employee concerned.

PART 71—ARMED FORCES INDUSTRIAL DEFENSE REGULATION

§ 71.2-402 *Release of information.* (a) When requested by management, or when circumstances make it desirable, the representative of the cognizant Military Department will advise management in matters concerning the release of information which may affect the industrial defense of the facility.

(b) In this connection management should be encouraged to exercise considerable caution prior to any release of economic or technical information (unclassified) in press releases, advertisements, notices to stockholders, annual or quarterly reports, brochures, etc., and reports in response to questionnaires from unknown or questionable sources. This material, when assembled, collated, and evaluated could contribute materially to an accurate appraisal of the strategic intentions of the United States. Among the various areas where management should exercise caution before making information public are the following:

- (1) Contract award information.
- (2) Vulnerable points within a facility.
- (3) Plans and details of expansion of equipment and facilities.
- (4) Production methods, techniques, and equipment.
- (5) Production and production capacity of plants.
- (6) Sources of semi-finished products, components, and supplies.
- (7) Sources of power, other utilities and critical transportation.
- (8) Information concerning facility industrial defense measures.

DEPARTMENT OF DEFENSE, AIR FORCE

TITLE 32—NATIONAL DEFENSE

PART 805—SAFEGUARDING MILITARY INFORMATION

§ 805.1 *Purpose.* Sections 805.1 to 805.13 establishes policies for safeguarding classified information and explain how to identify, classify, and protect such official material.

§ 805.4 *Preparation, reproduction and photographing*—(a) *Preparation and reproduction.* Classified documents may be prepared and reproduced only when necessary to satisfy actual military or other official government requirements.

(b) *Photographs.* Photographs or similar reproductions of classified matter are prohibited, except by persons specifically directed or authorized by proper authority.

(c) *Secret and top secret information of any agency other than the Air Force.* Secret or top secret documents originated in a department or agency of the Executive Branch of the Federal Government other than the Air Force will not be reproduced without the consent of the originating department or agency.

(d) *Effect of limitations imposed by originators.* A document will not be copied, photographed, or otherwise reproduced in whole or in part without approval of the originator or higher authority in the same chain of command, providing the originator requires such approval.

§ 805.5 *Dissemination*—(a) *General*—(1) *Basic principle.* Only persons who are known to be trustworthy and whose official duties require knowledge or possession of classified defense information in the interest of promoting national defense will be permitted to have access to it. (It is emphasized that no person is entitled to knowledge of or access to classified defense information solely by virtue of his office or position.)

(2) *Determination of requirement for access.* Responsibility for determining whether a person's official duties require that he possess or have access to any classified information and whether he is authorized to receive it rests upon the individual who has possession, knowledge, or command control of the information involved and not upon the prospective recipient. However, the individual who has this possession, knowledge, or command control will not disclose or permit access to the information unless he is authorized to do so by §§ 805.1 to 805.13.

(3) *Determination of trustworthiness of persons.* A person may be deemed trustworthy if he has been granted personnel security clearance for access to the category of information involved. Also, a previous clearance or investigation may be considered in determining an individual's trustworthiness. In addition, persons may be deemed trustworthy if the officer or official authorized to release or disclose classified information to them personally certifies that they are (except when prior investigative action and/or clearance is specifically required by regulation or instructions of higher authority.)

(4) *Discussion and access.* Classified information will not be discussed in the presence or hearing of unauthorized persons.

(5) *Physical security factor.* Possession or use of classified defense information or material will be limited to locations where prescribed facilities for secure storage or protection of it are available.

(6) *Information of an agency other than Department of Defense.* Classified information originating in an agency outside the Department of Defense will not be disseminated outside the Department of Defense without the consent of the originating agency, except as otherwise provided by the National Security Act of July 26, 1947, (sec. 102, 61 Stat. 498, as amended, 50 U. S. C. 403). (Information originated by a contractor to a department or agency is considered as originated by that department or agency.)

(7) *Automatic distribution and dissemination.* Regulations and other directives which authorize automatic distribution of documents or dissemination

of information will not apply to classified information unless the proposed dissemination is necessary and is authorized by §§ 805.1 to 805.13. Normally, automatic distribution of classified information outside the Department of Defense will not be authorized.

(b) *To Department of Defense and interdepartmental activities—(1) Authority.* Subject to paragraph (a) of this section originating headquarters or unit, or higher authority in the same chain of command, may disseminate classified information to other agencies, activities, or personnel in the Department of Defense by the same channels established for military correspondence. Under the same conditions, dissemination to officially constituted interdepartmental committees with Air Force membership is also authorized.

(2) *Requests.* An individual will not make a request for classified material unless he has a clear, official requirement for knowledge or possession of such material. No request will be honored by any commander or other person, regardless of the grade or position of the requester, unless the validity of the request has been fully established on the basis of policy prescribed in §§ 805.1 to 805.13.

(3) *Restriction against release for personal use.* Classified information may not be released to anyone for private use (personal, commercial, or as background information). In this connection, military personnel on active duty, military personnel in retired status, members of the Reserve Forces, and civilian personnel who requested classified information for such use will be considered as "private individuals"; and their requests will not be approved, even though they may have been partly or solely responsible for production of the information.

(4) *Limitation on disclosure to Reserve Forces personnel.* Certain members of the Air Force Reserve and the Air National Guard of the United States not on extended active duty, including persons undergoing inactive duty training, may have access to classified information under the conditions specified in subdivisions (i) and (ii) of this subparagraph.

(i) Top secret information will not be used in Reserve Forces training programs. However, an individual on a short or special tour of active duty may be permitted access to such information if it is essential for the performance of his officially assigned duties.

(ii) Individuals participating in active or inactive duty training, as defined in §§ 861.1 to 861.14 of this chapter, may be permitted access to specific information classified secret or confidential only if they need it to perform their officially assigned duties.

(c) *Identification and protection—(1) Identification.* Before an individual discusses or permits access to classified information, he must make sure that the intended recipients are indisputably identified and determined trustworthy (by personal recognition, identifying documents, or verification of identity by telephone, telegraph, radio, or mail communication). If prior personnel security clearance is prescribed as a prerequisite for access to a specific item of information, the intended recipients' clearance will be verified.

(2) *Protection.* When classified information is discussed with persons who are subject to military law or are employed in the Executive Branch of the Federal Government they will be informed of its classification. When classified information is discussed with persons other than those subject to military law or employed in the Executive Branch, they will be informed that it affects the national defense of the United States within the meaning of the Espionage Laws and that its revelation to an unauthorized person is prohibited by law.

(d) *Telephone conversations.* Classified information will not be discussed or revealed over the telephone. However, it is permissible to refer to classified material, provided that such references do not reveal the classified portions. For example, reference may be made to the file number, date, and subject (provided that the subject itself is not classified). Each individual must make sure that questions or their answers do not reveal classified information.

(e) *Commercial publications—(1) Individual activities.* Military or civilian personnel will not include classified information in any personal or commercial article, thesis, book, or other product written for publication or distribution.

(2) *Compilations of information.* A compilation of individually unclassified items may be published in commercial or service publications only after coordination with the office(s) having primary interest in the material to insure that such compilation does not require classification.

(f) *Additional precautions necessary to limit dissemination—(1) Conferences.* Individuals who make arrangements for, or attend, meetings at which classified

information is or will be revealed will comply with §§ 805.1 to 805.13 to prevent the unauthorized dissemination of classified information.

(2) *Care of documents in use.* Classified documents in actual use will be kept under the constant surveillance of the person responsible for them. They will be covered, turned face down, placed in storage, or otherwise protected when visitors are present.

(3) *Personal correspondence.* Classified information will not be included in personal correspondence or messages.

(4) *Addressing official mail.* If official correspondence contains classified information and is intended for delivery to an individual in another headquarters or office, address it to the commander or head of office, marked for the attention of the individual.

(5) *Legal instruments.* During wartime, if an individual overseas executes or acknowledges a legal instrument, he must not indicate the place of execution or acknowledgment unless proper authority determines that the information would be of no value to the enemy if it should reach him.

(6) *Rescission.* Classified documents which have been rescinded or superseded will be protected according to their category until destroyed.

§ 805.6 *Removal of classified matter*—(a) *Restriction.* No person will remove classified material from the headquarters or unit having custodial responsibility for it without the express permission of the commander or the individual designated in writing to act for him. This restriction applies under all circumstances without exception.

(b) *Recording removal.* Whenever an individual removes classified material from a headquarters or unit for purposes other than transmission, a record will be made and kept on file.

§ 805.7 *Return or transfer of classified matter*—(a) *General.* Neither a military person nor a civilian may retain classified matter for personal or commercial purposes, even though such person may have been solely or partly responsible for production of the material.

(b) *Action by individuals.* Before an individual retires, separates from the service or civilian employment, changes duty assignment, or reverts to inactive status, he will return to his commander or supervisor (or otherwise properly transfer or account for) all classified documents in his possession.

(c) *Action by commanders.* As a minimum action, commanders will require each such individual to sign a statement indicating that he has turned over to proper authority all classified matter which he might have had in his possession, and that no classified material is being retained under his custody or control.

§ 805.10 *Atomic energy restricted data*—(a) *Markings and notations required*—(1) *Material containing restricted data.* (i) In addition to other required classification markings and notations, all documents or other material containing Restricted Data and all inner covers in which Restricted Data is transmitted will be conspicuously marked at least once, with capital letters not less than one-quarter inch in height, as follows:

RESTRICTED DATA

ATOMIC ENERGY ACT 1954

(ii) When material is extracted from a document, or pages, sections, chapters, or other parts are so separated, each extract or part will be marked as prescribed in subdivision (i) of this subparagraph if it contains restricted data.

(b) *Dissemination*—(1) *Within Department of Defense and to contractors.* Restricted data originated or received in the Air Force may be disseminated or disclosed only to persons within the Department of Defense and to contractors of the military departments and their employees who have been granted appropriate personnel security clearance for access to the classification category which the information bears. Foreign nationals will not be permitted to have access to restricted data, regardless of grade, position, employment, or nationality (except for releases of certain data to foreign governments that are made in strict compliance with the Atomic Energy Act of 1954 after specific approval of the Chief of Staff, USAF (Director of Intelligence)).

(2) *To Atomic Energy Commission.* Restricted data may be disseminated, disclosed, or released to the Atomic Energy Commission only in accordance with § 805.10.

(3) *To other activities and individuals.* Except as provided in this section, the dissemination, disclosure, or release of restricted data to any individual may be made only by the Atomic Energy Commission or as approved by the Atomic Energy Commission. This restriction applies to restricted data originated in the Air Force, or by an Air Force contractor, as well as that which is furnished to the Air Force.

(4) *Oral discussions.* Persons with whom restricted data is discussed will be informed that the information is restricted data within the meaning of the Atomic Energy Act of 1954.

DEPARTMENT OF DEFENSE, ARMY

TITLE 32—NATIONAL DEFENSE

PART 504—RELATIONS WITH AGENCIES OF PUBLIC CONTACT

§ 504.12 *Release of aerial photographs.* (a) Even though unclassified, official aerial photographs of military installations and other possible target areas will not be publicly released except as authorized by appropriate Department of the Army or Department of Defense authority. Requests for exceptions to this policy will be referred to the Chief of Information and Education, Department of the Army. In addition to this restriction on the release of such official aerial photographs, commanders will, when called upon for such advice by media, recommend against the taking or publishing by news media of aerial photographs of military installations and other possible target areas, stressing that compliance with this recommendation is voluntary but desirable in the interests of national security.

(b) The photographing of vital (classified) military installations without the permission of the commander of the installation concerned is punishable by law. The reproduction, publication, or sale of an aerial photograph of such installations is also an offense punishable by law unless such a photograph indicates it has been reviewed and cleared for release by the authority competent to accomplish the security review thereof (see Title 18, United States Code, Sections 795, 796, and 797, as implemented by Executive Order No. 10104, February 1, 1950, 3 CFR, 1950 Supp.). Where recourse to legal authority becomes necessary in connection with such requests, guidance should be obtained from the staff judge advocate or other legal officer of the command or installation concerned.

§ 504.14 *Use by Department of the Army of personal letters or communications.* Generally the writer of a personal letter or communication expects that the contents will be treated in a personal and confidential manner, or at least not released to the public. Therefore, in every case where it is proposed to release a letter or communication to the public, the consent of the writer thereof will be obtained in writing in advance of the release. In the event the writer is deceased, the written consent of the personal representative or the nearest of kin, as appropriate, will be obtained. In those cases where compliance with this policy is impracticable, request for exception will be submitted to the Department of the Army for determination.

§ 504.15 *Release of information regarding travel by very important persons (VIPs)*

(c) *Policy.* (1) The movement of VIPs will not be classified, except where required in the interest of national security, or where it is deemed that adverse foreign reaction will result if information regarding the movement is released. Classification is authorized only when directed by the Secretary of the Army or the Secretaries of other military departments concerned, the Secretary of State or the Secretary of Defense, or higher authority.

(2) Itineraries of VIPs will be released in advance to commanders of installations and activities concerned, and normal media relations will be observed.

(3) Where the movement is not classified but the VIP does not desire media coverage, every effort will be made to comply with his wishes.

PART 505—SAFEGUARDING DEFENSE INFORMATION [REVISED]

§ 505.7 *Persons authorized to receive classified information.* No person is entitled to knowledge or possession of classified defense information solely by virtue of his rank, office, position, or security clearance. Such matter will be entrusted only to individuals whose official duties require knowledge or possession and who have been properly cleared. Responsibility for determining whether a person's official duties require that he have access to any item of classified de-

fense information rests upon each individual who has possession, knowledge, or command control of the information involved and not upon the prospective recipient. These principles are equally applicable if the prospective recipient is an organizational entity, including commands, other Federal agencies, or a foreign government.

§ 505.8 *Discussions involving classified information.* All discussions of classified defense information within the hearing of unauthorized persons are prohibited. In imparting classified information orally, the recipient will be told the classification of the defense information. When a lecture, address, or informal talk to a group includes classified defense information, the speaker will announce the classification at the beginning and end of the period.

§ 505.9 *Telephone conversations.* Classified defense information will not be revealed in telephone conversations except as may be authorized over approved circuits.

§ 505.10 *Personnel retiring or separating from service.* (a) Military personnel retiring or separating from the service, and civilian employees departing from employment with the Army Establishment, are prohibited under penalties as prescribed in the Uniform Code of Military Justice or appropriate Federal statutes from divulging to unauthorized persons classified defense information to which such persons have had access during their service or employment.

(b) The debriefing of military personnel retiring and separating from the service, and of civilians leaving Department of Defense employment or leaving the employment of Department of Defense contractors having classified contracts, must incorporate positive instructions that no classified information will be released or made available for release to the public or any persons not properly entitled to receive such information.

§ 505.11 *Publications*—(a) *General.* The inclusion of classified defense information in any information or material, whether of fact or of opinion, and whether visual or auditory, for dissemination to the public is prohibited. The contribution of classified defense information to other persons for dissemination to the public is expressly prohibited.

(b) *Service publications.* Officials having supervisory responsibility for service magazines, journals, or other publications intended for dissemination to the public will submit for review any material to be included in such publications that might contain classified defense information to the Chief of Information, Department of the Army.

§ 505.14 *Public display of classified materiel.* (a) Commanding officers are responsible that all classified features of materiel are properly safeguarded during maneuvers, ceremonies, or exhibitions open to the public.

(b) Photographing of development items of materiel or those revealing processes of manufacture is prohibited unless authorized by the head of the technical service concerned. After an article of equipment has been issued to combat units, release of photographs is permissible unless specifically prohibited.

(c) Requests for permission to take photographs of classified materiel will be referred by letter to the head of the appropriate technical service. If authority is granted, resulting photographs will be submitted to the Chief of Information, Department of the Army, for final review prior to public release.

§ 505.17 *Authority for admission of visitors*

(d) *United States citizens.* Subject to the approval of the commanding officer of an installation or Department of the Army representative at a facility, United States citizens, except those representing or employed by, a foreign government, firm, or corporation may be admitted to Army installations or facilities under the following conditions:

(3) Reporters, photographers, and other representatives of public information media may be admitted to Army installations or facilities, provided classified defense information projects or processes of manufacture are not shown or discussed with them.

§ 505.20 *Restricted areas*—(a) *Designation.* When conditions warrant, the commanding officer of a military reservation, post, camp, station, or installation will designate restricted areas within his command for the purpose of protecting classified defense information contained therein. He will post signs in conspicuous and appropriate places, such as ordinary entrances or approaches to these areas. Each sign, in addition to being marked "Restricted area," will quote the order, regulation, or part thereof which is pertinent to the particular area, the willful violation of which is made a crime by section 21, Internal Security Act

of 1950 (64 Stat. 1005; 50 U. S. C. 797). Such posted regulation or order will contain the following warning notice:

This regulation (or order) is promulgated by the authority of (name of officer) in accordance with the provisions of the directive issued by the Secretary of Defense on 20 August 1954 pursuant to the provisions of Section 21, Internal Security Act of 1950 (50 U. S. C. 797).

WARNING

Whoever willfully shall violate ---- (this), regulation or order shall be guilty of a misdemeanor and upon conviction thereof, shall be liable to a fine of not to exceed \$5,000, or to imprisonment for not more than one year, or both. Section 21, Internal Security Act of 1950 (50 U. S. C. 797).

(b) *Procedure in case of violation.* (1) the commanding officer of a military reservation, post, camp, station, or installation will cause any person not subject to military law who without competent authority enters a restricted area to be detained, warned of his rights, and interrogated by proper authority. If it is a first offense and there is no evidence of deliberate intent, the offender may be warned against repetition and released upon the surrender of any unlawful photograph, sketch, picture, drawing, map, or graphic representation in his possession. Otherwise, the offender will be delivered without unnecessary delay to the nearest United States marshal with a written statement of the facts, the names and addresses of the witnesses, and such pertinent exhibits as may be available.

(2) When an investigation reveals that a person not subject to military law has entered such restricted area, custody of the individual not having been effected, the commanding officer will promptly forward in writing to the nearest United States district attorney a report of all the facts, including the names and addresses of the witnesses.

(3) A report will be made through military channels to the commanding general of the army concerned of each case brought to the attention of civil authority that will include a brief summary of all the facts and copies of all pertinent communications.

DEPARTMENT OF DEFENSE, NAVY

TITLE 32—NATIONAL DEFENSE

PART 701—AVAILABILITY OF OFFICIAL RECORDS

§ 701.1. (b) Official records, within the meaning of this rule, include applications, registrations, petitions, reports, and returns filed with the Department of the Navy by persons not in the Naval service, certain records relating to Naval personnel, and all documents embodying Navy action directly affecting persons outside the Naval service, such as orders, rules, licenses, and contracts. The great mass of material relating to the internal operation of the Department of the Navy and the Naval forces is not a matter of official record within the meaning of this rule. Official records in the Department of the Navy's files are merely incidental to the performance of its major functions and it is not practicable to list all types of such official records. The Secretary will, however, determine when application is made whether or not any document is an official record, and whether or not it should be withheld as confidential, according to the principles stated in this section. [Paragraphs (a) and (b) amended, 22 F. R. 9694, Dec. 4, 1957.]

(c) Without limiting the discretion vested in the Secretary of the Navy by the other provisions of this rule access will not be granted to:

(1) Material classified "Confidential", "Secret," or "Top Secret" within the purview of Executive Order 10501 (18 F. R. 7049) or constituting Restricted Data under the Atomic Energy Act of 1954 as amended (42 U. S. C. 2011 et seq.).

(2) Material, such as tax returns, which is made confidential by law. (Cf. § 7213, Internal Revenue Code, 26 U. S. C. 7213.) [Subparagraphs (1) and (2) amended, 22 F. R. 9694, Dec. 4, 1957.]

(h) If the Secretary determines that one or the other of the principles stated above requires the refusal of a request to make information available, prompt notice of any such refusal will be given to the applicant, together with a simple statement of the grounds for such refusal.

(i) The Secretary of the Navy has legal custody of all official records of the Department of the Navy, and no subpoena duces tecum directed to any Department of the Navy employee or officer other than the Secretary is legally valid or effective to compel such officer or employee to produce any official record of the Department of the Navy, or other report, paper, or document in its custody. It is hereby declared to be contrary to the public interest to produce in any proceeding or trial any memorandum or document from Department of the Navy files to which access has not been asked and granted pursuant to this rule, whether a public record or not.

§ 701.2. *Official records in civil court.* (a) Unless authorized by the Secretary of the Navy or his designee, persons in the naval service and civil employees are prohibited from releasing or producing, in response to subpoenas duces tecum, motions for discovery, or in answer to interrogatories or otherwise, any official records or copies thereof, including the records described in paragraph (b) of this section or classified matter, in a civil court, or in connection with preliminary investigations by attorneys or others. Official records or copies thereof will be produced in such cases when authorized under procedures prescribed in paragraphs (c) and (d) of this section.

(b) The records of proceedings of Navy courts-martial, courts of inquiry, boards of investigation, and the records of investigations and administrative reports are intended solely for use in the Naval Establishment and are privileged. Such records or documents are confidential, for good cause found, within the meaning of the Administrative Procedure Act. The Secretary of the Navy, or his designee, may make such records or information therefrom available to persons properly and directly concerned whether or not litigation is involved.

(c) In cases where naval records are desired by or on behalf of litigants and where the records are not classified or of a privileged and confidential status as

described in paragraph (b) of this section, such parties will be informed that the procedure for the production of the records desired or certified copies thereof is to obtain and forward to the Secretary of the Navy, Navy Department, Washington, D. C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court orders, after authorization by the Secretary of the Navy or his designee, will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues or by production of the original records by naval custodian where necessary. Where an original record is produced it will not be removed from the custody of the person producing it but copies may be placed in evidence in the case. Upon the written request of all parties in interest or their counsel records which would be produced in response to a court order as set forth in this paragraph may be furnished without court order.

(d) As exceptions to paragraph (c) of this section, and where not in conflict with the restrictions in paragraphs (a) and (b) of this section, the production in Federal, state, territorial, or local courts, of the service, employment, pay, or medical records (including medical records of dependents) of personnel of the Navy, Marine Corps, and the civilian employees thereof is authorized upon receipt of a court order, where litigation is pending, without procuring specific authority from the Secretary of the Navy. Where travel is involved, it must be without expense to the government or to the person producing the records.

[16 F. R. 12504, Dec. 12, 1951]

§ 701.3 *Production of official records in absence of court order.* (b) Officers' and enlisted men's records are deemed confidential for good cause found except to persons properly and directly concerned, including the serviceman himself, and personal representatives of the serviceman, e. g., executors, guardians, etc., who present proper proof thereof. The serviceman, former serviceman, or personal representative may obtain access to health records by applying to the Chief of the Bureau of Medicine and Surgery, Navy Department, Washington 25, D. C., and for other personnel records to the Chief of Naval Personnel, Navy Department, Washington 25, D. C. Applications for Marine Corps personnel records should be addressed to the Commandant of the Marine Corps, Headquarters U. S. Marine Corps, Washington 25, D. C. Applications may be made in person or in writing.

[16 F. R. 12505, Dec. 12, 1951]

PART 744—POLICIES AND PROCEDURES FOR THE PROTECTION OF PROPRIETARY RIGHTS IN TECHNICAL INFORMATION PROPOSED FOR RELEASE TO FOREIGN GOVERNMENTS

§ 744.5 *Release procedures.* Where the use of government channels is required for the release of technical information to foreign governments, the following procedures will be observed in order to provide for the recognition and protection of any proprietary rights and to minimize any liability for the unauthorized disclosure or use of proprietary information.

(b) *Classified information.* In the case of classified technical information private sources supplying the information shall be notified by a separate communication prior to each proposed release to foreign governments and written permission for the release obtained if proprietary rights in the information are claimed. The communication should also include the conditions of release and offer such assistance in filing foreign patent applications as may be appropriate.

BUREAU OF FEDERAL CREDIT UNIONS, DEPARTMENT
OF HEALTH, EDUCATION, AND WELFARE

TITLE 45—PUBLIC WELFARE

§ 320.3 *Availability of official records and information.* All records and information of the Bureau of Federal Credit Unions, except rules issued in the administration of the Federal Credit Union Act, as amended, and opinions and orders in the adjudication of cases, are hereby declared to be confidential and no disclosure of any such records or information shall be made directly or indirectly except as hereinafter authorized by the regulations in this part.

§ 320.6 *Authority for refusal to disclose.* Any request or demand for records or information, the disclosure of which is forbidden by the regulations in this part, shall be declined upon authority of the regulations in this part. If any officer or employee of the Bureau of Federal Credit Unions or of the Social Security Administration or of the Department of Health, Education, and Welfare, is sought to be required, by subpoena or other compulsory process, to produce such record, or give such information, he shall respectfully decline to present such record or to divulge such information, basing his refusal on the regulations in this part.

FEDERAL DEPOSIT INSURANCE CORPORATION

TITLE 12—BANKS AND BANKING

CHAPTER III—FEDERAL DEPOSIT INSURANCE

PART 309—CONFIDENTIAL AND PRIVILEGED RECORDS AND INFORMATION

§ 309.1 *Unpublished information*—(b) *Disclosure prohibited.* (2) The authorizations hereunder may be given only in response to a subpoena or other legal process duly issued and served upon the Corporation at its principal office, which service may be by registered mail addressed to the Corporation at Washington, D. C., specifying the record requested, the nature and scope of the testimony to be elicited, the name of the witness and the place and time of appearance: *Provided*, That the General Counsel, in his discretion, may waive the requirement of service of subpoena or process when he believes it to be in the interest of justice to do so. Without such prior authorization, any officer, employee or agent of the Corporation required to respond to a subpoena or other legal process shall attend at the time and place therein mentioned and respectfully decline to produce any record or disclose any information or give any testimony with respect thereto, basing his refusal upon this rule.

(c) *Application for disclosure without subpoena.* Applications for disclosure of information or records hereunder should be addressed to the appropriate Division Chief or the General Counsel of the Corporation, as the case may be.

(d) *Service of process on officer, employee, or agent.* Any officer, employee, or agent of the Corporation served with a subpoena, order, or other process requiring his personal attendance as a witness or the production of records or information upon any proceeding mentioned in paragraph (b) (1) (vii) of this section shall promptly advise (1) the court or tribunal which issued the process, and the attorney for the party at whose instance the process was issued, if known, of the substance of this rule, and (2) the General Counsel of the Corporation at Washington, D. C., of such service and of the records and information requested and of any facts which may be of assistance to the General Counsel in determining whether such records and information should be made available.

(e) *Authority of Chairman of Board of Directors.* Notwithstanding any of the foregoing provisions, the Chairman of the Board of Directors, in his discretion and pursuant to law, may authorize the production, examination, or inspection of any records, or the furnishing of copies thereof, or the disclosure of any information, or the Chairman, in his discretion, may direct the General Counsel or the Chief of any Division to refuse to permit the production, examination, or inspection of any records, or the furnishing of copies thereof, or the disclosure of any information, if he shall find such action to be in the best interests of the Corporation and consistent with the public interest.

(f) *Publication of data.* The Board of Directors or the Chairman may from time to time authorize and direct the publication and public distribution of information and data compiled from the records of the Corporation.

§ 309.2 *Opinions and orders.* (a) A survey and review of the opinions and orders heretofore made by the Board of Directors of the Corporation in the adjudication of cases, in connection with licensing, supervision, investigation, termination of insured status, payment of insured deposits, and the administration of liquidations and receiverships, disclose that their publication would not be of current interest or importance, they are not cited as precedents, and are required for good cause to be held confidential. Accordingly, they will not be published nor made available to public inspection.

FEDERAL MARITIME BOARD, DEPARTMENT OF
COMMERCE

TITLE 46—SHIPPING

PART 201—RULES OF PRACTICE AND PROCEDURE—MARITIME BOARD AND
MARITIME ADMINISTRATION

§ 201.167 *Objection to public disclosure of information.* Upon objection to public disclosure of any information sought to be elicited during a hearing the witness shall disclose such information only in the presence of the presiding officer, official reporter, and such attorneys or representatives of each party as the presiding officer shall designate, and after all present have been sworn to secrecy. The transcript of testimony shall be held confidential. Within five (5) days after such testimony is given, the objecting party shall file with the presiding officer a verified written motion to withhold such information from public disclosure, setting forth sufficient identification of same and the basis upon which public disclosure should not be made. Copies of said transcript and motion need not be served upon any other party unless so ordered by the presiding officer.

FEDERAL RESERVE BOARD

TITLE 12—BANKS AND BANKING

CHAPTER II—FEDERAL RESERVE SYSTEM

PART 261—INFORMATION, SUBMITTALS OR REQUESTS

§ 261.3 Unpublished information—(a) *General rule regarding unpublished information.* Except as authorized by the Board, no person, whether or not an officer or employee of the Board or of a Federal Reserve Bank, shall disclose or permit the disclosure of any unpublished information of the Board to anyone (other than an officer or employee of the Board or of a Federal Reserve Bank properly entitled to such information for the performance of his official duties), whether by giving out or furnishing such information or copy thereof or allowing any person to inspect, examine or copy such information or copy thereof or otherwise. For the purpose of these rules, “unpublished information of the Board” includes all information or advice (including any examination report, or related information, in connection with examinations made by examiners selected or approved by the Board), which is not published in the Federal Register, Federal Reserve Bulletin, or elsewhere, and which comes to the Board or to any officer, employee, or agent thereof (including any Federal Reserve Bank, or officer, agent, or employee thereof) in the performance of duties for or on behalf of the Board, whether contained in files, memoranda, documents, reports, books, accounts, records, or papers, or acquired by any such officer, employee, or agent in the performance of such duties, and whether located in the Board’s files, at a Reserve Bank, or elsewhere.

(b) *Disclosure of certain grants of permission or authority.* The approval by the Board of an application of a State bank for membership in the Federal Reserve System, the granting of permission to establish a branch or to exercise trust powers, and other similar grants of permission or authority by the Board may not in all cases be of sufficient general interest to justify publication, but the fact that the Board has granted such approval, permission or authority in such cases will at the appropriate time be disclosed to any person upon request made in accordance with § 261.2 (c), to the extent that such disclosure would not conflict with the principles stated in paragraph (d) of this section.

(c) *Certain unpublished information not disclosed.* For the reasons and good cause found as set forth in paragraph (d) of this section, and except as provided in §§ 261.2 (b) or paragraph (b) of this section, the Board will not make available or otherwise disclose in response to requests any unpublished information of the Board, whether or not a matter of official record within the meaning of the Administrative Procedure Act (60 Stat. 237), if such information relates to any of the following:

(1) Examinations, investigations, inspections, or reports of any particular bank or affiliate thereof, broker, finance company, or other person engaged, or proposing to engage, in the business of extending any kind of credit or in the business of a holding company affiliate; or information concerning the business, personal or financial affairs of any such person or of anyone employed by or doing business with any such person.

(2) Proceedings in connection with the consideration of (i) the removal of a director or officer of a member bank pursuant to section 30 of the Banking Act of 1933 (sec. 30, 48 Stat. 193; 12 U. S. C. 77), (ii) the granting of approval or permission for a bank to establish a branch or exercise trust powers, (iii) the granting or termination of membership in the Federal Reserve System, (iv) the granting or revocation of a voting permit to a holding company affiliate, (v) the suspension from the use of the credit facilities of the Federal Reserve System pursuant to section 4 of the Federal Reserve Act (sec. 4, 38 Stat. 254, as amended; 12 U. S. C. 301–308, 341), or (vi) the granting or termination of

permission or authority in other cases in which public hearing is not required by statute or Board regulations.

(3) The determination of policies concerning discount rates, reserve requirements, open-market operations, interest rates, margin requirements, consumer credit controls, or other matters of monetary, fiscal or credit policy.

(4) Relations between the Board and any Federal Reserve Bank, activities of any Reserve Bank for any agency of the United States or for any international organization, and internal operations of the Board or any Reserve Bank, including, among other things, any matters of administration.

(5) Relations with, or activities that affect relations with, any foreign bank, banker or country.

(6) Any other matter as to which the Board, in a particularly case, determines that, in the public interest and for the reasons stated in paragraph (d) of this section, the information should not be disclosed.

(d) *Reasons for non-disclosure.* The public interest requires that certain unpublished information, as mentioned above, be not disclosed. For the following good cause found, such non-disclosure is a manifest need in order that the Board may achieve the due execution of its authorized functions:

(1) The Board's investigating, examining and information-gathering functions, and the appropriate safeguarding of information regarding such functions, are essential to the proper enforcement of the legislation it administers.

(2) In connection with its activities described in subparagraph (1) of this paragraph, its proceedings as more fully specified in paragraph (c) (2) of this section, and its other activities in the field of monetary, fiscal and credit policy, the Board necessarily has much information that is secret or confidential or that relates solely to the internal management of the Board or of other Government agencies. This includes advice and other information received by the Board from its staff, other Government agencies, the Reserve Banks, and others. It also includes information concerning the business, personal, and financial affairs of individual banks and their holding company and other affiliates, brokers, finance companies, and other extenders of credit, and also concerning such affairs of persons employed by or doing business with them. Improper disclosure of such information would:

(i) Permit speculators and others to interfere with the Board's actions taken with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country;

(ii) Permit speculators and others to reap unfair profits and other unfair advantages by speculative trading in securities and otherwise;

(iii) Unreasonably and unnecessarily disturb and interfere with individual privacy and confidential business relations;

(iv) Interfere with the orderly execution and accomplishment of the objectives of policies adopted by other Government agencies concerned with economic and fiscal matters;

(v) Impede the Board's necessary collection of information and advice, much of which cannot be obtained except on a confidential and voluntary basis; and

(vi) Cause misinterpretations and misunderstandings as to the Board's policies and purposes, and as to the status of particular financial institutions, with resulting disturbance of securities markets and impairment of public confidence in individual institutions or in the Nation's financial structure.

(3) Relations of the Board, of the Federal Reserve Banks, or of other banks, with foreign banks, bankers or countries involve matters of foreign affairs. Other activities of the Board and of the Reserve Banks influence the flow of gold and of dollar balances to or from foreign countries, with vital effects upon such countries and the United States. Improper disclosures regarding such matters would interfere with the orderly conduct of the foreign affairs of the United States.

(4) Unpublished information regarding personnel or other matters of the Board's internal administration could be of no proper benefit to other persons; and its improper disclosure would needlessly interfere with the privacy of the Board's personnel, with their performance of duties for the Board, and with the Board's necessary functions.

(5) The Federal Reserve Banks stand in a peculiarly close relationship to the Board. In addition to their other important functions, they act in many matters as the Board's field representatives, and give the Board much valuable advice and assistance on both local and national problems. The Reserve Banks

also perform certain functions for various agencies of the United States and certain international organizations. Improper disclosure of information regarding the Board's supervision and regulation of the Reserve Banks, its relations with them, or their activities for agencies of the United States or for international organizations, would damage the public interest in the manner described in subparagraphs (1), (2), (3), and (4) of this paragraph.

FEDERAL RESERVE SYSTEM—FEDERAL OPEN MARKET COMMITTEE

TITLE 12—BANKS AND BANKING

CHAPTER II—FEDERAL RESERVE SYSTEM

PART 271—INFORMATION, SUBMITTALS OR REQUESTS

§ 271.2 *Availability of information*—(a) *Federal Register*. Rules describing the Committee's organization and procedure and any substantive rules or statements of policy which are formulated and adopted by the Committee for the guidance of the public will be published in the *FEDERAL REGISTER*.

(b) *Policy record*. A complete record of the actions taken by the Committee during the preceding year upon all matters of policy relating to open market operations, showing the votes taken and the reasons underlying the actions, is included in each annual report made to Congress by the Board of Governors of the Federal Reserve System in accordance with section 10 of the Federal Reserve Act.

(c) *Unpublished information*. Except as may be specifically authorized by the Committee, or as may be required in the performance of duties for, or pursuant to the direction of, the Committee, no person shall disclose, or permit the disclosure of, any unpublished information of the Committee to anyone, whether by giving out or furnishing such information or copy thereof, by allowing any person to inspect, examine or copy such information or copy thereof, or by any other means. Unpublished information of the Committee shall include all information concerning the proceedings, deliberations, discussions, and actions of the Committee and all information or advice coming to the Committee or to any member of the Committee or any officer, employee or agent of the Committee, the Board of Governors of the Federal Reserve System, or any Federal Reserve Bank, in the performance of duties for, or pursuant to the direction of, the Committee, whether contained in files, memoranda, documents, reports, books, accounts, records, or papers or otherwise acquired and whether located at the offices of the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, or elsewhere: *Provided*, That it shall not include information which has been published in accordance with paragraphs (a) and (b) of this section or information which is available to the public through other sources.

[Paragraph (c) amended, 20 F. R. 4644, June 30, 1955]

(d) *Reasons for non-disclosure*. The non-disclosure of unpublished information of the Committee generally is required in the public interest for one or more of the following reasons:

(1) Disclosure of unpublished information concerning policies with respect to future open market operations which are under consideration or have been adopted by the Committee, and of unpublished information which might aid in anticipating action by the Committee, would:

(i) Interfere with the accomplishment of the objectives of the Committee's actions taken with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country;

(ii) Permit speculators and others to reap unfair profits or other unfair advantages by speculative trading in securities and otherwise;

(iii) Interfere with the orderly execution of policies adopted by the Committee;

(iv) Result in unnecessary and unwarranted disturbances in the securities markets;

(v) Make open market operations more costly to the Federal Reserve Banks;

(vi) Interfere with the orderly execution and accomplishment of the objectives of policies adopted by other Government agencies concerned with economic and fiscal matters; and

(vii) Cause misinterpretations and misunderstandings, with possible resultant impairment of public confidence in the nation's financial structure.

(2) The Committee's unpublished information includes much that is furnished to it on a secret or confidential basis and its disclosure would:

(i) Have the effects described in subparagraph (1) of this paragraph;

(ii) Impede the necessary collection of information and advice, much of which cannot be obtained except on a confidential and voluntary basis;

(iii) Unreasonably and unnecessarily disturb and interfere with individual privacy and confidential business relationships.

(e) *Requests for unpublished information.* Requests for access to unpublished information will be granted only if it clearly appears that disclosure of the information will not be contrary to the public interest for any of the reasons set forth in paragraph (d) of this section.

FEDERAL POWER COMMISSION

TITLE 18—CONSERVATION OF POWER

CHAPTER I—FEDERAL POWER COMMISSION

PART 1—RULES OF PRACTICE AND PROCEDURE

§ 1.36 *Public information*—(e) *Other records.* Files and records not made part of the public files and records by this section will be made available for public reference only pursuant to written request and a showing in support thereof, by order of the Commission or the Chairman, where consistent with the public interest.

(f) *Procedure in event of subpoena.* If an officer or employee of the Commission is served with a subpoena duces tecum, material which is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

[Order 186, 21 F. R. 2612, Apr. 24, 1956]

FEDERAL TRADE COMMISSION

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

PART 1—GENERAL PROCEDURES

§ 1.133 Confidential information. (a) The records and files of the Commission, and all documents, memoranda, correspondence, exhibits, and information of whatever nature, other than the documentary matters above described, coming into the possession or within the knowledge of the Commission or any of its officers or employees in the discharge of their official duties, are confidential, and none of such material or information may be disclosed, divulged, or produced for inspection or copying except under the procedures set forth in § 1.134.

(b) Under section 10 of the Federal Trade Commission Act, any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five thousand (\$5,000) dollars, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

FOOD AND DRUG ADMINISTRATION—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 21—FOOD AND DRUGS

CHAPTER I—FOOD AND DRUG ADMINISTRATION

§ 3.37 Confidentiality of information contained in new-drug applications.
[Superseded.]

CODIFICATION: The regulations contained in § 3.37 have been incorporated in § 130.32 of this chapter, 21 F. R. 5576, July 25, 1956.

§ 4.1 Disclosure of official records and information. (c) A person who desires the disclosure of any such record or information may make written request therefor, verified by oath, directed to the Commissioner of Food and Drugs, setting forth his interest in the matter sought to be disclosed and specifically designating the use to which such records or information will be put in the event of compliance with such request; *Provided*, That a written request therefor made by a health, food or drug officer, prosecuting attorney or member of the judiciary of any State, Territory or political subdivision thereof, acting in his official capacity, need not be verified by oath. If it is determined by the Commissioner, or any other officer or employee of the Food and Drug Administration whom he may designate to act on his behalf for the purpose, that disclosure of any such record or information for the use so specifically designated will not be incompatible with the public interest and will not result in revealing confidential matters the request will be granted, and if testimony relating thereto is requested one or more employees of the Food and Drug Administration will be designated and directed to appear, in response to a subpoena or a subpoena duces tecum, and testify with respect thereto.

§ 130.32 Confidentiality of information contained in new-drug applications.
(a) The Federal Food, Drug, and Cosmetic Act provides, in section 505 (b), that any person may file with the Secretary of Health, Education, and Welfare an application with respect to any new drug, which shall include, among other things, a full list of the articles used as components and a full statement of the composition of such drug. These requirements apply to all components or ingredients of a new drug, whether or not they are therapeutically active. Fulfillment of these requirements may be met by submitting a full statement of the chemical or common or usual name and of the quantity of each component or ingredient of the drug. Such requirements may also be met through the inclusion in the new-drug application of a properly authorized reference to a previous application or other Food and Drug Administration file containing the relevant information.

(b) The Food and Drug Administration treats information in new-drug applications as confidential. Section 301 (j) of the Federal Food, Drug, and Cosmetic Act makes it an offense to divulge to unauthorized persons any information acquired from a new-drug application concerning any method or process that is a trade secret. Basic manufacturers sometimes submit data to the Food and Drug Administration in the form of so-called master files for the purpose of establishing the safety of ingredients that may be used in new drugs and authorize specified applicants to incorporate by reference such data in support of their applications. Such manufacturers may regard some of the data in such files as trade secrets and request the Food and Drug Administration to treat such information as confidential. The Food and Drug Administration will preserve the confidentiality of such data to the extent that it may properly do so. Because the applicant is legally responsible for the composition of the new drug and all its ingredients and may require information in the master file for judicial or administrative proceedings concerning the drug, the Food and Drug Administration will not withhold such information from the applicant when his need for it arises and he submits a written request for it. The Food and Drug Administration will inform the person who submitted the data of any such requests.

FREEDMEN'S HOSPITAL—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 42—PUBLIC HEALTH

PART 400—AVAILABILITY OF RECORDS AND INFORMATION

§ 400.2 *Disclosure of information.* No copy of, or information relative to, any official record or other official business of the Hospital which appears to be of confidential nature, shall be given to any person unless:

- (a) Such person obtains a court order therefor, or makes application therefor in the manner prescribed in paragraph (b) of this section, and
- (b) It appears to the Superintendent of the Hospital that the furnishing thereof would not be inimical to the public interest or to the welfare of the patient. The application mentioned in paragraph (a) of this section shall be addressed to the Superintendent and must set forth the interest of the applicant in the subject matter and the purpose for which such copy or information is desired.

(B. S. 161; 5 U. S. C. 22) [13 F. R. 7432]

GENERAL ACCOUNTING OFFICE

TITLE 4—ACCOUNTS

CHAPTER I—GENERAL ACCOUNTING OFFICE

§ 3.2 *Access to files and examination of records.* No persons other than officials and employees of the General Accounting Office and others authorized by law, in the regular discharge of their official duties, shall be allowed access to or furnished information from the files and records in the custody of the General Accounting Office without the previous written authority of the Comptroller General, except that claimants and accountable and certifying officers, and other persons having a direct and immediate interest in the transaction, or their duly authorized attorneys or legal representatives, may be permitted to examine their claims or accounts upon a satisfactory showing as to the reasons therefor and under proper supervision. In no case shall information be given that may be made the basis of a claim against the United States, except in the proper discharge of official duties.

§ 81.4 *Access to records.* No persons other than officials and employees of the General Accounting Office and others authorized by law, in the regular discharge of their official duties, shall be allowed access to or furnished information from the files and records of the General Accounting Office, wherever such records may be located, except as hereinafter provided. In no case shall information be given that may be made the basis of a claim against the United States, except in the proper discharge of official duties.

GENERAL SERVICES ADMINISTRATION

TITLE 44—PUBLIC PROPERTY AND WORKS

SUBCHAPTER A—ARCHIVES AND RECORDS MANAGEMENT

PART 1—AVAILABILITY OF RECORDS

§ 1.2 *Records not to be disclosed.* The following records will not be disclosed:

- (a) Records relating solely to internal management.
- (b) Records that are confidential by law, or for reasons of national security, or otherwise in the public interest.

§ 1.5 *Service of subpoena or other legal demand; compliance.* When a subpoena duces tecum or other legal demand for the production of matters of official record within the General Services Administration is served upon the Administrator notwithstanding the provisions of this part for making available upon request records and authenticated copies of records, the Administrator will, so far as legally practicable, comply with such subpoena or demand by submitting authenticated copies of such records, or the original records if necessary, unless he determines that disclosure of the information is contrary to law or would prejudice the national interest or security of the United States. When such subpoena or demand is served upon any officer or employee of the General Services Administration other than the Administrator, he will, so far as legally practicable and unless otherwise directed by the Administrator, respectfully decline to produce such records on the ground that he does not have legal custody thereof, is without authority under this part to produce the same, and the Administrator has not determined that disclosure is lawful and will not prejudice the national interest or security of the United States.

PART 4—PRESERVATION AND USE OF RECORDS IN REGIONAL FEDERAL RECORDS CENTERS

§ 4.3 *Restrictions on use of certain records.* Records in regional Federal records centers that contain information the disclosure of which would be prejudicial to the national interest or security of the United States or contrary to standards of propriety (save in cases where the public interest nevertheless requires disclosure) will not be made available. Otherwise records will be made available to persons properly and directly concerned subject to conditions or restrictions under which they have been transferred to the respective regional Federal records centers, and such restrictions respecting their use as may be imposed by the respective Regional Directors.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 45—PUBLIC WELFARE

§ 6.4 Central records; confidentiality. Central files and records shall be maintained of all inventions, patents, and licenses in which the Department has an interest, together with a record of all licenses issued by the Department under such patents. Invention reports required from employees or others for the purpose of obtaining determinations of ownership, and documents and information obtained for the purpose of prosecuting patent applications shall be confidential and shall be disclosed only as required for official purposes or with the consent of the inventor.

PUBLIC HEALTH SERVICE—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 42—PUBLIC HEALTH

CHAPTER I—PUBLIC HEALTH SERVICE

SUBCHAPTER A—GENERAL PROVISIONS

PART 1—AVAILABILITY OF RECORDS AND INFORMATION

§1.102 Clinical information; disclosure. (b) Clinical information in the records or in the possession of the Service is confidential and shall be disclosed only as necessary for the performance of the functions of the Service, or as follows:

(1) Upon a reasonable showing of the need therefor, the officer in charge of a hospital, station or other facility of the Service may authorize disclosure to a patient or a person designated by a patient (or, in the case of a deceased patient, to his next of kin or an authorized representative of his estate) of such clinical information as such officer determines to be medically appropriate for disclosure. The information shall not be disclosed to a person other than the patient except on the condition that it shall not be further disclosed for any purpose other than that for which it was shown to be needed. If the patient's examination, treatment or care was requested or arranged for by a governmental agency, the information shall not in any event be disclosed without the consent of that agency.

(2) Any governmental agency which, in accordance with applicable statutes, has requested or arranged for the examination, treatment, or care of a patient by the Service may upon request be furnished clinical information regarding such examination, treatment, or care.

(3) At the direction of the Surgeon General or his designee, clinical information may be furnished State or other public health agencies engaged in collecting data regarding disease.

(4) Nothing in this section shall preclude the officer in charge of any facility of the Service from disclosing (i) information as to the presence of a patient in the facility, or as to his general condition and progress, or (ii) such information regarding the commission of crimes or the occurrence of communicable disease as may be required to be disclosed by hospitals generally by the law of the State in which the facility is located.

§ 1.103 Nonclinical information; disclosure. (a) Information in the records or possession of the Service obtained by the Service under an assurance of confidentiality which the Surgeon General or his authorized representative determines to be necessary for the purpose of any research, survey, investigation, or collection of statistical data may be disclosed only with the consent of the person, association, or agency to which such assurance was given, or whenever the Surgeon General specifically determines disclosure to be necessary (1) to prevent an epidemic or other grave danger to the public health or (2) to oppose any legal action related to the activities of the Service and brought against the United States or any of its officers or employees.

(b) Information in the records or in the possession of the Service concerning (1) the discussions of any councils or other bodies advisory to the Service or to the Surgeon General, or of any committees or panels of such councils or bodies, (2) reports made by such committees or panels to such councils or bodies, and (3) action taken or opinions expressed by individual members of such councils, bodies, committees or panels shall not be disclosed except as may be authorized by the Surgeon General with the assent of the council or advisory body involved. In addition, if the council or other advisory body so recommends, disclosure of its

final conclusions on any subject considered by it may be prohibited by the Surgeon General.

(c) The following types of information in the records or possessions of the Service are confidential and, subject to the provisions of paragraphs (a) and (b) of this section, shall be disclosed only as necessary for the performance of the functions of the Service, or as follows:

(1) Information concerning individuals, business enterprises, or public or private agencies obtained by the Service in connection with communicable disease control, water pollution control, licensing of biological products or the manufacture of such products, or with other regulatory functions of the Service may be disclosed to Federal, State or local authorities carrying on related governmental functions to the extent necessary to carry out such related functions.

(2) Information and data obtained and tentative and final conclusions reached in course of or in connection with the conduct of research projects, surveys and investigations may be disclosed at such times and to such extent as the Surgeon General or his designee may determine to be in the public interest.

(3) Information obtained in connection with applications for employment, fellowships, traineeships or commissions or for research or other grants and information obtained for similar purposes may be disclosed upon consent of the person concerned.

§ 1.104 *Disclosure upon court or other official order.* Notwithstanding any other provision on this part, information in the records or in the possession of the Service, except information described in § 1.103 (a) and (b) and information the disclosure of which the Surgeon General determines would impair national security, shall be disclosed upon the order of a judge of a court of competent jurisdiction or of a responsible officer of any agency or body having power to compel appearances before it: *Provided, however,* That (a) clinical information shall be disclosed only in accord with applicable local law regarding the confidentiality of communications to physicians as expressly determined by the court, agency or body, and (b) in the case of an order requiring production of records other than to the court, agency or body involved, the Surgeon General or his designee may determine, in the light of the need to assure the integrity and safety of the records or the efficient administration of the Service, that the records shall be made available for examination or copying at such place as may be designated by him.

§ 1.108 *Response to subpoena or other compulsory process.* If any officer or employee of the Service is sought to be required, by subpoena or other compulsory process, to produce records of the Service or to disclose any information described in § 1.102 or § 1.103, he shall respond, call attention to the provisions of this part, and respectfully decline to produce records or disclose information inconsistently with such provisions: *Provided,* That where a patient (or, in the case of a deceased patient, his next of kin or an authorized representative of his estate) is a party to litigation or other proceedings in which any other person or party seeks to require the production of records of the Service or the disclosure of information described in § 1.102 before a court, agency or other body described in § 1.104, the patient (or, in the case of a deceased patient, his next of kin or an authorized representative of his estate) or his attorney shall be notified promptly, by mail or other reasonable means at his last address known to the Service, of the demand for the records or information and the officer or employee shall respond to the compulsory process in accordance with its terms, without prejudice, however, to any claim of the patient or his representative to the protection against the disclosure of clinical information set forth in the proviso to § 1.104.

HOME LOAN BANK BOARD

TITLE 24—HOUSING AND HOUSING CREDIT

PART 141—PROMULGATION, AMENDMENT, AND REPEAL OF RULES AND REGULATIONS

§ 141.4 *Availability of opinions, orders, rules and regulations for public inspection*—(b) *Classification as confidential.* The classification of final opinions or orders in the adjudication of cases as final opinions and orders, which are required to be held confidential and not cited as precedents shall be made only by the Home Loan Bank Board Chairman or such person or persons as he may designate for that purpose and shall be in writing. Any change in such classification may be made only by the Home Loan Bank Board Chairman or such person or persons as he may designate for that purpose and shall be in writing.

OFFICE OF HOUSING EXPEDITER

TITLE 24—HOUSING AND HOUSING CREDIT

CHAPTER VIII—OFFICE OF HOUSING EXPEDITER

PART 840—PROCEDURE FOR ADJUSTMENTS, APPEALS AND INTERPRETATIONS UNDER RENT REGULATIONS

§ 840.44 *Confidential information, inspection of documents filed with Certifying Officer.* Appeals and all papers filed in connection therewith are public records, open to inspection in the Office of the Certifying Officer upon such reasonable conditions as the Certifying Officer may prescribe. Except as provided above, confidential information filed with the Office of the Housing Expediter, will not be disclosed, unless in the judgment of the Housing Expediter the disclosure thereof is in the public interest.

PUBLIC HOUSING ADMINISTRATION—HOUSING AND HOME FINANCE AGENCY

TITLE 24—HOUSING AND HOUSE CREDIT

CHAPTER III—PUBLIC HOUSING ADMINISTRATION HOUSING AND HOME FINANCE AGENCY

§ 300.1 *PHA records*—(a) *Availability of records.* (1) Section 3 (c) of the Administrative Procedure Act, approved June 11, 1946, requires that matters of official record shall be made available to persons properly and directly concerned, except:

- (i) Where otherwise required by statute.
- (ii) Where the matter is held confidential for good cause found.
- (iii) Where there is involved (a) any function of the United States requiring secrecy in the public interest or (b) any matter relating solely to the internal management of an agency.

(2) The responsibility for compliance with this provision is vested in the Director of the Production and Document Control Branch. Persons desiring to consult such records should apply, in writing, to the Director of the Production and Document Control Branch, PHA, Longfellow Building, Washington 25, D. C. Such applications shall identify as precisely as possible the official records which the applicant desires to consult, and shall set forth the facts bearing on the extent to which the applicant is a person properly and directly concerned with the matter involved. The Director of the Production and Document Control Branch shall advise the applicant in writing either (i) of the time and place at which the records will be available to him; or (ii) that the records are not available to the applicant, in which case the reasons shall be briefly stated.

(b) *Definition of official records.* The term "official records" as used in this part means documents which embody the official acts of the PHA and documents which are filed with the PHA pursuant to statute, PHA regulations, or contract with the PHA, as determined by the Director of the Production and Document Control Branch. It does not include memoranda and other reports which reflect research and analysis preliminary to official action or which are otherwise merely part of the background upon which official action is predicated.

§ 300.2 *Final PHA action*—(a) *Availability of final PHA actions.* Section 3 (b) of the Administrative Procedure Act, approved June 11, 1946, requires that every agency make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules, except where there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency. Except as hereinafter provided, the required information will be available at the Regional Office having jurisdiction over the project covered by the particular action. It is the responsibility of the Regional Director to assemble the actions in a form in which they may be readily consulted by members of the public. The only exceptions to the foregoing are the following:

(1) *Actions on applications for tenancy.* Information on final action on applications for tenancy shall be kept at the project office and made available to the public by the Housing Manager.

(2) *Project management procurement.* Information as to final action of Housing Managers in the procurement of supplies and materials for which such managers are authorized to contract shall be kept at the project office and made available to the public by the Housing Manager.

TESTIMONY OR PRODUCTION OF RECORDS BY EMPLOYEES OF THE PHA

§ 300.4 (d) *Appearances by PHA employees.* (1) Whenever a PHA employee is served with a subpoena or is otherwise directed or requested to testify or

to produce records, he will notify the General Counsel or the Regional Attorney, as the case may be, and if no affidavit has been submitted, the General Counsel or the Regional Attorney will notify the litigant or other party in interest or his attorney that approval to testify or produce records cannot be granted unless an affidavit is submitted in accordance with this section.

(3) Whenever the approving officer has declined to grant approval to testify or to produce records, as to all or part of the matters covered by a subpoena, the employee shall, unless otherwise instructed by the approving officer, appear in response to the subpoena and, with the respect to those matters for which approval has not been granted, respectfully decline to testify or to produce records on the grounds that such action is prohibited unless approved in accordance with this section and that such approval has been refused.

[21 F. R. 4047, June 13, 1956]

DEPARTMENT OF INTERIOR

TITLE 43—PUBLIC LANDS: INTERIOR

PART 2—RECORDS AND TESTIMONY

§ 2.1 *Inspection.* Unless the disclosure of matters of official record would be prejudicial to the interests of the Government, they shall be made available for inspection or copying, and copies may be furnished, during regular business hours at the request of persons properly and directly concerned with such matters. Requests for permission to inspect official records or for copies will be handled with due regard for the dispatch of other public business.

§ 2.2 (c) In the exercise of the authority conferred in this section, no officer or employee of the Department may disclose a record (or its contents) which is classified as "Top Secret", "Secret", "Security Confidential", or "Restricted" to any person who has not been properly cleared for the receipt of such information; and no officer or employee other than the Secretary, the Under Secretary, and Assistant Secretary, the Administrative Assistant Secretary, or the head of a bureau or office may disclose to a person outside the Department a record (or its contents) which has a nonsecurity designation of "confidential": *Provided, however,* That factual data contained in field reports of the Bureau of Land Management having only a nonsecurity designation of "Confidential" may be referred to in decisions and correspondence of the Bureau of Land Management without revealing sources of information, and copies of such field reports may be furnished to any Federal agency on behalf of which the investigations embodied in the field reports were made.

DEPARTMENT OF INTERIOR—OIL AND GAS DIVISION

TITLE 30—MINERAL RESOURCES

**CHAPTER III—OFFICE OF OIL AND GAS, DEPARTMENT OF THE
INTERIOR**

**PART 302—REPORTS AND INSPECTIONS OF FACILITIES AND AGENCIES FOR THE
PRODUCTION, PROCESSING, STORAGE, AND TRANSPORTATION OF PETROLEUM AND
PETROLEUM PRODUCTS**

§ 302.20 *Official records.* Official records to be kept confidential, except when otherwise ordered by the Director of the Oil and Gas Division, shall include the following types of records: reports, diagrams and other papers submitted, and records of inspections made, pursuant to this part; records of investigations and hearings; and recommendations in the enforcement of the Connally "Hot Oil" Act. (See also 43 CFR, Part 2.)

INTERNAL REVENUE OFFICE

TITLE 26—INTERNAL REVENUE

§ 601.702 (a) *Publication and Inspection. General.* Sections 6103, 7213, 7237 (b) of the code and the corresponding positions of prior Internal Revenue Laws contain broad prohibitive and penal provisions against the disclosure of certain information described therein obtained by the Internal Revenue Service from members of the public in the performance of its functions. See also 18 U. S. C. section 1905. Publication and public inspection of the official records of the Service, or including final opinions or orders in particular cases, are affected in the light of these provisions. The extent to which public disclosure is made of matters of official record to persons properly and directly concerned is set forth in this section.

(1) *Inspection of tax returns.* The inspection of returns is governed by the provisions of the Internal Revenue laws and rules promulgated by the President or by the Secretary of the Treasury pursuant to such provisions. (See Treasury Decision 4873, approved by the President November 12, 1938, as amended; Treasury Decision 4878, approved by the Secretary January 4, 1939; Treasury Decision 4929, approved by the President August 28, 1939, as amended; Treasury Decision 5138, approved by the President April 20, 1942 (26 C. F. R.) 39 (part 458, Subpart A); Treasury Decision 4945, approved by the Secretary September 20, 1939 (26 C. F. R.) 1939 (Part 458, Subpart E), as amended.

(b) *Final Opinions and Orders.* In conformity with the policy of the provisions of law referred to in paragraph (a) of this section, final opinions and orders in the adjudication of cases arising under the Internal Revenue Laws are, with limited exceptions, treated by the Service as confidential and are neither published nor made available for public inspection.

(d) *Requests.* (1) Requests for information in connection with matters of official record in which the procedure for inspection is not set out in rules referred to in the preceding paragraphs of this section should be submitted to the Commissioner of Internal Revenue, Washington 25, D. C. The request should clearly state the information desired and must set forth the interest of the applicant in the subject matter and purpose for which the information is desired. If the applicant is an agent or attorney acting for another he will attach to the application evidence of his authority to act for his principal. If such evidence is set, such agent or attorney will be given access to any record to which his principal would be given access. The determination as to whether the information requested is available for disclosure in any particular case will be made by the Commissioner of Internal Revenue or such other officer authorized under the provisions of law referred to in paragraph (a) of this section.

DEPARTMENT OF JUSTICE
TITLE 28—JUDICIAL ADMINISTRATION
CHAPTER 1—DEPARTMENT OF JUSTICE

§ 1.15 Reports confidential. Reports to the President by United States attorneys, judges and other officials are confidential, and are not open to inspection by the petitioner or by any other persons, except with the written assent of the attorney, judge, or official making the report, nor, if such assent be given, unless it be shown that the ends of justice require its disclosure. All other papers, except reports or communications to the President or to the Attorney General by officials, are open to inspection by the petitioner and his attorney or representative.

§ 12.40 Public examination. Registration statements shall be available for public examination at the offices of the Registration Section, Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington 25, D. C., from 10:00 a. m. to 4:00 p. m. on each official business day, except to the extent that the Attorney General, having due regard for the national security and public interest, may withdraw such statements from public examination.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., January 13, 1953.

ORDER NO. 3229 (REVISED)

Pursuant to authority vested in me by R. S. 161 (5 U. S. C. 22), it is hereby ordered:

1. When a United States attorney or any other officer or employee of the Department of Justice is served with a subpoena or order for the production or disclosure of materials or information contained in the files of the Department, the United States attorney, or such other attorney as may be designated, will appear with the person upon whom the demand is made and inform the court or other issuing authority that such person is not authorized to produce or disclose the materials or information sought. Time will be requested within which to refer the subpoena or order to the Attorney General, and the United States attorney or other attorney designated will refer the court to this order as published in the Federal Register. Advice as to such subpoena or order will be given immediately to the Attorney General without awaiting court appearance.

2. In the event the court declines to defer a ruling until instructions from the Attorney General have been received, or in the event the court rules adversely on a claim of privilege asserted under instructions of the Attorney General, the person upon whom such demand is made will, pursuant to this order, respectfully decline to produce the material or information sought. *United States ex rel Touhy v. Ragen* (340 U. S. 462).

3. Order No. 3229 (dated May 2, 1939) and Supplements 1, 2, 3, and 4 thereto (dated December 8, 1942, June 6, 1947, May 1, 1952, and August 20, 1952, respectively), heretofore in effect, are hereby revoked.

(Signed) JAMES P. McGRANERY,
Attorney General.

DEPARTMENT OF JUSTICE—OFFICE OF ALIEN PROPERTY

1E.

TITLE 8—ALIENS AND NATIONALITY

§ 503.17 *General rule as to non-availability of records of the Office of Alien Property.* All official files, documents, records and information in the Office of Alien Property, or in the custody or control of any officer, employee, agent or delegate of the Office of Alien Property, are to be regarded as confidential. No officer, employee, agent or delegate may permit the disclosure or use of the same for any purpose other than for the performance of his official duties, except in the discretion of the Attorney General, the Deputy Attorney General, the Director, or the Deputy Director, of the Office of Alien Property, and in the case of defense information as defined in Executive Order 10501 of November 5, 1953 (18 F. R. 7049, 3 CFR, 1953 Supp.), except in accordance with the provisions of said Executive Order and the Department of Justice regulations thereunder: *Provided, however,* That each section chief and the Intercustodial and Foreign Funds Officer, are generally authorized to make available or disclose such official files, documents, records and information in the Office of Alien Property, other than defense information, in the conduct of affairs of his section or office, unless otherwise instructed by the Director. Whenever a subpoena duces tecum is served to produce any such files, documents, records, or information, the officer, or employee, or agent, or delegate on whom such subpoena is served, unless otherwise expressly directed by the Attorney General, will appear in court to answer thereto and respectfully decline to produce the records specified therein, on the ground that the disclosure of such records is prohibited by this section.

[22 F. R. 8811, Nov. 1, 1957]

DEPARTMENT OF LABOR

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor

§ 2.7 Opinions and orders; availability for inspection. All final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules, as defined in the Administrative Procedure Act (60 Stat. 237; 5 U. S. C. 1001 et seq.), issued by the Department of Labor will be made available for public inspection at reasonable times during business hours. Persons desiring to inspect such material may communicate with the Solicitor of Labor or the Director of Information, Department of Labor Building, Washington 25, D. C., or the regional attorney at the nearest regional office of the Department of Labor.

[11 F. R. 177A-339, 13911. Redesignated at 13 F. R. 8639]

LABOR DEPARTMENT—BUREAU OF EMPLOYEES' COMPENSATION

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER I—BUREAU OF EMPLOYEES' COMPENSATION

SUBCHAPTER B—UNITED STATES EMPLOYEES' COMPENSATION ACT

PART I—CLAIMS FOR COMPENSATION AND ADMINISTRATIVE PROCEDURE

§ 1.21 *Confidential nature of records and papers relating to injury or death of employees.* (a) All records, medical and other reports, statements of witnesses and other papers relating to the disability or death of a civil employee of the United States or other person entitled to compensation benefits from the United States under said act and all amendments or extensions thereof, are the official records of the Bureau and are not records of the agency, establishment or department making or having the care or use of such records. Such records and papers pertaining to any such injury or death are confidential and no official or employee of a Government establishment who has investigated or secured statements from witnesses and others pertaining to a claim for compensation, or any person having the care or use of such reports, shall disclose information from or pertaining to such records to any person, except upon the written approval of the Bureau.

(b) Any person having any such record shall assume no control over same, nor shall such person be vested with any discretion relative to the production of same in court, as such discretion shall remain in the Bureau to whose business such records appertain. Any such person is prohibited from presenting such records or information in court, whether in answer to a subpoena duces tecum or otherwise. When a subpoena shall have been served upon such person, he shall appear in court and respectfully decline to present such records or to divulge the information called for, basing his refusal upon this regulation and upon the fact that such person is not the custodian of such records.

(c) Information with respect to an injury or death which may be necessary for the official purpose of any department, agency or other establishment of the United States may be disclosed upon the responsibility of the official superior to see that such information will be used exclusively for such official purpose.

SUBCHAPTER C—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

PART 31—GENERAL ADMINISTRATIVE PROVISIONS

§ 31.22 *Availability of records for inspection.* Any party in interest may be permitted to examine the record of the case in which he is interested. The deputy commissioner, however, shall be the judge of the reasonableness of any such request and may in his discretion deny inspection of any such record or part thereof which in his opinion may result in damage or harm to the beneficiary or to any other person, or which may be inimical to the interests of the Bureau or of the United States. The original record in any such case shall not be removed from the office of the deputy commissioner for such inspection.

SUBCHAPTER D—DISTRICT OF COLUMBIA WORKMEN'S COMPENSATION LAW

PART 41—GENERAL ADMINISTRATIVE PROVISIONS

§ 41.21 *Availability of records for inspection.* Any party in interest may be permitted to examine the record of the case in which he is interested. The deputy commissioner, however, shall be the judge of the reasonableness of any

such request and may in his discretion deny inspection of any such record or part thereof which in his opinion may result in damage or harm to the beneficiary or to any other person, or which may be inimical to the interests of the Bureau or of the United States. The original record in any such case shall not be removed from the office of the deputy commissioner for such inspection.

**SUBCHAPTER F—COMPENSATION FOR INJURY, DISABILITY, DEATH, OR
ENEMY DETENTION OF EMPLOYEES OF CONTRACTORS WITH THE UNITED
STATES**

PART 64—GENERAL ADMINISTRATIVE PROVISIONS

§ 61.18 Confidential nature of records and papers relating to injury, death or detention of employees. (a) All records, medical and other reports, statements of witnesses, and other papers relating to the disability, death, or detention of any persons coming within the purview of Title I of such Public Law, are the official records of the Bureau and are not records of the agency, establishment, Government department, employer, or any individual making or having the care of such records. Such records and papers pertaining to any such injury, death, or detention are confidential and no official or employee of the United States, or other person, who has investigated or secured statements from witnesses and others pertaining to any case within the purview of Title I of such Public Law, or any person having the care or use of such records and papers, shall disclose information from or pertaining to such records to any person, except upon written approval of the Bureau, or except as otherwise provided for by these regulations.

(b) Any person having any such record or paper shall assume no control over same nor shall such person be vested with any discretion relative to the production of same in court, as such discretion shall remain in the Bureau to whose business such records appertain. Any such person is prohibited from presenting such records or information in court, whether in answer to a subpoena duces tecum or otherwise. When a subpoena shall have been served upon such person, he shall appear in court and respectfully decline to present such records or papers or to divulge the information called for, basing his refusal upon this regulation and upon the fact that such person is not the custodian of such records or papers.

(c) Information with respect to any matter necessary for the official purpose of any department, agency, or other establishment of the United States may be disclosed upon a showing that the information will be used exclusively for such official purpose.

DEPARTMENT OF LABOR—FEDERAL MEDIATION AND CONCILIATION SERVICE

TITLE 29—LABOR

CHAPTER XII—FEDERAL MEDIATION AND CONCILIATION SERVICE

§ 1401.2 *Nondisclosure of information.* Public policy and the successful effectuation of the Federal Mediation and Conciliation Service's mission require that commissioners and employees maintain a reputation for impartiality and integrity. Labor and management or other interested parties participating in mediation efforts must have the assurance and confidence that information disclosed to commissioners and other employees of the Service will not subsequently be divulged, voluntarily or because of compulsion.

§ 1401.3 *Confidential records.* All files, reports, letters, memoranda, minutes, documents or other papers (hereinafter referred to as "confidential records") in the official custody of the Service or any of its employees, relating to or acquired in its or their official activities under Title II of the Labor-Management Relations Act, 1947, as amended, are hereby declared to be confidential. No such confidential records shall be disclosed to any unauthorized persons, or be taken or withdrawn, copied or removed from the custody of the Service or its employees by any person, or by any agent or representative of such person without the prior consent of the Director.

**DEPARTMENT OF LABOR—WAGES AND HOURS
DIVISION**

TITLE 29—LABOR

CHAPTER 5—WAGE AND HOUR DIVISION

§ 511.14 Privacy of information. No member of any industry committee shall make public any information obtained by the committee or a subcommittee thereof without the approval of a majority of the committee: *Provided, however,* That if an industry committee or an authorized subcommittee elects to hold a public hearing pursuant to § 511.11, the transcript of the proceedings of such public hearing will be made available to any person at prescribed rates upon request to the official reporter thereof.

[4 F. R. 2103] (Published in the 1949 edition of the Code of Federal Regulations.)

LOYALTY REVIEW BOARD

TITLE 5—ADMINISTRATIVE PERSONNEL

PART 220—DIRECTIVES TO THE DEPARTMENTS AND AGENCIES

§ 220.6 *Directive VI; records, files and reports*—(b) *Safeguarding confidential information.* It shall be the duty and responsibility of the heads of the several agencies, and of persons designated by them, to insure the physical security of all files of loyalty cases. No persons other than the head of the agency or persons designated by him shall have access to the contents of the files, including reports of investigations.

Confidential sources of information and the identity of confidential witnesses referred to in the reports shall not be disclosed to any person not officially connected with the adjudication of the case.

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NATIONAL LABOR RELATIONS BOARD

TITLE 29—LABOR

CHAPTER 1—NATIONAL LABOR RELATIONS BOARD

§ 102.89 *Files, records, etc., in exclusive custody of Board and not subject to inspection; formal documents and final opinions and orders subject to inspection.* (a) The formal documents described as the record in the case or proceeding and defined in §§ 102.45, 102.59, and 102.61 are matters of official record, and are available to inspection and examination by persons properly and directly concerned, during usual business hours, at the appropriate Regional Office of the Board or in Washington, D. C., as the case may be. True and correct copies thereof will be certified upon submission of such copies a reasonable time in advance of need and payment of lawfully prescribed costs: *Provided, however,* That if the Board, the General Counsel, or the Regional Director with whom the documents are filed shall find in a particular instance good cause why a matter of official record should be kept confidential, such matter shall not be available for public inspection or examination. Application for such inspection, if desired to be made at the Board's office in Washington, D. C., shall be made to the Executive Secretary or the General Counsel, as the case may be, and if desired to be made at any Regional Office, shall be made to the Regional Director. The Executive Secretary, General Counsel, or the Regional Director may, in his discretion, require that the application be made in writing and under oath and set forth the facts upon which the applicant relies to show that he is properly and directly concerned with such inspection and examination. Should the Executive Secretary, General Counsel, or the Regional Director, as the case may be, deny any such application, he shall give prompt notice thereof, accompanied by a simple statement of procedural or other grounds.

(b) All final opinions or orders of the Board in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and its rules and regulations are available to public inspection during regular business hours at the Board's office in Washington, D. C. Copies may be obtained upon request made to any Regional Office of the Board at its address as published in the **FEDERAL REGISTER**, or to the Director of Information in Washington. Subject to the provisions of §§ 102.81 and 102.58, all files, documents, reports, memoranda, and records pertaining to the internal management of the Board or to the investigation or disposition of charges or petitions during the nonpublic investigative stages of proceedings and before the institution of formal proceedings, and all matters of evidence obtained by the Board or any of its agents in the course of investigation, which have not been offered in evidence at a hearing before a trial examiner or hearing officer or have not been made part of an official record by stipulation, whether in the Regional Offices of the Board or in its principal office in the District of Columbia, are for good cause found by the Board held confidential and are not matters of official record or available to public inspection, unless permitted by the Board, its Chairman, the General Counsel, or any Regional Director.

OLD-AGE AND SURVIVORS INSURANCE BUREAU— DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 20—EMPLOYEES BENEFITS

CHAPTER III—BUREAU OF OLD-AGE AND SURVIVORS INSURANCE, SOCIAL SECURITY ADMINISTRATION, FEDERAL SECURITY AGENCY

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

§ 401.1 *Prohibition against disclosure.* No disclosure of any return or portion of a return (including information returns or other written statements) filed with the Commissioner of Internal Revenue under Title VIII of the Social Security Act or the Federal Insurance Contributions Act or under regulations made under authority thereof, which has been transmitted to the Federal Security Agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper or any information, obtained at any time by the Agency or by any officer or employee of the Agency, which in any way relates to, or is necessary to, or is used in or in connection with, the administration of the old-age and survivors insurance program conducted pursuant to Title II of the Social Security Act, shall be made directly or indirectly except as hereinafter authorized by this part or as otherwise expressly authorized by the Commissioner for Social Security.

§ 401.2 *Authority for refusal to disclose.* Any request or demand for any such file, record, report, or other paper, or information, disclosure of which is forbidden by this part, shall be declined upon authority of the provisions of section 1106 of the Social Security Act, and this part prescribed thereunder. If any member, officer, or employee of the Agency is sought to be required, by subpena or other compulsory process, to produce such file, report, or other paper, or give such information, he shall respectfully decline to present such file, record, report, or other paper, or divulge such information, basing his refusal upon the provisions of law, and this part prescribed thereunder.

PATENT OFFICE—DEPARTMENT OF COMMERCE

TITLE 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

§ 1.14 Patent applications preserved in secrecy. (a) Pending applications are preserved in secrecy. No information will be given by the Office respecting the filing by any particular person of an application for a patent, the pendency of any particular case before it, or the subject matter of any particular application, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his assignee or attorney or agent, unless it shall be necessary to the proper conduct of business before the Office or as provided by this part.

(b) Abandoned applications are likewise not open to public inspection, except that if an application referred to in a United States patent is abandoned and is available, it may be inspected or copies obtained by any person on written request, without notice to the applicant. Abandoned applications may be destroyed after twenty years from their filing date, except those to which particular attention has been called and which have been marked for preservation. Abandoned applications will not be returned.

(c) Applications for patents which disclose, or which appear to disclose, or which purport to disclose, inventions or discoveries relating to Atomic Energy Commission and the Commission will be given access to such applications, but such reporting does not constitute a determination that the subject matter of each application so reported is in fact useful or an invention or discovery or that such application in fact discloses subject matter in categories specified by sec. 11 (d) of the Atomic Energy Act of 1946 (60 Stat. 768; 42 U. S. C. 1811).

§ 2.7 Secret register. Any instrument to be recorded will be placed on a secret record or register at the request of the department or agency submitting the same. No information will be given concerning any instrument in such record or register, and no examination or inspection thereof or of the index thereto will be permitted, except on the written authority of the head of the department or agency which submitted the instrument and requested secrecy and the approval of such authority by the Commissioner of Patents. No instrument or record other than the one specified may be examined, and the examination must take place in the presence of a designated official of the Patent Office. When the department or agency which submitted an instrument no longer requires secrecy with respect to that instrument, it will be recorded or registered anew in the appropriate part of the register which is not secret.

SECRECY ORDERS

§ 5.1 Defense inspection of certain applications. In accordance with the provisions of 35 U. S. C., section 181, applications for patent containing subject matter the disclosure of which might be detrimental to the national security are made available for inspection by defense agencies as specified in said section. Only applications obviously relating to national security, and applications within fields indicated to the Patent Office by the defense agencies as so related, are made available. Such inspection must be at the Patent Office and by responsible representatives of the agency who are required to sign a dated acknowledgement of such access accepting the condition that information obtained from the inspection will be used for no other purpose than in the administration of sections 181–188. of Title 35, U. S. Code. Applications relating to atomic energy are made available to the Atomic Energy Commission as specified in § 1.14 of this chapter.

§ 5.2 Secrecy order. (a) When notified by the chief officer of a defense agency that publication or disclosure of the invention by the granting of a patent would be detrimental to the national security, an order that the invention be kept secret will be issued by the Commissioner of Patents.

(b) The secrecy order is directed to the applicant, his successors, any and all assignees, and their legal representatives; hereinafter designated as principals.

(c) A copy of the secrecy order will be forwarded to each principal of record in the application and will be accompanied by a receipt, identifying the particular principal, to be signed and returned.

(d) The secrecy order is directed to the subject matter of the application. Where any other application in which a secrecy order has not been issued discloses a significant part of the subject matter of the application under secrecy order, the other application and the common subject matter should be called to the attention of the Patent Office. Such a notice may include any material such as would be urged in a petition to rescind secrecy orders on either of the applications.

§ 100.67 *Application confidential prior to publication.* No information respecting the filing of an application for the registering of a trade-mark, or the subject matter thereof will be given, prior to publication under § 100.151, without authority of the applicant, unless it shall, in the opinion of the Commissioner, be necessary to the proper conduct of business before the Patent Office. Decisions of the Commissioner in applications and proceedings relating thereto are published or available for inspection or publication.

POST OFFICE DEPARTMENT

TITLE 39—POSTAL SERVICE

PART 3—MAIL TREATED IN CONFIDENCE [REVISED]

§ 3.1 *Mail treated in confidence.*—Sealed first-class mail while in the custody of the Post Office Department is accorded absolute secrecy. No persons in the Postal Service, except those employed for that purpose in dead-mail offices, may break or permit the breaking of the seal of any matter mailed as first-class mail without a legal warrant, even though it may contain criminal or otherwise unmailable matter, or furnish evidence of the commission of a crime.

(R. S. 161, 396, as amended; sec. 1, 62 Stat. 782; 5 USC 22, 369, 18 U. S. C. 1717) [22 F. R. 4499, June 27, 1957]

Prior Amendment

1956: 21 F. R. 2683, Apr. 26

PART 4—INFORMATION ON POSTAL MATTERS

§ 4.3 *Privileged matter.* The following records, documents, and information are privileged matter, and may not be disclosed by subordinate officers or employees of the Department without authorization:

- (a) Reports of Postal Inspectors.
- (b) Records of the Postal Inspection Service.
- (c) Names of post office box holders.
- (d) Names and addresses of post office patrons and former patrons, except as provided in § 13.5 of this chapter.
- (e) Records regarding mail matter.
- (f) Records regarding postal savings accounts.
- (g) Records regarding money orders.

[21 F. R. 2683, Apr. 26, 1956]

§ 4.4 *Available Records—(b) Conditions.* You may inspect all other records of the Department or field service if permitted to do so by the head of a Bureau or Office in the Post Office Department. In making such determinations, the following items will be taken into consideration:

- (1) The interest of the person requesting permission to make the inspection.
- (2) Whether disclosure of the information contained in the records will violate the privacy of mail matter.
- (3) Whether the release of the record will jeopardize future Government access to information.
- (4) Whether the release of the record at the time is premature and will improperly affect a pending action.
- (5) Whether the disclosure of the record will have the effect of hindering free administrative decisions in the same or similar matters in the future.
- (6) Whether the purpose for which the record is sought is prejudicial to the public interest.
- (7) Whether the record is already otherwise made public, such as reports of public hearings and conferences, recorded maps, plats and documents, records published for the information of the public, and material of a similar public nature.

(e) *Compliance with summons.* (1) A postmaster or other postal employee will comply with a summons requiring his appearance in court. He will not testify as to names and addresses of post office patrons, mail matter, postal savings accounts, or money orders unless he is specifically directed to do so by the court after first calling attention of the court to this regulation.

(2) Postal inspectors and other employees having possession of inspectors' reports or Inspection Service records are prohibited from presenting such reports, records, or information in a State court or for the use of parties to a suit or habeas corpus proceedings in a Federal court, if the United States is

not a party in interest. They will inform the parties interested that the regulations of the Post Office Department prohibit them from furnishing official reports, records, or information direct unless authorized by the Department. Should an attorney for a private litigant attempt to compel an employee to disclose sources of official information or similar privileged matter, the employee will decline to produce the information or matter and state that it is privileged and can not be disclosed without specific approval from the Department.

(3) When appearing as a witness for the United States in Federal grand jury proceedings, criminal prosecutions of violations of postal laws, suits brought by the United States, or other actions in which the United States is a party in interest, postal inspectors and other officers and employees will testify as to their knowledge of the facts in the matter involved. With respect to privileged matters, each case must be given individual consideration as it arises. The Department will offer every possible assistance to the courts, but the question of disclosing privileged information is a matter entirely in the discretion of the head of the Department.

[Paragraph (e) amended, 21 F. R. 1834, Mar. 24, 1956]

RAILROAD RETIREMENT BOARD

TITLE 20—EMPLOYEES BENEFITS

CHAPTER II—RAILROAD RETIREMENT BOARD

SUBCHAPTER B—REGULATIONS UNDER THE RAILROAD RETIREMENT ACT

§ 262.16 Records and other papers of the Board; disclosure; service of process. (a) No document, or any information acquired therefrom or otherwise officially acquired, which is in the possession of the Board or any member, officer, agent or employee of the Board, shall be produced, disclosed, or delivered by any such member, officer, agent, or employee to any person or tribunal outside the Board, whether in response to a subpoena or otherwise, except as authorized by this section or with the consent of the Board. The consent of the Board to such production, disclosure, or delivery of any such document or information will not be granted, and no such document will be open to inspection by any person other than a member, officer, agent, or employee of the Board in the performance of his official duties, unless the Board finds that such production, disclosure, delivery, or opening to inspection will not be detrimental to the interest of the person to whom the document pertains, or to the estate of such person. Except as otherwise ordered by the Board or authorized by this section, any request or demand made by any person or tribunal, or otherwise, for any such document or information shall be refused upon the authority of this section.

(b) When any member, officer, agent, or employee of the Board is served with a subpoena to produce, disclose or deliver any document described in paragraph (a) of this section, or to furnish any information acquired therefrom or otherwise officially acquired, he shall immediately notify the Board of the fact of the service of such subpoena. Unless otherwise ordered by the Board or authorized by this section, he shall appear in response to the subpoena and respectfully decline to produce, disclose, or deliver the document, or to furnish the information, basing his refusal upon the authority of this section.

(c) When any document described in paragraph (a) of this section is called for by a subpoena duces tecum or other judicial order upon the Board for production, inspection, or disclosure thereof, issued by a court of competent jurisdiction in a proceeding in which such document is relevant, a copy of such document, certified by the Secretary of the Board as a true copy, will be produced, disclosed, or delivered, unless the Board finds that such production, disclosure, or delivery would be prejudicial to the public interest. In determining whether such production, disclosure, or delivery would be prejudicial to the public interest, the Board will consider, together with such other considerations as it deems relevant, the probable effect of such production, disclosure, or delivery upon the furnishing of complete and accurate information requested by the Board.

(d) When pursuant to paragraph (c) of this section the Board determines that the production, disclosure, or delivery of any document described in paragraph (a) of this section would be prejudicial to the public interest, no member, officer, agent, or employee of the Board shall make any disclosure or testify with respect to such document. Refusal to make such disclosure or so to testify shall be based upon the authority of this section.

(e) In the event the production, disclosure, or delivery of any document described in paragraph (a) of this section is called for on behalf of the United States or the Board, such document shall be produced, disclosed, or delivered only upon and pursuant to the advice of the General Counsel of the Board.

(f) No officer, agent, or employee of the Board is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the General Counsel and to no one else.

(g) Subject to the limitation expressed in paragraph (j) of this section, disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant or prospective applicant for an annuity, pension, or death benefit under the 1937 act or the 1935 act, or his duly authorized representative, as to matters directly concerning such employer, employee, applicant or prospective applicant in the administration of such acts.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his duly authorized representative, as to matters directly concerning such employer, employee, applicant or prospective applicant in the administration of such act.

(3) To any officer or employee of the United States lawfully charged with the administration of the Railroad Retirement Tax Act, the Social Security Act, or acts or executive orders administered by the Veterans Administration, and for the purpose of such administration only.

(4) To any applicant or prospective applicant for death benefits or accrued annuities under the railroad retirement acts, or to his duly authorized representative, as to the amount payable as such death benefits or accrued annuities, and the name of the person or persons determined by the Board to be the beneficiary, or beneficiaries, thereof, if such applicant or prospective applicant purports to have a valid reason for believing himself to be, in whole or in part, the beneficiary thereof.

(5) To any officer or employee of any State of the United States lawfully charged with the administration of any law of such state concerning taxes imposed by such state with respect to amounts payable at death, as to the amount of death benefits or accrued annuities payable under the railroad retirement acts and the name of the person or persons to whom such amount was payable.

(6) To any officer or employee of any state of the United States lawfully charged with the administration of any law of such state concerning unemployment compensation, as to the amounts payable to payees or beneficiaries under the Railroad Retirement Acts and the Railroad Unemployment Insurance Act.

(7) To any court of competent jurisdiction in which proceedings are pending which relate to the care of the person or estate of an incompetent individual, as to amounts payable under the Railroad Retirement Acts to such incompetent individual but only for the purpose of such proceedings.

(h) No document, and no information acquired solely by reason of any agreement, arrangement, contract, or request by or on behalf of the Board, relating to the gathering, preparation, receipt or transmittal of documents or information to, from or for the Board which is, by virtue of such agreement, arrangement, contract or request, in the possession of any person other than an employee of the Board, shall be produced, reproduced, or duplicated, disclosed or delivered by any person to any other person or tribunal (other than the Board or an employee thereof, or the person to whom the document or information pertains), whether in response to a subpoena or otherwise, except with the consent of the Board. Any person, upon receipt of any request, subpoena, or order calling for the production, disclosure, or delivery of such document or information shall notify the Board of the request, subpoena or order and shall take no further action except upon advice of the Board. Unless consent of the Board is given, the person shall respectfully decline to comply with the request, subpoena or order, basing his refusal upon the authority of this section.

(i) As used in this section, the word "document" includes correspondence, applications, claims, reports, records, memoranda and any other papers used, prepared, received, or transmitted to, from, or for the Board in connection with the administration of any act of Congress administered by the Board.

(j) Notwithstanding any other provision of this section, no disclosure of information may be made by the Board or any member, officer, agent, or employee of the Board, if the disclosure of such information is prohibited by law.

(Sec. 12, 52 Stat. 1107, as amended; 45 U. S. C. 362)

ST. ELIZABETHS HOSPITAL—DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

TITLE 42—PUBLIC HEALTH

PART 300—AVAILABILITY OF RECORDS AND INFORMATION

§ 300.2 *Disclosure of information.* No copy of, or information relative to, any official record or other official business of the Hospital, which appears to be of confidential nature, shall be given to any person unless:

(a) Such person obtains a court order therefor, or makes application therefor in the manner prescribed in paragraph (b) of this section.

(b) It appears to the Superintendent of the Hospital that the furnishing thereof would not be inimical to the public interest or to the welfare of the patient. The application mentioned above shall be addressed to the Superintendent and must set forth the interest of the applicant in the subject matter and the purpose for which such copy or information is desired.

(R. S. 161; 5 U. S. C. 22) [18 F. R. 7743]

SECURITIES AND EXCHANGE COMMISSION

TITLE 17—COMMODITY AND SECURITIES EXCHANGES

201.13 (i) Information or documents obtained by the Commission in the course of any examination or investigation shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents available to anyone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this rule. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

(k) All final opinions and orders entered by the Commission in the adjudication of cases, and all rules of the Commission shall be released for general publication, except where confidential treatment has for good cause been directed by the Commission. Copies of such published material shall be available for public inspection at the office of the Commission or may be obtained by mail on request. Bound volumes of past decisions and reports are obtainable from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., at a prescribed charge.

§ 230.122 *Nondisclosure of information obtained in the course of examinations and investigations.* Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation pursuant to section 8 (e) or 20 (a) (48 Stat. 80, 86; 15 U. S. C. 77h (e), 77t (a)) shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents available to anyone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[2 F. R. 2204]

§ 230.171 *Disclosure detrimental to the national security.* (c) The Commission may protect any information in its possession which may require classification in the interests of national defense pending determination by an appropriate department or agency as to whether such information should be classified.

(Sec. 19, 48 Stat. 85, as amended; 15 U. S. C. 77s) [20 F. R. 7034, Sept. 20, 1955]

Prior Amendments

1951 : 16 F. R. 2679, Mar. 27.

NONDISCLOSURE OF CONTRACT PROVISIONS

§ 230.485 *Contracts in general.* Public disclosure will not be made of the provisions of any material contract or portion thereof if the Commission deter-

mines that such disclosure would impair the value of the contract and is not necessary for the protection of investors. In any case where the registrant desires the Commission to make such a determination, the procedure set forth below shall be followed:

(a) The registrant shall omit from the registration statement as originally filed the portion of the contract which it desires to keep undisclosed, or, if the registrant desires to keep the entire contract undisclosed, any copy of the contract.

(b) The registrant shall file with the registration statement, but not bound as part thereof, (1) three copies of the contract or portion thereof which it desires to keep undisclosed, clearly marked "Confidential Treatment," and (2) an application for an order making the above described determination. Such application shall set forth the considerations relied upon for obtaining such order. Pending the granting or denial by the Commission of the application, the terms and existence of the contract or portion thereof will be kept undisclosed.

(c) If the Commission determines that the application shall be granted, an order to that effect will be entered. Prior to any determination denying the application, confirmed telegraphic notice of an opportunity for hearing, at a specified time within 10 days after the dispatch of such notice, will be sent to the agent for service. After such hearing, an order granting or denying the application will be entered.

(d) If the Commission denies the application, confirmed telegraphic notice of the order of denial will be sent to the agent for service. In such case, within 10 days after the dispatch of such notice, the registrant shall have the right to withdraw the registration statement in accordance with the terms of § 230.477, but without the necessity of stating any grounds for the withdrawal or of obtaining the further assent of the Commission. In the event of such withdrawal, the contract or portion thereof filed confidentially will be returned to the registrant.

(e) If the registration statement is not withdrawn pursuant to paragraph (d) of this section, the contract or portion thereof filed confidentially will be made available for public inspection as part of the registration statement, and the registrant shall amend the registration statement to include all information required to be set forth in regard to such contract or portion thereof.

§ 230.486 *Contracts affecting the national defense.* [Revoked, 20 F. R. 7084, Sept. 20, 1955]

§ 240.0-4 *Nondisclosure of information obtained in examinations and investigations.* Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation pursuant to section 17 (a) (48 Stat. 897, sec. 4, 49 Stat. 1379; 15 U. S. C. 78q (a) or 21 (a) (48 Stat. 899; 15 U. S. C. 78u (a)) shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents available to anyone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

CROSS REFERENCE: For nondisclosure of information filed with the Commission and with an exchange, see § 240.24b-2

REGISTRATION AND EXEMPTION OF EXCHANGES

§ 240.6 *Disclosure detrimental to the national security.* (c) The Commission may protect any information in its possession which may require classification in the interests of national defense pending determination by an appropriate department or agency as to whether such information should be classified.

[20 F. R. 7035, Sept. 20, 1955]

§ 250.104 Public disclosure of information and objections thereto—(c) Information obtained in the course of examinations, studies, and investigation. Information or documents obtained by officers or employees of the Commission in the course of any examination, study or investigation pursuant to section 13 (g), section 15 (f) (49 Stat. 828; 15 U. S. C. 79o), or paragraph (a) or (b) of section 18 (49 Stat. 831; 15 U. S. C. 79r) shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents available to anyone other than a member, officer, or employee of the Commission, unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court, and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this rule. Any officer or employee who is served with such a subpoena, shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

§ 250.105 Disclosure detrimental to the national security.

(c) The Commission may protect any information in its possession which may require classification in the interests of national defense pending determination by an appropriate department or agency as to whether such information should be classified.

[20 F. R. 7036, Sept. 20, 1955]

Prior Amendments

1951 : 16 F. R. 2680, Mar. 27.

§ 260.0-6 Nondisclosure of information obtained in the course of examinations and investigations. Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation under section 8 (e) of the Securities Act of 1933 (48 Stat. 79; 15 U. S. C. 77h), pursuant to section 307 (c) of the Trust Indenture Act of 1939, (53 Stat. 1156; 15 U. S. C. 77 ggg), or any examination or investigation under section 20 (a) of the Securities Act of 1933, (48 Stat. 86; 15 U. S. C. 77t), pursuant to section 321 (a) of the Trust Indenture Act of 1939, (53 Stat. 1174; 15 U. S. C. 77 uuu), shall, unless made a matter of public record, be deemed confidential. Officers and employees are hereby prohibited from making such confidential information or documents available to any one other than a member, officer or employee of the Commission unless the Commission authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the Commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

SELECTIVE SERVICE SYSTEM

TITLE 32—NATIONAL DEFENSE

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

PART 1606—GENERAL ADMINISTRATION

§ 1610.31 *What records confidential.* Except as provided by law or by the regulations in this part, the records in a registrant's file and the information contained in such records shall be confidential.

§ 1606.35 *Subpена or records.* (a) In the prosecution of a registrant or any other person for a violation of title 1 of the Universal Military Training and Service Act, as amended, the Selective Service Regulations, any orders or directions made pursuant to such act or regulations, or for perjury, all records of the registrant shall be produced in response to the subpена or summons of the court in which such prosecution or proceeding is pending.

(b) Except as provided in paragraph (a) of this section, no officer or employee of the Selective Service System shall produce a registrant's file, or any part thereof, or testify regarding any confidential information contained therein, in response to the subpена or summons of any court without the consent, in writing, of the registrant concerned, or of the Director of Selective Service.

(c) Whenever, under the provisions of this section, a registrant's file, or any part thereof, is produced as evidence in the proceedings of any court, such file shall remain in the personal custody of an official of the Selective Service System, and permission of the court be asked, after tender of the original file, to substitute a copy of the file with the court.

[13 F. R. 4420, July 31, 1948, as amended by Amdt. 26, 16 F. R. 9030, Sept. 6, 1951]

PART 1670—RECORDS ADMINISTRATION IN FEDERAL RECORD DEPOT

§ 1670.5 *Confidential records.* All records obtained under the Selective Training and Service Act of 1940, as amended, except Registration Cards (DSS Form 1) and Classification Records (DSS Form 100), and all records obtained under Public Law 26, 80th Congress, and title I of the Universal Military Training and Service Act, as amended, which are in Federal record depots of the several State Headquarters for Selective Service and the information contained in such records shall be confidential, and shall not be available in any manner or used for any purpose except as provided by the regulation in this part. Information on Registration Cards (DSS Form 1) and information contained in Classification Records (DSS Form 100) shall be available to the public.

[Amdt. 62, 20 F. R. 5079, July 15, 1955]

§ 1670.8 *Availability and use of confidential records and information.* (a) Information contained in records in a registrant's file may be disclosed or furnished to, or examined by, the following persons, namely:

(1) The registrant, or any person having written authority signed by the registrant.

(2) The legal representative of a deceased registrant upon presentation of letters testamentary or letters of administration, or where there is no legal representative appointed for the estate of a deceased registrant, his next of kin; provided, that proof of the registrant's death and proof of the relationship of the next of kin to the registrant have been submitted and are in his file. For the purpose of this subparagraph, the next of kin of a registrant shall be limited to his widow, child, mother, father, brother, or sister.

(3) All personnel of the Selective Service System while engaged in carrying out the functions of the Selective Service System.

(4) United States Attorneys and their duly authorized representatives, including agents of the Federal Bureau of Investigation.

(5) Any agency, official, or employee, or class or group of officials or employees, of the United States or any State or subdivision thereof, but only when and to the extent specifically authorized in writing by the State Director of Selective Service or the Director of Selective Service.

[Paragraph (a) amended by Amdt. 62, 20 F. R. 5080, July 15, 1955]

§ 1670.12 *Searching or handling records.* Except as specifically provided by regulations in this part or by written authority of the Director of Selective Service, no person shall be entitled to search or handle any record which is in a Federal record depot.

[13 F. R. 4666, Aug. 12, 1948. Redesignated at 14 F. R. 5021, Aug. 13, 1949]

SMALL BUSINESS ADMINISTRATION

TITLE 13—BUSINESS CREDIT AND ASSISTANCE

CHAPTER II—SMALL BUSINESS ADMINISTRATION

PART 105—DISCLOSURE OF INFORMATION

§ 105.3 Disclosure prohibited. Officers and employees of the Small Business Administration are hereby prohibited from disclosing or making available to anyone the files, documents, records and information described in § 105.2 for any purpose other than the performance of his official duties, unless the Administrator specifically authorizes the disclosure of such information or the production of such files, documents and records, or parts thereof, as not being contrary to the public interest.

§ 105.4 Advice to Administrator. Whenever an officer or employee of the Administration is served with a subpoena demanding the disclosure of the information or the production of the files, documents and records described in § 105.2, or is requested by any court, committee or other body to disclose the information or produce the files, documents and records described in § 105.2, such officer or employee shall promptly inform his superior of the requirements of the subpoena or request and shall ask for instructions from the Administrator with respect thereto.

DEPARTMENT OF THE TREASURY

TITLE 31—MONEY AND FINANCE—TREASURY

Subtitle A—Office of the Secretary of the Treasury

PART 1—CENTRAL OFFICE PROCEDURES

Subpart A—Disclosure of Official Information and Testimony in Court

Sec.

1.2 Rules governing access to final opinions or orders, to rules and to official records.
[Amended]

§ 1.2 *Rules governing access to final opinions or orders, to rules and to official records*—(a) *Availability of final opinions or orders and rules.* Except as hereinafter stated, all final opinions or orders in the adjudication of cases and all rules (other than those relating solely to the internal management of the Treasury Department) issued by the Office of the Secretary of the Treasury (including the Offices of the Under Secretary, the Assistant Secretaries, the Fiscal Assistant Secretary, the Assistants and Special Assistants to the Secretary, and the Administrative Assistant Secretary) are made available to public inspection at the Treasury Department, Washington 25, D. C. This provision shall not apply, however, to final opinions or orders which are not cited as precedents and which contain information held confidential for one or more of the good causes set forth in paragraph (e) of this section. In view of the nature of their functions, the Office of the General Counsel, the Bureau of Engraving and Printing, the Office of International Finance (except the Division of Foreign Assets Control) the Division of Personnel, the Office of the Technical Staff, the Division of Tax Research, the Office of Administrative Services, the United States Savings Bonds Division, the Office of the Tax Legislative Counsel, and the Office of the Chief Coordinator, Treasury Enforcement Agencies, do not issue any final opinions or orders in the adjudication of cases, nor do they issue any rules (other than those relating solely to the internal management of the Treasury Department.)

[Paragraph (a) amended, 16 F. R. 767, Jan. 27, 1951]

* * * * *

(c) *Availability of official records.* Except as to official records relating solely to the internal management of the Treasury Department and except as to official records held confidential for one or more of the good causes set forth in paragraph (e) of this section, all matters of official record in the files of the Office of the Secretary of the Treasury (including the Offices of the Under Secretary, the Assistant Secretaries, the Fiscal Assistant Secretary, the Assistants and Special Assistants to the Secretary, and the Administrative Assistant to the Secretary), the Office of the General Counsel, the Bureau of Engraving and Printing, the Office of International Finance, the Division of Personnel, the Office of the Technical Staff, the Division of Tax Research, the Office of Administrative Services, the United States Savings Bonds Division, the Office of the Tax Legislative Counsel, and the Office of the Chief Coordinator, Treasury Enforcement Agencies, are made available to persons properly and directly concerned.

(e) *Confidential official records.* For one or more of the following good causes, certain information in the official records of the bureaus, divisions, and offices enumerated in paragraph (c) of this section is held confidential, and is not available to the public: (1) The information has been submitted in confidence to the Treasury Department; (2) the information relates to a financial matter or some other type of transaction between the Government and an individual or corporation, the disclosure of which would be prejudicial to the individual or corporation involved (such as by aiding a competitor) without furthering the public interest; (3) for security reasons, such as protection against counterfeit-

ing; (4) the information pertains to negotiations with foreign countries, which information, because of its nature or because of an agreement between this Government and the foreign countries concerned, is required to be held confidential; (5) the material is made confidential by law, such as tax returns; or (6) the disclosure of the information would clearly be inimical to the public interest.

(g) *Determination of application for information.* The determination as to whether the information requested is available for disclosure in any particular case will be made by the Administrative Assistant to the Secretary (or the Secretary of the Treasury, the Under Secretary, an Assistant Secretary, the Fiscal Assistant Secretary, or the General Counsel). As a general rule, the request for information will be determined on the basis of the nature of the interest of the person making the request and the character of the information desired. If in a particular case the Administrative Assistant to the Secretary (or the Secretary of the Treasury, the Under Secretary, an Assistant Secretary, the Fiscal Assistant Secretary, or the General Counsel) determines that a request for information must be refused, prompt notice of the refusal will be given to the applicant, together with a simple statement of the grounds for such refusal.

§ 1.4 *Regulations not applicable to official requests.* Sections 1.1 to 1.3 shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that compliance therewith would be in violation of law, or inimical to the public interest. Cases of doubt should be referred for decision to the Secretary, the Under Secretary, an Assistant Secretary, or the Administrative Assistant to the Secretary.

§ 1.5 *Waiver of regulations.* The provisions of §§ 1.1 to 1.3 may be waived in proper cases by the Secretary, the Under Secretary, or an Assistant Secretary.

DEPARTMENT OF THE TREASURY—BUREAU OF THE MINT

TITLE 31—MONEY AND FINANCE—TREASURY

Subtitle B—Regulations Relating to Money and Finance

PART 92—BUREAU OF MINT PROCEDURES AND DESCRIPTIONS OF FORMS

Subpart A—Procedures

§ 92.27 *Opinions, rulings and orders available to the public.* Final opinions, rulings and orders issued by the Bureau of the Mint in specific cases in connection with administration of the gold and silver regulations and other mint matters are not cited as precedents and, accordingly, are not published or made available to the public except in the discretion of the Director of the Mint upon specific request and a showing of legitimate interest therein. Rulings and opinions of general applicability are available to the public upon written request to the Director.

§ 92.29 *Official—(a) Official records deemed confidential.* Official records falling within § 92.28 (a) through (k) are held to be confidential for the following causes: (1) They do not contain information of legitimate concern to the general public; (2) they may contain information of a confidential nature concerning the commercial and industrial affairs and activities of individuals and enterprises; and (3) to permit general inspection of such documents would violate public and private confidence.

(b) *Availability of official records deemed confidential.* Official records deemed confidential are available for inspection as follows:

(1) An applicant for a gold license and his agent or successor in interest may inspect documents included in § 92.28 (a), (b), (c), (d), and (k) which refer to his application;

(2) Gold licensees, persons whose licenses have been revoked, persons whose applications have been denied, and their agents or successors in interest may inspect documents included in § 92.28 (a), (b), (c), (d), (i), and (j) which refer to their applications or licenses;

(3) Depositors of gold or silver may inspect documents included in § 92.28 (f) through (h) and (j) which refer to their deposit; and

(4) Persons properly and directly concerned, upon the furnishing of a court order therefor entered in pending litigation, or in lieu thereof with the written consent of the person authorized to inspect the documents under this paragraph and paragraph (a) or (c) of this section, may inspect documents included in § 92.28 (a) through (j); and

(5) Any person showing a legitimate interest therein will be advised as to the form and amount of a license held by any person.

(6) Upon official requests of other governmental agencies or officers thereof, acting in their official capacities, the records included in § 92.28 may be made available to them.

(c) *Information for applicants.* Applicants will be advised of the records which they will be permitted to examine, the time and place of examination. In certain instances, where facilities permit, copies of documents may in the discretion of the Director be sent to the applicant. A reasonable fee may be charged for furnishing copies of official records.

DEPARTMENT OF THE TREASURY—COMMITTEE ON PRACTICE

TITLE 31—MONEY AND FINANCE—TREASURY

PART 13—PROCEDURES OF THE COMMITTEE ON PRACTICE—AVAILABILITY OF RECORDS

§ 13.2 *Official Records.* (c) The official records pertaining to the revocation (or the proposed revocation) of licenses of the character indicated in paragraph (a) (1) and (2) of this section, and to the investigation of applicants therefor, constitute confidential information, except as provided in paragraphs (a) and (b) of this section. These records are held confidential for these good causes:

(1) Publication is capable of injuring licensees and former licensees without furthering the public interest.

(2) Much of the information is elicited without the aid of the subpoena power on the assurance that the sources will be protected.

(R. S. 161; 5 U. S. C. 22) [11 F. R. 177A-87, 12045. Redesignation noted at 14 F. R. 3678]

DEPARTMENT OF THE TREASURY—OFFICE OF THE TREASURER

TITLE 31—MONEY AND FINANCE—TREASURY

CHAPTER II—FISCAL SERVICE

SUBCHAPTER C—OFFICE OF THE TREASURER OF THE UNITED STATES

PART 351—AVAILABILITY OF RECORDS

§ 351.2 *Official records.* The official records on file in the Office of the Treasurer include paid checks and records thereof; retired obligations of the United States and records thereof; records relating to coin, bullion and currency; and various accounting and other records relating to the functions of the Office of the Treasurer. Certain of the information contained in these records is held confidential and is not available to the public because it relates to personal financial transactions of individuals or corporations, or because the disclosure of the information would clearly be inimical to the public interest. All requests for information in respect to matters contained in the official records of the Office of the Treasurer of the United States, should be addressed to the Treasurer of the United States, Treasury Department, Washington 25, D. C. The request should set forth the interest of the applicant in the subject matter and the purpose for which the information is desired. The determination as to whether the information is available for disclosure will be made by the Secretary, the Under Secretary or the Fiscal Assistant Secretary. Whenever it is determined that a matter of official record is available for disclosure in a particular case, a copy of said official record will be furnished the party requesting the same, or the officer passing upon the request may, in his discretion, allow a personal inspection of the official record in question at the place where the document is normally kept. The regulations contained in this section shall supersede any other Treasury Department orders, rules or regulations to the extent that they are in conflict with the regulations in this part.

(R. S. 161 ; 5 U. S. C. 22) [11 F. R. 177A-94, redesignated at 13 F. R. 9497]

VOCATIONAL REHABILITATION OFFICE—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

TITLE 45—PUBLIC WELFARE

§ 401.58 Confidential information; Office of Vocational Rehabilitation, including the District of Columbia Rehabilitation Service. (a) All information as to personal facts given or made available to the Office of Vocational Rehabilitation, including the District of Columbia Rehabilitation Service, its representatives or employees, in the course of the administration of the vocational rehabilitation program shall be held confidential.

(b) The use of such information and records shall be limited to purposes directly connected with the administration of the vocational rehabilitation program and may not be disclosed, directly or indirectly, other than in the administration thereof, unless the consent of the client to such release has been obtained either expressly or by necessary implication. Such information may, however, be released, in accordance with such standards as the Director may find necessary, to welfare agencies or programs from which the client has requested certain services under circumstances from which his consent may be presumed.

(c) All such confidential information and records are the property of the Office of Vocational Rehabilitation and are to be used only in accordance with this part.

(d) The Director is authorized to establish or approve such procedures and standards as may be required:

- (1) To effectuate this section;
- (2) To assure that all rehabilitation clients and interested persons will be informed as to the confidentiality of rehabilitation information, and that a copy of this section will be made available to them; and
- (3) To assure the adoption of such office practices and the availability of such office facilities and equipment as will assure the adequate protection of the confidentiality of such records.

VETERANS ADMINISTRATION

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

§ 1.454 Unauthorized disclosure of investigative information. All testimony given in an investigation conducted by the Investigation Service and the report of investigation and its contents are for the use of the Administrator and his staff only and will not be disclosed to unauthorized persons within or without the Veterans Administration. Under no circumstances should reports of investigation or their contents be forwarded or disclosed to field stations, Managers, or other officials within or without the Veterans Administration, without clearance through and authorization by either the Administrator, Deputy Administrator, Assistant Administrator for Appraisal and Security, or the Director, Investigation Service, except those reports referred to the office of the General Counsel or the Chief Attorney for purposes of criminal prosecution or litigation, or reports of investigation authorized by the Chairman, Board of Veterans Appeals. In order that investigations may not interrupt the normal functions of a station, all employees are instructed to refrain from discussing matters under investigation either during the investigation or after its completion. Particularly those employees called upon to testify will refrain from discussing their testimony except with the investigator.

RELEASE OF INFORMATION CONCERNING CLAIMANTS AND BENEFICIARIES (FROM RECORDS OF THE VETERANS' ADMINISTRATION)

AUTHORITY: §§ 1.500 to 1.526 issued under sec. 5, 43 Stat. 608, as amended, sec. 2, 46 Stat. 1016, as amended; 38 U. S. C. 11a, 426. Statutory provisions interpreted or applied are cited to text in parentheses.

SOURCE: §§ 1.500 to 1.526 appear at 13 F. R. 6999, Nov. 27, 1948, except as otherwise noted.

§ 1.500 General. Files, records, reports, and other papers and documents pertaining to any claim filed with the Veterans' Administration, whether pending or adjudicated, will be deemed confidential and privileged, and no disclosure thereof or information therefrom will be made except in the circumstances and under the conditions set forth in §§ 1.501–1.526.

§ 1.505 Genealogy. Information of a genealogical nature when its disclosure will not be detrimental to the memory of the veteran and not prejudicial, so far as may be apparent, to the interests of any living person or to the interests of the Government may be released by the Veterans' Administration or in the case of inactive records may be released by the Archivist of the United States if in his custody.

§ 1.507 Disclosures to Members of Congress. Members of Congress shall be furnished in their official capacity in any case such information contained in the Veterans Administration files as may be requested for official use. However, in any unusual case, the request will be presented to the Administrator, Deputy Administrator, Assistant Administrator, or department head for personal action. When the requested information is of a type which may not be furnished a claimant, the Members of Congress shall be advised that the information is furnished to him confidentially in his official capacity and should be so treated by him. (See Vet. Reg. 11, 38 U. S. C. ch. 12A.) Information concerning the beneficiary designation of a United States Government life insurance or National Service life insurance policy is deemed confidential and privileged and during the insured's lifetime shall not be disclosed to anyone other than the insured or his duly appointed fiduciary unless the insured or the fiduciary authorizes the release of such information.

[21 F. R. 10375, Dec. 28, 1956]

§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States. Copies of records from the files of the Veterans Administration will, in the event of lit-

gation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge, provided the claimant or his duly authorized representative has authorized the release of the information contained in such records. If the release of information is not authorized in writing by the claimant or his duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the General Counsel or Chief Attorney whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen's compensation, or similar board in which the litigation is pending upon receipt of a subpoena duces tecum addressed to the Administrator of Veterans' Affairs, or the Manager of the office in which the records desired are located. In the event the subpoena requires the production of the file, as distinguished from the copies of the records, no expense to the Veterans Administration may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpoena to insure submission of the file to the court without expense to the Veterans Administration.

[21 F. R. 10375, Dec. 28, 1956]

§ 1.511 *Judicial proceedings generally.* (c) Where copies of documents or records are requested by the process of any State or municipal court, workmen's compensation board or other administrative agency, functioning in a quasi-judicial capacity, the process when presented must be accompanied either by authority from the claimant concerned to comply therewith or by an affidavit of the attorney of the party securing the same, setting forth the character of the pending suit, the purpose for which the documents or records sought are to be used as evidence, and, if adversely to the claimant, information from which it may be determined whether the furnishing of the records sought is necessary to prevent the perpetration of fraud or other injustice. When the process received is accompanied by authorization of the claimant to comply therewith, if otherwise it be proper under §§ 1.501 to 1.526, copies of the records requested shall be furnished to the attorney for the party who caused the process to be issued upon the payment of the prescribed fee. If it appears by the process or otherwise that the records are to be used adversely to the claimant, the averments contained in the affidavit shall be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the records is necessary and proper to prevent a fraud or other injustice, the records requested shall be produced before the court, or board or other agency on the date stipulated in the subpoena duces tecum, or other proper process and appropriate disclosure made within the limits of § 1.501 to § 1.526. In such case both the attorney for the veteran and the attorney for the party who secured the process shall be advised by the Veterans Administration representative having custody of the records or file that the same are available for examination within said limits by either or both of the said attorneys. Payment of the fees as prescribed by the schedule of fees, as well as the amount of any other cost incident to producing the records, must first be deposited with the Veterans Administration by the party who caused the process to be issued. If the responsible Veterans Administration employees (see par. (a) of this section) decide that insufficient cause has been shown to warrant releasing the requested information, the Veterans Administration employee who responds to the process will insist that Veterans Administration records are confidential and privileged and, although they are produced at the hearing, he will decline to reveal their content. The file must remain at all times in the custody of a representative of the Veterans Administration, and, if there is an offer and admission of any

record or document contained therein, permission should be obtained to submit a copy so that the original may remain intact in the file.

§ 1.514 *Disclosure to private physicians and hospitals other than Veterans Administration.* When a beneficiary elects to obtain medical attention from a private practitioner or in a hospital other than a Veterans Administration hospital, there may be disclosed to such private practitioner or head of such hospital (State, municipal, or private) such information as to the medical history, diagnosis, findings, or treatment as is requested, provided there is also submitted a written authorization from the beneficiary or in the event he is incompetent, from his representative or his nearest relative, for release of desired data. The said information will be supplied without charge directly to the private physician or hospital head and not through the beneficiary. In forwarding this information, it will be accompanied by the stipulation that it is released with the consent of the patient and then only on condition that it is to be treated as a privileged communication. However, such information may be released without charge and without consent of the patient, his representative, or nearest relative when a request for such information is received from the superintendent of a State hospital for psychotic patients, a commissioner or head of a State department of mental hygiene, or head of a State, county, or city health department.

[21 F. R. 10376, Dec. 28, 1956]

§ 1.517 *Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Veterans' Administration.* Requests from educational institutions and agencies cooperating with the Veterans' Administration in the vocational rehabilitation and education of veterans for the use of vocational rehabilitation and education records for research studies will be forwarded to central office with the Manager's recommendation for review by the Chief Benefits Director. Where the request to conduct a research study is approved by the Chief Benefits Director, the Manager is authorized by this section to release information for such studies from vocational rehabilitation and education records as required: *Provided, however,* That any data or information obtained shall not be published without prior approval of the Chief Benefits Director and that data contained in published material shall not identify any individual veteran.

(Sec. 30, 43 Stat. 615, as amended, Vet. Reg. 11, as amended; 38 U. S. C. 456, ch. 12A) [19 F. R. 6380, Oct. 26, 1954; 20 F. R. 9180, Dec. 10, 1955]

§ 1.520 *Confidentiality of social data.* Persons having access to social data will be conscious of the fact that the family, acquaintances, and even the veteran himself have been willing to reveal these data only on the promise that they will be held in complete confidence. There will be avoided direct, ill-considered references which may jeopardize the personal safety of these individuals and the relationship existing among them, the patient, and the social worker, or may destroy their mutual confidence and influence, rendering it impossible to secure further cooperation from these individuals and agencies. Physicians in talking with beneficiaries will not quote these data directly but will regard them as indicating possible directions toward which they may wish to guide the patient's self-revelations without reproaching him for his behavior or arousing natural curiosity or suspicion regarding any informant's statement. The representatives of service organizations and duly authorized representatives of veterans will be especially cautioned as to their grave responsibility in this connection.

§ 1.521 *Special restrictions concerning social security records.* Information received from the Social Security Administration may be filed in the veteran's claims folder without special provision. Such information will be deemed privileged and may not be released by the Veterans Administration except that the amount of a social security payment made to the claimant in conjunction with a Veterans Administration benefit payment may be disclosed to the claimant. Any request from outside the Veterans Administration for social security information will be referred to the Social Security Administration for such action as they deem proper.

(Sec. 30, 43 Stat. 615, as amended, Vet. Reg. 11, as amended; 38 U. S. C. 456, ch. 12A) [22 F. R. 6060, Aug. 1, 1957]

§ 1.525 *Inspection of records by or disclosure of information to recognized representatives of organizations.* (a) (1) The accredited representatives of any of the organizations recognized under section 200, Public Law 844, 74th Congress (act of June 29, 1936), holding appropriate power of attorney may inspect the Veterans' Administration file of any claimant upon the condition that only such

information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him to the claimant or, if the claimant is incompetent, to his legally constituted fiduciary. All other information in the file shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Veterans' Administration of the claim of the claimant. The managers of field stations and the directors of the services concerned in central office will each designate a responsible officer to whom requests for all files must be made, except that managers of district offices and centers with district office activities will designate two responsible officials recommended by the service directors concerned, one responsible for claims and allied folders and the other for insurance files.

(2) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Veterans' Administration the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; in no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be made out and attached to the case, outlining the reasons which justify the verbal or written release of the information to the accredited representative. In any case where there is an unrevoked power of attorney, no persons or organizations other than the one named in the power of attorney shall be afforded information from the file; and when any claimant has filed notice with the Veterans' Administration that he does not want his file inspected, such file will not be made available for inspection.

(b) (3) No person other than a Veterans' Administration employee in the performance of his official duties may inspect an insurance file or receive information therefrom except:

(i) An authorized representative of the insured, or, after maturity of the insurance by death of the insured, of the beneficiary, shall, if holding valid power of attorney, be permitted to inspect the claims file containing the basic papers concerning the insurance for the purpose of assisting the insured or beneficiary in perfecting a claim for any benefit under the policy.

(ii) In the absence of a claim for benefits under the insurance policy, the insured or, after the maturity of the insurance by death of the insured, the beneficiary may authorize the release to a third person of such insurance information as the insured or the beneficiary would be entitled to receive, provided there is submitted to the Veterans' Administration a specific authorization in writing for this purpose.

(iii) Unless otherwise authorized by the insured or the beneficiary, as the case may be, such authorized representative shall not release information as to designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§ 1.500 through 1.526.

(4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Veterans' Administration personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Veterans' Administration personnel for adjudication purposes will not be inspected by anyone other than those employees of the Veterans' Administration whose duties require same for the purpose of clinical diagnosis or medical treatment.

EXHIBIT No. 12

STATUTORY PROVISIONS RESTRICTING DISCLOSURE
OF GOVERNMENT INFORMATION

MEMORANDUM

April 18, 1958.

To: Senate Subcommittee on Constitutional Rights. (Attention: Mr. Slayman.)
From: American Law Division, Legislative Reference Service, Library of Congress.

Subject: SELECT LIST OF PROVISIONS RESTRICTING DISCLOSURE OF GOVERNMENT INFORMATION.

(1) Disclosure of information affecting national security. Examples of this type of limitation are:

U. S. C. 10: 1582-----	Information detrimental to national security may be omitted from annual report of Secretary of Defense. (P. 988.)
U. S. C. 18: 793-798-----	Unauthorized gathering, transmitting, or losing defense, or classified, information and intelligence codes penalized. (P. 988.)
U. S. C. 18: 952-----	Diplomatic codes protected. (P. 991.)
U. S. C. 35: 181, 186-----	Inventions made secret where disclosure detrimental to public safety. (P. 992.)
U. S. C. 42: 2161-2166, 2274, 2277--	Atomic energy information controlled. (P. 993.)
U. S. C. 47: 154 (j)-----	Federal Communications Commission may withhold secret information relating to national defense. (P. 996.)
U. S. C. 49: 674-----	Civil Aeronautics Board may withhold secret information affecting national defense. (P. 997.)
U. S. C. 50: 159-----	Information detrimental to national security may be omitted from report of National Advisory Committee for Aeronautics. (P. 997.)
U. S. C. 50: 403g-----	Central Intelligence Agency exempted from requirements concerning disclosure of information about its personnel. (P. 997.)
U. S. C. 50: 403 (d) (3)-----	Director of Central Intelligence made responsible for protecting intelligence sources and methods from unauthorized disclosure.
U. S. C. 50: 783 (b)-----	Government personnel forbidden to communicate classified information to agents of foreign governments. (P. 997.)

(2) Disclosure of confidential information acquired from private persons under compulsion of the law. Examples:

U. S. C. 7: 12-----	Trade secrets or names of customers obtained under Commodity Exchange Act. (P. 999.)
U. S. C. 7: 472-----	Cotton data furnished to Secretary of Agriculture. (P. 999.)

U. S. C. 7: 507-----	Tobacco data furnished to Secretary of Agriculture. (P. 999.)
U. S. C. 7: 608d-----	Information concerning Agricultural Marketing Agreements. (P. 1000.)
U. S. C. 7: 955-----	Peanut data furnished to Secretary of Agriculture. (P. 1000.)
U. S. C. 7: 1159-----	Information obtained under Sugar Act of 1948. (P. 1000.)
U. S. C. 7: 1373 (c)-----	Information acquired under Agricultural Adjustment Act. (P. 1001.)
U. S. C. 8: 1304 (b)-----	Alien registration records. (P. 1001.)
U. S. C. 13: 8-9, 214-----	Census information. (P. 1001.)
U. S. C. 15: 50-----	Information obtained by Federal Trade Commission. (P. 1002.)
U. S. C. 15: 717g-----	Information obtained from accounts and records of natural gas companies. (P. 1002.)
U. S. C. 16: 825-----	Information obtained from accounts and records of persons regulated by Federal Power Commission. (P. 1003.)
U. S. C. 18: 1905-----	Disclosure of information obtained in confidence made a criminal offense. (P. 1004.)
U. S. C. 18: 1906-1908-----	Names of borrowers from banks, etc., ascertained by examiners. (P. 1004.)
U. S. C. 21: 331(j)-----	Trade secrets acquired under Food and Drug Act. (P. 1005.)
U. S. C. 22: 286(f)-----	Information obtained under Bretton Woods Agreement. (P. 1005.)
U. S. C. 26: 6103, 7213-----	Tax returns. (P. 1006.)
U. S. C. 26: 7237 (e)-----	Narcotics tax returns. (P. 1008.)
U. S. C. 26: 7213(b)-----	Processes of manufacturers inspected by revenue agents. (P. 1008.)
U. S. C. 45: 362(d)-----	Information obtained by Railroad Retirement Board. (P. 1008.)
U. S. C. 46: 643(f)-----	Records of seamen's discharge books. (P. 1008.)
U. S. C. 47: 220(f)-----	Information obtained from accounts and records examined by Federal Communications Commission. (P. 1009.)
U. S. C. 49: 20 (7, f), 917e, 1021 (e).-----	Information obtained by agents of Interstate Commerce Commission. (P. 1009.)
U. S. C. 49: 320(a), 913(b)-----	Contracts of motor and water carriers, unless found unlawful. (P. 1010.)
U. S. C. 49: 322(d)-----	Information obtained from accounts and records of motor carriers. (P. 1011.)
U. S. C. 49: 622(f)-----	Information obtained from accounts and records of air carriers. (P. 1011.)
U. S. C. 50: 139-----	Information obtained from manufacturers and distributors of explosives. (P. 1011.)
U. S. C. 50 (App): 327-----	Selective Service records. (P. 1011.)
U. S. C. 50 (App): 643a-----	Information obtained upon audit of defense contracts. (P. 1012.)
U. S. C. 50 (App): 1896(g)-----	Information obtained under Housing and Rent Act of 1947. (P. 1012.)
U. S. C. 50 (App): 2026-----	Information obtained under Export Control Act of 1949. (P. 1013.)
U. S. C. 50 (App): 2155-----	Information obtained under Defense Production Act of 1950. (P. 1013.)

(3) Information, premature disclosure of which would give an unfair advantage to recipients. Examples:

U. S. C. 5: 637-----Information concerning civil service examinations. (P. 1014.)

U. S. C. 18: 1902-----Crop reports. (P. 1014.)

(4) Miscellaneous provisions imposing restrictions on the release of information. Examples:

U. S. C. 12: 77-----Order and findings in proceedings to remove director of national bank. (P. 1015.)

U. S. C. 15: 80b-10-----Investigations of investment advisers by Securities and Exchange Commission. (P. 1015.)

U. S. C. 22: 987-----Correspondence and records of State Department concerning Foreign Service employees. (P. 1016.)

U. S. C. 34: 526-----Results of experiments for private ship-builders. (P. 1016.)

U. S. C. 38: 3201-----Veterans' Bureau files.

U. S. C. 39: 762-----Postal savings deposits. (P. 1017.)

U. S. C. 42: 260(d)-----Public Health Service hospital records of voluntary narcotics patients. (P. 1017.)

U. S. C. 49: 674-----Withholding, upon request, of information filed or obtained under Civil Aeronautics Act. (P. 1017.)

EXHIBIT No. 13

COMPILATION OF SELECTED STATUTORY PROVISIONS RESTRICTING DISCLOSURE OF GOVERNMENT INFORMATION

I. STATUTORY LIMITATIONS ON DISCLOSURE OF INFORMATION AFFECTING NATIONAL SECURITY

TITLE 10—ARMED FORCES

CHAPTER 81—CIVILIAN EMPLOYEES

§ 1582. Professional and scientific services: reports to Congress on appointments

The Secretary of Defense shall report to Congress each calendar year on the number of positions established under sections 1581, 4021, 7471, and 9021 of this title during that calendar year. The report shall list the name, rate of compensation, functions, and qualifications of each incumbent. However, the Secretary may omit any item, if he considers that a full public report on it would be detrimental to the national security. In such a case, he shall present the information, in executive session, to such committees of the Senate and the House of Representatives as are designated by the presiding officers of those bodies. Aug. 10, 1956, ch. 1041, Sec. 1, 70A Stat. 118.

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

CHAPTER 37—ESPIONAGE AND CENSORSHIP

CROSS REFERENCES

§ 793. Gathering, transmitting, or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal, station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model,

instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of his trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. June 25, 1948, c. 645, § 1, 62 Stat. 736, amended Sept. 23, 1950, c. 1024, § 18, 64 Stat. 1003.

§ 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or

conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. As amended Sept. 3, 1954, c. 1261, Title II, § 201, 68 Stat. 1219.

§ 795. Photographing and sketching defense installations

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 737.

§ 796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 738.

§ 797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 738.

§ 798. Disclosure of classified information

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.
(Added Oct. 31, 1951, ch. 655, Sec. 24 (a), 65 Stat. 719.)

TEMPORARY EXTENSION OF SECTION

Temporary extension of section, see section 798 of this title.

§ 798. Temporary extension of section 794¹

The provisions of section 794 of this title, as amended and extended by section 1 (a) (29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C. F. R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for. (Added June 30, 1953, ch. 175, Sec. 4, 67 Stat. 133.)

CHAPTER 45—FOREIGN RELATIONS**§ 952. Diplomatic codes and correspondence**

Whoever, by virtue of his employment by the United States, obtains from another or has or has had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and without authorization or competent authority, willfully publishes or furnishes to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United States, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. June 25, 1948, c. 645, 62 Stat. 743.

¹ So enacted. See first section 798 enacted on Oct. 31, 1951, set out in 1952 edition.

TITLE 35—PATENTS**CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING
APPLICATIONS IN FOREIGN COUNTRY****§ 181. Secrecy of certain inventions and withholding of patent**

Whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another department or agency so designated, the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner and the Commissioner shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the grant of a patent withheld for a period of more than one year. The Commissioner shall renew the order at the end thereof, or at the end of any renewal period, for additional periods of one year upon notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issued, during a time when the United States is at war, shall remain in effect for the duration of hostilities and one year following cessation of hostilities. An order in effect, or issued, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security. July 19, 1952, c. 950, § 1, 66 Stat. 805.

§ 186. Penalty

Whoever, during the period of periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than two years, or both. July 19, 1952, c. 950, § 1, 66 Stat. 807.

TITLE 42—THE PUBLIC HEALTH AND WELFARE**CHAPTER 23—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY
(NEW)****SUBCHAPTER XI—CONTROL OF INFORMATION****HISTORICAL NOTE**

Prior Provisions. Provisions similar to those comprising this subchapter were contained in section 10 of Act Aug. 1, 1946, c. 724, 60 Stat. 766 (formerly classified to section 1810 of this title), prior to the complete amendment and renumbering of said Act Aug. 1, 1946, by Act Aug. 30, 1954, 9:44 a. m., E. D. T., c. 1073, 68 Stat. 921.

§ 2161. Policy of Commission

It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense of security. Consistent with such policy, the Commission shall be guided by the following principles:

(a) Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 2164 of this title; and

(b) The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information. Aug. 1, 1956, c. 724, § 141, as added Aug. 30, 1954, 9:44 a. m., E. D. T., c. 1073, § 1, 68 Stat. 940.

HISTORICAL NOTE

Legislative History. For legislative history and purpose of Act Aug. 30, 1954, see 1954 U. S. Code Cong. and Adm. News, p. 3456.

§ 2162. Classification and declassification of Restricted Data—Periodic determination

(a) The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

CONTINUOUS REVIEW

(b) The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

**JOINT DETERMINATION ON ATOMIC WEAPONS; PRESIDENTIAL DETERMINATION
ON DISAGREEMENT**

(c) In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

SAME; REMOVAL FROM RESTRICTED DATA CATEGORY

(d) The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made

available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with section 2164 (b) of this title.

JOINT DETERMINATION ON ATOMIC ENERGY PROGRAMS

(e) The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 403 (d) of Title 50 and can be adequately safeguarded as defense information. Aug. 1, 1946, c. 724, § 142, as added Aug. 30, 1954, 9:44 a.m., E. D. T., c. 1073, § 1, 68 Stat. 941.

§ 2163. Access to Restricted Data

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under section 2165 (b) of this title to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 2165 of this title. Aug. 1, 1946, c. 724, § 143, as added Aug. 30, 1954, 9:44 a.m., E. D. T., c. 1073, § 1, 68 Stat. 941, and amended Aug. 6, 1956, c. 1015, § 14, 70 Stat. 1071.

HISTORICAL NOTE

1956 Amendment. Act Aug. 6, 1956, amended section by inserting between the words "licensee of the Commission" and the words "to permit any employee" the words "or any other person authorized access to Restricted Data by the Commission under section 2105 (b) of this title".

§ 2164. International cooperation—By Commission

(a) The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

- (1) refining, purification, and subsequent treatment of source material;
- (2) reactor development;
- (3) production of special nuclear material;
- (4) health and safety;
- (5) industrial and other applications of atomic energy for peaceful purposes; and

(6) research and development relating to the foregoing:

Provided, however, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title, or is undertaken pursuant to an agreement existing on August 30, 1954.

BY DEPARTMENT OF DEFENSE

(b) The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data as is necessary to—

- (1) the development of defense plans;
- (2) the training of personnel in the employment of and defense against atomic weapons; and
- (3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons,

while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That no such cooperation shall involve communication of Restricted Data relating to the

design or fabrication of atomic weapons except with regard to external characteristics, including size, weight, and shape, yields and effects, and systems employed in the delivery or use thereof but not including any data in these categories unless in the joint judgment of the Commission and the Department of Defense such data will not reveal important information concerning the design or fabrication of the nuclear components of an atomic weapon: *And provided further*, That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title. Aug. 1, 1946, c. 724, § 144, as added Aug. 30, 1954, 9:4 a. m., E. D. T., c. 1073, § 1, 68 Stat. 942.

§ 2165. Security restrictions—On contractors and licensees

(a) No arrangement shall be made under section 2051 of this title, no contract shall be made or continued in effect under section 2061 of this title, and no license shall be issued under section 2133 or 2134 of this title, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

EMPLOYMENT OF PERSONNEL; ACCESS TO RESTRICTED DATA

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

INVESTIGATIONS BY F. B. I.

(c) In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

SAME; PRESIDENTIAL INVESTIGATION

(d) If the President deems it to be in the national interest, he may from time to time cause investigations of any group or class which are required by subsections (a) and (b) of this section to be made by the Federal Bureau of Investigation instead of by the Civil Service Commission.

CERTIFICATION OF SPECIFIC POSITIONS FOR INVESTIGATION BY F. B. I.

(e) Notwithstanding the provisions of subsections (a) and (b) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity and upon such certification the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation instead of by the Civil Service Commission.

INVESTIGATION STANDARDS

(f) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations to be made by the Civil Service Commission pursuant to subsections (a) and (b) of this section. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted. Aug. 1, 1946, c. 724, § 145, as added Aug. 30, 1954, 9:44 a. m., E. D. T., c. 1073, § 1, 68 Stat. 942.

§ 2166. Applicability of other laws

(a) Sections 2161–2165 of this title shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

(b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law. Aug. 1, 1946, c. 724, § 146, as added Aug. 30, 1954, 9:44 a. m., E. D. T., c. 1073, § 1, 68 Stat. 943.

§ 2274. Communication of restricted data

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data—

(a) communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished by death or imprisonment for life (but the penalty of death or imprisonment for life may be imposed only upon recommendation of the jury), or by a fine of not more than \$20,000 or imprisonment for not more than twenty years, or both;

(b) Communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both. (Aug. 1, 1946, ch. 724, § 224, as added Aug. 30, 1954, 9:44 a. m., E. D. T., ch. 1073, § 1, 68 Stat. 958.)

§ 2277. Disclosure of restricted data

Whoever, being or having been an employee or member of the Commission, a member of the Armed Forces, an employee of any agency of the United States, or being or having been a contractor of the Commission or of an agency of the United States, or being or having been an employee of a contractor of the Commission or of an agency of the United States, or being or having been a licensee of the Commission, or being or having been an employee of a licensee of the Commission, knowingly communicates, or whoever conspires to communicate or to receive, any Restricted Data, knowing or having reason to believe that such data is Restricted Data, to any person not authorized to receive Restricted Data pursuant to the provisions of this chapter or under rule or regulation of the Commission issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive Restricted Data shall, upon conviction thereof, be punishable by a fine of not more than \$2,500. (Aug. 1, 1946, ch. 724, § 227, as added Aug. 30, 1954, 9:44 a. m., E. D. T., ch. 1073, § 1, 68 Stat. 959.)

TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5—WIRE OR RADIO COMMUNICATION

§ 154. Federal Communications Commission

(j) The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest. Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

TITLE 49—TRANSPORTATION**CHAPTER 9—CIVIL AERONAUTICS ACT****§ 674. Public disclosure of information**

Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this chapter or of information obtained by the Board, or the Administrator of Civil Aeronautics, pursuant to the provisions of this chapter, stating the grounds for such objection. Whenever such objection is made, the Board shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public. The Board is authorized to withhold publication of records containing secret information affecting national defense. June 23, 1938, c. 601, Title XI, § 1104, 52 Stat. 1026; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F. R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F. R. 2421, 54 Stat. 1235.

TITLE 50—WAR AND NATIONAL DEFENSE**CHAPTER 9—AIRCRAFT****§ 159. Same; reports to Congress; confidential information**

The Chairman of the National Advisory Committee for Aeronautics shall submit to the Congress, not later than December 31 of each year, a report setting forth the number of positions established pursuant to section 158 of this title in the headquarters and research stations of the National Advisory Committee for Aeronautics, during that calendar year, and the name, rate of compensation, and description of the qualifications of each incumbent, together with a statement of the functions performed by him. In any instance where the Chairman may consider full public report on these items detrimental to the national security, he is authorized to omit such items from his annual report and, in lieu thereof, to present such information in executive sessions of such committees of the Senate and House of Representatives as the presiding officers of those bodies shall designate. Aug. 1, 1947, c. 433, § 3, 61 Stat. 715; July 13, 1949, c. 332, § 2, 63 Stat. 411.

§ 403g. Same; protection of nature of Agency's functions

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403 (d) (3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: *Provided*, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947 (b) of Title 5. June 20, 1949, c. 227, § 7, 63 Stat. 211.

HISTORICAL NOTE

References in Text. Section 947 of Title 5, referred to in text, was repealed by Act Sept. 12, 1950, c. 946, Title III, § 301 (85), 64 Stat. 343.

Codification. Section was not enacted as a part of the National Security Act of 1947, part of which comprises this chapter.

CHAPTER 23—INTERNAL SECURITY**§ 783. Offenses****COMMUNICATION OF CLASSIFIED INFORMATION BY GOVERNMENT OFFICER OR EMPLOYEE**

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other

person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 782 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

II. STATUTORY PROVISIONS RESTRICTING DISCLOSURE OF CONFIDENTIAL INFORMATION ACQUIRED FROM PRIVATE PERSONS UNDER COMPELSION OF THE LAW. EXAMPLES:

TITLE 7—AGRICULTURE

CHAPTER 1—COMMODITY EXCHANGES

§ 12. Investigations and reports by Secretary

For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this chapter, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided*, That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct of any board of trade or of the transactions of any person found guilty of violating the provisions of this chapter under the proceedings prescribed in sections 8, 9, and 15 of this title: *Provided further*, That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of commodity and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

CHAPTER 19—COTTON STATISTICS AND ESTIMATES

§ 472. Information furnished of confidential character; penalty for divulging information

The information furnished by any individual establishment under the provisions of this chapter shall be considered as strictly confidential and shall be used only for the statistical purpose for which it is supplied. Any employee of the Department of Agriculture who, without the written authority of the Secretary of Agriculture, shall publish or communicate any information given into his possession by reason of his employment under the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than \$300 or more than \$1,000, or imprisoned for a period of not exceeding one year, or both so fined and imprisoned, at the discretion of the court. Mar. 3, 1927, c. 337, § 2, 44 Stat. 1373.

CHAPTER 21—TOBACCO STATISTICS

§ 507. Limitation on use of statistical information

The information furnished under the provisions of sections 501–508 of this title shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Secretary of Agriculture whereby the data furnished by any particular establishment can be identified, nor shall the Secretary of

Agriculture permit anyone other than the sworn employees of the Department of Agriculture to examine the individual reports. Jan. 14, 1929, c. 69, §7, 45 Stat. 1080.

CHAPTER 26—AGRICULTURE ADJUSTMENT

§ 608d. Books and records; disclosure of information

(1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, and 624 of this title and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 607 of this title, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. May 12, 1933, c. 25, Title I, § 8d, as added Aug. 24, 1935, c. 641, § 6, 49 Stat. 761, and amended June 3, 1937, c. 296, § 1, 50 Stat. 246.

CHAPTER 32—PEANUT STATISTICS

§ 955. Limitation on use of statistical information

The information furnished under the provisions of this chapter shall be used only for the statistical purposes for which it is supplied. No publication shall be made by the Secretary whereby the data furnished by any person can be identified, nor shall the Secretary permit anyone other than the sworn employees of the Department of Agriculture to examine the individual reports. June 24, 1936, c. 745, § 5, 49 Stat. 1899.

CHAPTER 34—SUGAR PRODUCTION AND CONTROL

§ 1159. Surveys and investigations by Secretary; producer-processor and producer-labor contracts

Whenever the Secretary determines that such action is necessary to effectuate the purposes of this chapter, he is authorized, if first requested by persons constituting or representing a substantial proportion of the persons affected in any one of the five domestic sugar-producing areas, to make for such area surveys and investigations to the extent he deems necessary, including the holding of public hearings, and to make recommendations with respect to (a) the terms and conditions of contracts between the producers and processors of sugar beets

and sugarcane in such area and (b) the terms and conditions of contracts between laborers and producers of sugar beets and sugarcane in such area. In carrying out the provisions of this section, information shall not be made public with respect to the individual operations of any processor, producer, or laborer. Aug. 8, 1947, c. 519, Title IV, § 409, 61 Stat. 933.

CHAPTER 35—AGRICULTURE ADJUSTMENT ACT

§ 1373. Reports and records

DATA AS CONFIDENTIAL

(c) All data reported to or acquired by the Secretary pursuant to this section shall be kept confidential by all officers and employees of the Department, and only such data so reported or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under this chapter. Feb. 16, 1938, 3 p. m., c. 30, Title III, § 373, 52 Stat. 65; June 13, 1940, c. 360, § 6, 54 Stat. 394; Apr. 3, 1941, c. 39, §§ 6, 7, 55 Stat. 92.

TITLE 8—ALIENS AND NATIONALITY

CHAPTER 12—IMMIGRATION AND NATIONALITY

§ 1304. Forms for registration and fingerprinting

(b) Confidential nature. All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only to such persons or agencies as may be designated by the Attorney General.

TITLE 13—CENSUS

CHAPTER 1—ADMINISTRATION

§ 8. Certified copies of certain returns; other data; restrictions on use; disposition of fees received

(a) The Secretary may, upon a written request, and in his discretion, furnish to Governors of States and Territories, courts of record, and individuals, data for genealogical and other proper purposes, from the population, agriculture, and housing schedules prepared under the authority of subchapter II of chapter 5, upon the payment of the actual, or estimated cost of searching the records and \$1 for supplying a certificate.

(b) The Secretary may furnish transcripts or copies of tables and other census records and make special statistical compilations and surveys for State or local officials, private concerns, or individuals upon the payment of the actual, or estimated cost of such work.

(c) In no case shall information furnished under the authority of this section be used to the detriment of the persons to whom such information relates.

(d) All moneys received by the Department of Commerce or any bureau or agency thereof in payment for furnishing transcripts of census records or making special statistical compilations and surveys shall be deposited to the credit of an appropriation for collecting statistics. Aug. 31, 1954, c. 1158, § 1, 68 Stat. 1013.

§ 9. Information as confidential; exception

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may, except as provided in section 8 of this title—

- (1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or
- (2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or
- (3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

(b) The provisions of subsection (a) of this section relating to the confidential treatment of data for particular individuals and establishments, shall not apply to the censuses of governments provided for by subchapter III of chapter 5 of this title, nor to interim current data provided for by subchapter IV of chapter 5 of this title as to the subjects covered by censuses of governments, with respect to any information obtained therefor that is compiled from, or customarily provided in, public records. Aug. 31, 1954, c. 1158, § 1, 68 Stat. 1013.

CHAPTER 7—OFFENSES PENALTIES**§ 214. Wrongful disclosure of information**

Whoever, being an employee referred to in subchapter II of chapter 1 of this title, having taken and subscribed the oath of office, publishes or communicates, without the written authority of the Secretary or other authorized officer or employee of the Department of Commerce or bureau or agency thereof, any information coming into his possession by reason of his employment under the provisions of this title, shall be fined not more than \$1,000 or imprisoned not more than two years, or both. Aug. 31, 1954, ch. 1158, Sec. 1, 68 Stat. 1023.

TITLE 15—COMMERCE AND TRADE**CHAPTER 2—FEDERAL TRADE COMMISSION****§ 50. Offenses and penalties**

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under sections 41–46 and 47–58 of this title, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to said sections, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by sections 41–46 and 47–58 of this title to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court. Sept. 26, 1914, c. 311, § 10, 38 Stat. 723.

CHAPTER 15B—NATURAL GAS**§ 717g. Accounts; records; memoranda**

(a) Every natural-gas company shall make, keep, and preserve for such periods such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter: *Provided, however,* That nothing in this chapter shall

relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

(c) The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission. June 21, 1938, c. 556, § 8, 52 Stat. 825.

TITLE 16—CONSERVATION

CHAPTER 12—FEDERAL REGULATION AND DEVELOPMENT OF POWER

SUBCHAPTER III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

§ 825. Accounts, records and memoranda; duty to keep; examination by Commission; disclosure of information

(a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection therewith, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this chapter shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or informa-

tion which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

(c) The books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility subject to the jurisdiction of the Commission, and of any other company controlled by such person, insofar as they relate to transactions with or the business of such licensee or public utility, shall be subject to examination on the order of the Commission. June 10, 1920, c. 285, § 301, added Aug. 26, 1935, c. 687, Title II, § 213, 49 Stat. 854.

TITLE 18—CRIMES AND PROCEDURE

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, c. 645, 62 Stat. 791.

HISTORICAL AND REVISION NOTES

Reviser's Note. Based on section 176b of Title 15, U. S. C., 1940 ed., Commerce and Trade; section 216 of Title 18, U. S. C., 1940 ed.; section 1335 of Title 19, U. S. C., 1940 ed., Customs Duties (R. S. § 3167; Aug. 27, 1894, c. 349, § 34, 28 Stat. 557; Feb. 26, 1926, c. 27, § 1115, 44 Stat. 117; June 17, 1930, c. 497, Title III, § 335, 46 Stat. 701; Jan. 27, 1938, c. 11, § 2, 52 Stat. 8).

Section consolidates section 176b of Title 15, U. S. C., 1940 ed., Commerce and Trade; section 216 of Title 18, U. S. C., 1940 ed., and section 1835 of Title 19, U. S. C., 1940 ed., Customs Duties.

Words "or of any department or agency thereof" and words "such department or agency" were inserted so as to eliminate any possible ambiguity as to scope of section. (See definition of "department" and "agency" in section 6 of this title.)

References to the offenses as misdemeanors, contained in all of said sections, were omitted in view of definitive section 1 of this title. (See reviser's note under section 212 of this title.)

The provisions of section 216 of Title 18, U. S. C., 1940 ed., relating to publication of income tax data by "any person", were omitted as covered by section 55 (f) (1) of Title 26, U. S. C., 1940 ed., Internal Revenue Code.

Minor changes were made in translations and phraseology. 80th Congress House Report No. 304.

§ 1906. Disclosure of information by bank examiner

Whoever, being an examiner, public or private, discloses the names of borrowers or the collateral for loans of any member bank of the Federal Reserve System, or bank insured by the Federal Deposit Insurance Corporation, examined by him, to other than the proper officers of such bank, without first having obtained the express permission in writing from the Comptroller of the Currency as to a national bank, the Board of Governors of the Federal Reserve System as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than \$5,000 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 791.

HISTORICAL AND REVISION NOTES

Reviser's Note. Based on section 594 of Title 12, U. S. C., 1940 ed., Banks and Banking (Dec. 23, 1913, c. 6, § 22 [second and third sentences of second paragraph], 38 Stat. 272, 273; Sept. 26, 1918, c. 177, § 5 [22 (b), second paragraph], 40 Stat. 970; Aug. 23, 1935, c. 614, § 326 (b), 49 Stat. 716).

Changes were made in phraseology.

Other provisions of section 594 of Title 12, U. S. C., 1940 ed., Banks and Banking, were consolidated with similar provisions from other sections, to form section 1909 of this title. 80th Congress House Report No. 304.

CROSS REFERENCES

Civil liability of officers or directors of member banks of the Federal Reserve System, for violating or permitting violation of this section, see section 503 of Title 12, Banks and Banking.

§ 1907. Disclosure of information by farm credit examiner

Whoever, being a farm credit examiner or any examiner, public or private, discloses the names of borrowers of any national farm loan association, Federal land bank, or joint-stock land bank, or any organization examined by him under the provisions of law relating to Federal intermediate credit banks, to other than the proper officers of such institution or organization, without first having obtained express permission in writing from the Land Bank Commissioner or from the board of directors of such institution or organization, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as a farm credit examiner. June 25, 1948, c. 645, 62 Stat. 791.

§ 1908. Disclosure of information by national agricultural credit corporation examiner

Whoever, being an examiner appointed under the provisions of law relating to National Agricultural Credit Corporations, discloses the names of borrowers of any organization examined by him, to other than the proper officers of such organization, without first having obtained express permission in writing from the Comptroller of the Currency or from the board of directors of such organization, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States or either House thereof, or any committee of Congress or either House duly authorized, shall be fined not more than \$5,000 or imprisoned not more than one year, or both; and shall be disqualified from holding office as such examiner. June 25, 1948, c. 645, 62 Stat. 792.

TITLE 21—FOOD AND DRUGS**CHAPTER 9—FEDERAL FOOD, DRUG, AND COSMETIC REGULATIONS****§ 331. Prohibited acts**

The following acts and the causing thereof are hereby prohibited:

(j) The using by any person to his own advantage, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of section 344, 355, 356, 357, or 374 concerning any method or process which as a trade secret is entitled to protection.

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE**CHAPTER 7—INTERNATIONAL BUREAUS, CONGRESSES, ETC.****§ 286f. Obtaining and furnishing information to the Fund; penalty for refusal; penalty for unlawful disclosures; definition of person**

(a) Whenever a request is made by the Fund to the United States as a member to furnish data under article VIII, section 5, of the Articles of Agreement of the Fund, the President may, through any agency he may designate, require any person to furnish such information as the President may determine to be essential to comply with such request. In making such determination the President shall seek to collect the information only in such detail as is necessary to comply with the request of the Fund. No information so acquired shall be furnished to the Fund in such detail that the affairs of any person are disclosed.

(b) In the event any person refuses to furnish such information when requested to do so, the President, through any designated governmental agency, may by subpoena require such person to appear and testify or to appear and produce records and other documents, or both. In case of contumacy by, or refusal to obey a subpoena served upon any such person, the district court for any district in which such person is found or resides or transacts business, upon application by the President or any governmental agency designated by him, shall have jurisdiction to issue an order requiring such person to appear and give

testimony or appear and produce records and documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) It shall be unlawful for any officer or employee of the Government, or for any advisor or consultant to the Government, to disclose, otherwise than in the course of official duty, any information obtained under this section, or to use any such information for his personal benefit. Whoever violates any of the provisions of this subsection shall, upon conviction, be fined not more than \$5,000, or imprisoned for not more than five years, or both.

(d) The term "person" as used in this section means an individual, partnership, corporation or association. July 31, 1945, c. 339, § 8, 59 Stat. 515.

TITLE 26—INTERNAL REVENUE CODE

CHAPTER 61—INFORMATION AND RETURNS

§ 6103. Publicity of returns and lists of taxpayers

(a) Public record and inspection.—

(1) Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

(2) All returns made with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B, C, and D of chapter 33, and subchapter B of chapter 37, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Secretary or his delegate. The Secretary or his delegate may prescribe a reasonable fee for furnishing such copy.

(b) Inspection by states.—

(1) State officers.—The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of any corporation, at such times and in such manner as the Secretary or his delegate may prescribe.

(2) State bodies or commissions.—All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws.

(c) Inspection by shareholders.—All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) Inspection by Committees of Congress.—

(1) Committees on Ways and Means and Finance.—

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the

House of Representatives, Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate, or the House or to both the Senate and the House, as the case may be.

(2) **Joint Committee on Internal Revenue Taxation.**—The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) **Declarations of estimated tax.**—For purposes of this section, a declaration of estimated tax shall be held and considered a return under this chapter.

(f) **Inspection of list of taxpayers.**—The Secretary or his delegate shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the principal internal revenue officer for the internal revenue district in which the return was filed, and in such other places as he may determine, lists containing the name and the post-office address of each person making an income tax return in such district. Aug. 16, 1954, 9:45 a. m., E. D. T., c. 763, 68A Stat. 753.

§ 7213. Unauthorized disclosure of information

(a) Income returns.—

(1) **Federal employees and other persons.**—It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures, appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) **State employees.**—Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103 (b)), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under section 6103 (b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103 (b), to be seen or examined by any person except as provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(3) **Shareholders.**—Any shareholder who pursuant to the provisions of section 6103 (c) is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount

or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) **Disclosure of operations of manufacturer or producer.**—Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) **Cross references.**—

(1) **Returns of federal unemployment tax.**—

For special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax), see section 6106.

(2) **Penalties for disclosure of confidential information.**—

For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U. S. C. 1905.

Aug. 16, 1954, 9:45 a. m., E. D. T., c. 736, 69A Stat. 855.

§ 7237. Violation of laws relating to narcotic drugs and to marihuana

(e) **Unlawful disclosure of information on returns and order forms.**—Any person who shall disclose the information contained in the statements or returns required under section 4732 (b) or 4754 (a), in the duplicate order forms required under section 4705 (e), or in the order forms or copies thereof referred to in section 4742 (d), except—

(1) as expressly provided in section 4773,

(2) for the purpose of enforcing any law of the United States relating to narcotic drugs or marihuana, or

(3) for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana,

shall be fined not more than \$2,000 or imprisoned not more than 5 years or both. (Aug. 16, 1954, 9:45 a. m., E. D. T., ch. 736, 68A Stat. 860, amended Jan. 20, 1955, ch. 1, 69 Stat. 3; July 18, 1956, ch. 629, title I, Sec. 103, 70 Stat. 568.)

TITLE 45—RAILROADS

CHAPTER 11—RAILROAD UNEMPLOYMENT INSURANCE

§ 362. Duties and powers of Board

INFORMATION AS CONFIDENTIAL

(d) Information obtained by the Board in connection with the administration of this chapter shall not be revealed or open to inspection or be published in any manner revealing an employee's identity: *Provided, however, That* (i) the Board may arrange for the exchange of any information with governmental agencies engaged in functions related to the administration of this chapter; (ii) the Board may disclose such information in cases in which the Board finds that such disclosure is clearly in furtherance of the interest of the employee or his estate; and (iii) any claimant of benefits under this chapter shall, upon his request, be supplied with information from the Board's records pertaining to his claim.

TITLE 46—SHIPPING

CHAPTER 18—MERCHANT SEAMEN

§ 643. Continuous discharge book and certificate of identification

RECORDS OF DISCHARGE BOOKS AND CERTIFICATES

(f) There shall be maintained in the Bureau of Marine Inspection and Navigation in Washington, District of Columbia, a record of every continuous discharge

book, certificate of identification, certificate of discharge, and any other certificate issued by the Bureau of Marine Inspection and Navigation, together with the name and address of the seaman to whom it is issued and of his next of kin, and certified copies of all entries made in continuous discharge books or certificates of discharge, which entries shall be forwarded to the Bureau by the shipping commissioner or other person making such entries in accordance with the provisions of this section. Records so maintained shall not be open for general or public use or inspection.

TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIO-TELEGRAPHS

CHAPTER 5—WIRE OR RADIO COMMUNICATION [NEW]

§ 220. Accounts, records, and memorandum; depreciation charges; forfeitures and penalties

* * * * *

(f) No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commissioner or by a court.

TITLE 49—TRANSPORTATION

CHAPTER 1—INTERSTATE COMMERCE ACT, PART 1

§ 20, par. (7). Penalties and forfeitures in connection with accounts, records, reports, etc.

(f) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this section, except insofar as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$500 or imprisonment for not exceeding six months, or both. Feb. 4, 1887, c. 104, Pt. I, § 20, 24 Stat. 386; June 29, 1906, c. 3591, &, 34 Stat. 593; Feb. 25, 1909, c. 193, 35 Stat. 649; Feb. 28, 1920, c. 91, § 436, 41 Stat. 494; Aug. 9, 1935, c. 498, § 1, 49 Stat. 543; Sept. 18, 1940, c. 722, Title I, § 13 (a), 54 Stat. 916.

§ 917. Unlawful acts and penalties

(e) Any special agent, accountant, or examiner of the Commission who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of section 913 of this title, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$500 or imprisonment for a term not exceeding six months, or both.

CHAPTER 13—INTERSTATE COMMERCE ACT—FREIGHT FORWARDERS

§ 1021. Unlawful acts and penalties

(e) Any special agent, accountant, or examiner of the Commission who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this chapter, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than \$500 or imprisonment for not exceeding six months, or both.

(f) It shall be unlawful for any freight forwarder or any officer, agent, employee, or representative of such forwarder, or for any other person authorized by such forwarder or any such person to receive information, knowingly and willfully to disclose to or permit to be acquired by, any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or

routing of any property tendered or delivered to such forwarder in service subject to this chapter, which information may be or is used to the detriment or prejudice of such shipper or consignee, or which may or does improperly disclose his business transactions to a competitor, and it shall also be unlawful for any person to solicit or knowingly and willfully receive any such information which may be or is so used. Any person violating any provisions of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$100 for the first offense and not more than \$500 for any subsequent offense. Each day of such violation shall constitute a separate offense. Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes, or to another freight forwarder, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such forwarders.

(g) The provisions of sections 41, 42, and 43 of this title shall apply to service subject to this chapter, and to freight forwarders and shippers in respect to such service, and shall apply for purposes of enforcement of this chapter; and the provisions of sections 41, 42, and 43 of this title shall be considered to apply in addition to, and not to the exclusion of, the provisions of this chapter. Feb. 4, 1887, c. 104, Part IV, § 421, as added May 10, 1942, c. 318, § 1, 56 Stat. 298.

CHAPTER 8—INTERSTATE COMMERCE ACT, PART 2

§ 320. Accounts, records and reports—(a) Reports to Commission; copies of contracts; publication of information

The Commission is authorized to require annual, periodical, or special reports from all motor carriers, brokers, lessors, and associations (as defined in this section); to prescribe the manner and form in which such reports shall be made; and to require from such carriers, brokers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier, broker, lessor, or association in such form and detail as may be prescribed by the Commission. The Commission may also require any motor carrier or broker to file with it a true copy of any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this chapter. The Commission shall not, however, make public any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest: *Provided*, That if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by motor vehicle as required by section 318 (a) of this title, the Commission may, in its discretion, make public such of the provisions of the contract as the Commission considers necessary to disclose such failure and the extent thereof.

CHAPTER 12—INTERSTATE COMMERCE ACT—WATER CARRIERS

§ 913. Accounts, records, and reports

(b) The Commission may also require any such carrier to file with it a true copy of any contract, charter, or agreement between such carrier and any other carrier or person in relation to transportation facilities, service, or traffic affected by the provisions of this chapter. The Commission shall not, however, make public any contract, charter, or agreement between a contract carrier by water and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest: *Provided*, That if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by water as required by section 906 (e) of this title, the Commission may, in its discretion, make public such of the provisions of the contract as the Commission considers necessary to disclose such failure and the extent thereof.

§ 322. Unlawful operation**DISCLOSURE OF INFORMATION BY AGENT, ACCOUNTANT, OR EXAMINER; PENALTY**

(d) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of section 320 of this title, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than \$500 or imprisonment for not exceeding six months, or both.

DISCLOSURE OR SOLICITATION OF INFORMATION CONCERNING PROPERTY IN TRANSPORTATION

(e) It shall be unlawful for any motor carrier or broker engaged in interstate or foreign commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, broker, or person, or for any other person authorized by such carrier, broker, or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such motor carrier or broker for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

CHAPTER 9—CIVIL AERONAUTICS ACT**§ 622. Criminal penalties**

(f) If any member of the Board, or the Administrator of Civil Aeronautics, or any officer or employee of any of them, shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of an examination of the accounts, records, and memoranda of any air carrier, or which is withheld from public disclosure under section 674 of this title, except as he may be directed by the Board in the case of information ordered to be withheld by it, or by a court of competent jurisdiction or a judge thereof, he shall upon conviction thereof be subject for each offense to a fine of not more than \$5,000 or imprisonment for not more than two years, or both.

TITLE 50—WAR AND NATIONAL DEFENSE**CHAPTER 8—EXPLOSIVES; MANUFACTURE, DISTRIBUTION****§ 139. Officers and employees for administration of chapter; disclosure of information obtained in course of duty**

Without authority from the applicant for a license, from the licensee or from the Director no officer or employee or licensing agent engaged in the administration or enforcement of this chapter shall divulge any information obtained in the course of his duties under this chapter regarding the business of any licensee or applicant for a license. Oct. 6, 1917, c. 83, § 17, 40 Stat. 388; Dec. 26, 1941, c. 633, § 2, 55 Stat. 868.

TITLE 50—APPENDIX**(OFFICE OF SELECTIVE SERVICE RECORDS)****§ 327. Rules and regulations; penalties**

The Director is authorized to prescribe such rules and regulations as may be necessary to preserve the confidential nature of the individual confidential records previously obtained under the Selective Training and Service Act of 1940, as amended. Any person charged with the duty of carrying out any of the provisions of this Act (sections 321–329 of this Appendix), and who fails to carry out such provisions or who shall knowingly violate the regulations promulgated under this section, or any person or persons who shall unlawfully obtain, gain access to, or use such records, shall, upon conviction in the district court of the

United States having jurisdiction thereof, be punished by imprisonment for not more than five years, or a fine of not more than \$10,000, or by both such fine and imprisonment, or if subject to military or naval law, may be tried by court martial, and, on conviction, shall suffer such punishment as the court martial may direct. (Mar. 31, 1947, ch. 26, Sec. 7, 61 Stat. 32.) "

(INSPECTION AND AUDIT OF WAR CONTRACTORS)

§ 643a. Oaths and affirmations; attendance and testimony of witnesses; production of records and other evidence; unlawful disclosure of information obtained

For the purpose of obtaining any information or making any inspection or audit pursuant to section 1301 [section 643 of this Appendix], any agency acting hereunder, or the Chairman of the War Production Board, as the case may be, may administer oaths and affirmations and may require by subpena or otherwise the attendance and testimony of witnesses and the production of any books or records or any other documentary or physical evidence which may be deemed relevant to the inquiry. Such attendance and testimony of witnesses and the production of such books, records, or other documentary or physical evidence may be required at any designated place from any State, Territory, or other place subject to the jurisdiction of the United States: *Provided*, That the production of a person's books, records, or other documentary evidence shall not be required at any place other than the place where such person resides or transacts business, if, prior to the return date specified in the subpena issued with respect thereto, such person furnishes such agency or the Chairman of the War Production Board, as the case may be, with a true copy of such books, records, or other documentary evidence (certified by such person under oath to be a true and correct copy) or enters into a stipulation with such agency or the Chairman of the War Production Board, as the case may be, as to the information contained in such books, records, or other documentary evidence. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. No person shall be excused from attending and testifying or from producing any books, records, or other documentary evidence or certified copies thereof or physical evidence in obedience to any such subpena, or in any action or proceeding which may be instituted under this section, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, or subject him to a penalty or forfeiture; but no individual shall be subject to prosecution and punishment or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that any such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Such agency or the Chairman of the War Production Board shall not publish or disclose any information obtained under this title which such agency or the Chairman of the War Production Board deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless such agency or the Chairman of the War Production Board determines that the withholding thereof is contrary to the interest of the national defense and security; and anyone violating this provision shall be guilty of a felony and upon conviction thereof shall be fined not exceeding \$1,000, or be imprisoned not exceeding two years, or both. Mar. 27, 1942, 3 p. m., E. W. T., c. 199, Title XIII, § 1302, 56 Stat. 185.

HISTORICAL NOTE

Transfer of Functions. The War Production Board was terminated and its functions transferred to Civilian Production Administration by Ex. Ord. No. 9638, Oct. 4, 1945, 10 F. R. 12591. The Civilian Production Administration was consolidated, with other agencies, into the Office of Temporary Controls by Ex. Ord. No. 9809 set out as a note under section 601 of this Appendix. The Office of Temporary Controls was terminated by Ex. Ord. No. 9841, set out as a note under section 601 of this Appendix, the functions of the Civilian Production Administration being transferred for liquidation to Department of Commerce, effective May 1, 1947.

(HOUSING AND RENT ACTS)

§ 1896. Prohibition and enforcement

(g) The President shall not publish or disclose any information obtained under this Act [sections 181-1910 of this Appendix] that such President deems

confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless he determines that the withholding thereof is contrary to the public interest.

(EXPORT CONTROLS)

§ 2026. Enforcement; compliance with requirements; disclosure of information

(a) To the extent necessary or appropriate to the enforcement of this Act [sections 2021–2032 of this Appendix], the head of any department or agency exercising any functions hereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in case of contumacy by, or refusal to obey a subpena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business upon application, and after notice to any such person and hearing shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443) [section 46 of Title 49], shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act [sections 2021–2032 of this Appendix], shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless the head of such department or agency determines that the withholding thereof is contrary to the national interest. Feb. 26, 1949, c. 11, § 6, 63 Stat. 8.

(DEFENSE PRODUCTION ACT)

§ 2155. Investigations; records; reports; subpenas; right to counsel

* * * * *

(e) Information obtained under this section which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

All information obtained by the Office of Price Stabilization under this section 705, as amended, and not made public prior to April 30, 1953, shall be deemed confidential and shall not be published or disclosed, either to the public or to another Federal agency except the Congress or any duly authorized committee thereof, and except the Department of Justice for such use as it may deem necessary in the performance of its functions, unless the President determines that the withholding thereof is contrary to the interests of the national defense, and any person willfully violating this provision shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(f) Any person subpenaed under this section shall have the right to make a record of his testimony and to be represented by counsel. As amended June 30, 1952, 9:36 a. m., E. D. T., c. 530, Title I, § 117, 66 Stat. 306; June 30, 1953; c. 171, § 9, 67 Stat. 131.

III. STATUTORY RESTRICTIONS ON INFORMATION, WHICH, IF PREMATURELY DISCLOSED, WOULD GIVE AN UNFAIR ADVANTAGE TO RECIPIENTS

TITLE 5—EXECUTIVE DEPARTMENTS—OFFICERS— EMPLOYEES

CHAPTER 12—CIVIL SERVICE COMMISSION AND CLASSIFIED CIVIL SERVICE

§ 637. Violation of duties by commissioners or officers, etc.

Any said commissioner, examiner, copyist, or messenger, or any person in the public service who shall willfully and corruptly, by himself or in cooperation with one or more other persons, defeat, deceive, or obstruct any person in respect of his or her right of examination according to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same or concerning the person examined or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, or to be examined, being appointed, employed, or promoted, shall for each such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$100, nor more than \$1,000, or by imprisonment not less than ten days, nor more than one year, or by both such fine and imprisonment. (Jan. 16, 1883, c. 27, § 5, 22 Stat. 405.)

TITLE 18—CRIMES AND PROCEDURE

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

§ 1902. Disclosure of crop information and speculation thereon

Whoever, being an officer, employee or person acting for or on behalf of the United States or any department or agency thereof, and having by virtue of his office, employment or position, become possessed of information which might influence or affect the market value of any product of the soil grown within the United States, which information is by law or by the rules of such department or agency required to be withheld from publication until a fixed time, willfully imparts, directly or indirectly, such information, or any part thereof, to any person not entitled under the law or the rules of the department or agency to receive the same; or, before such information is made public through regular official channels, directly or indirectly speculates in any such product by buying or selling the same in any quantity, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

No person shall be deemed guilty of a violation of any such rules, unless prior to such alleged violation he shall have had actual knowledge thereof. June 25, 1948, c. 645, 62 Stat. 790.

IV. MISCELLANEOUS PROVISIONS IMPOSING RESTRICTIONS ON THE RELEASE OF INFORMATION. EXAMPLES:

TITLE 12—BANKS AND BANKING

CHAPTER 2—NATIONAL BANKS

§ 77. Removal of director or officer

Whenever, in the opinion of the Comptroller of the Currency, any director or officer of a national bank, or of a bank or trust company doing business in the District of Columbia, or whenever, in the opinion of a Federal reserve agent, any director or officer of a State member bank in his district shall have continued to violate any law relating to such bank or trust company or shall have continued unsafe or unsound practices in conducting the business of such bank or trust company, after having been warned by the Comptroller of the Currency or the Federal reserve agent, as the case may be, to discontinue such violations of law or such unsafe or unsound practices, the Comptroller of the Currency or the Federal reserve agent, as the case may be, may certify the facts to the Board of Governors of the Federal Reserve System. In any such case the Board may cause notice to be served upon such director or officer to appear before such Board to show cause why he should not be removed from office. A copy of such order shall be sent to each director of the bank affected, by registered mail. If after granting the accused director or officer a reasonable opportunity to be heard, the Board of Governors of the Federal Reserve System finds that he has continued to violate any law relating to such bank or trust company or has continued unsafe or unsound practices in conducting the business of such bank or trust company after having been warned by the Comptroller of the Currency or the Federal reserve agent to discontinue such violation of law or such unsafe or unsound practices, the Board of Governors of the Federal Reserve System, in its discretion, may order that such director or officer be removed from office. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the bank of which he is a director or officer, whereupon such director or officer shall cease to be a director or officer of such bank: *Provided*, That such order and findings of fact upon which it is based shall not be made public or disclosed to anyone except the director or officer involved and the directors of the bank involved, otherwise than in connection with proceedings for a violation of this section. Any such director or officer removed from office as herein provided who thereafter participates in any manner in the management of such bank shall be fined not more than \$5,000, or imprisoned for not more than five years, or both, in the discretion of the court. June 16, 1933, c. 89, § 30, 48 Stat. 193; Aug. 23, 1935, c. 614, § 203 (a), 49 Stat. 704.

HISTORICAL NOTE

Change of Name. Act Aug. 23, 1935, cited to text, changed the name of the Federal Reserve Board to Board of Governors of the Federal Reserve System.

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISORS

§ 80b—10. Disclosure of information by Commission

(a) The information contained in any registration application or report or amendment thereto filed with the Commission pursuant to any provision of this subchapter shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the Commission under this

subchapter and made available to the public shall be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(b) Subject to the provisions of subsection (c) and (e), of section 80b—9 of this title, the Commission shall not make public the fact that any investigation under this subchapter is being conducted, nor shall it make public the results of any such investigation, or any facts ascertained during any such investigation, except that the provisions of this subsection shall not apply—

(1) in the case of any hearing which is public under the provisions of section 80b—12 of this title; or

(2) in the case of a resolution or request from either House of Congress.

(c) No provision of this subchapter shall be construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this subchapter.

Aug. 22, 1940, c. 686, Title II, § 210, 54 Stat. 854.

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 14—FOREIGN SERVICE

§ 987. Availability of records

The correspondence and records of the Department relating to the officers and employees of the Service, including efficiency records as defined in section 981 (1) of this title but not including records pertaining to the receipt, disbursement, and accounting for public funds, shall be confidential and subject to inspection only by the President, the Secretary, the Under Secretary, the Counselor of the Department, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service or representatives duly authorized by such committees, the members of the Board of the Foreign Service, the Director General, and such officers and employees of the Government as may be assigned by the Secretary to work on such records. Under such regulations as the Secretary may prescribe and in the interest of efficient personnel administration, the whole or any portion of an efficiency record shall, upon written request, be divulged to the officer or employee to whom such record relates. Aug. 13, 1946, c. 957, Title VI, § 612, 60 Stat. 1014.

TITLE 34—NAVY

CHAPTER 11—NAVAL PROPERTY, STORES, SUPPLIES, AND CONTRACTS

§ 526. Experiments for private shipbuilders at model tank

Upon the authorization of the Secretary of the Navy experiments may be made at the model tank at the navy yard at Washington, District of Columbia, for private shipbuilders, who shall defray the cost of material and of labor of per diem employees for such experiments: *Provided*, That the results of such private experiments shall be regarded as confidential and shall not be divulged without the consent of the shipbuilder for whom they may be made. (June 10, 1896, c. 399, § 1, 29 Stat. 372.)

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER 10—WORLD WAR VETERANS' RELIEF

§ 456. Files, records, etc., confidential and privileged; inspection of records

All files, records, reports, and other papers and documents pertaining to any claim for the benefits of the provisions of this chapter, whether pending or adjudicated, shall be deemed confidential and privileged and no disclosure thereof shall be made except as follows:

(a) To a claimant or his duly authorized representative, as to matters concerning himself alone, when in the judgment of the Administrator of Veterans'

Affairs such disclosure would not be injurious to the physical or mental health of the claimant;

(b) Where required by the process of a United States court to be produced in any suit or proceeding therein pending; or when such production is deemed by the Administrator of Veterans' Affairs to be necessary in any suit or proceeding brought under the provisions of this chapter;

(c) In all proceedings in the nature of an inquest into the mental competency of a claimant, and in all other judicial proceedings, when in the judgment of the Administrator of Veterans' Affairs such disclosure is deemed necessary and proper;

(d) The amount of compensation or training allowance of any beneficiary shall be made known to any person who applies for such information.

Wherever the production of a file, record, report, or other document is required or permitted by this section a certified copy thereof may be produced in lieu of the original, and such certified copy shall be received in evidence with like force and effect as the original.

(e) The Administrator of Veterans' Affairs may authorize an inspection of Veterans' Administration records by duly authorized representatives of the organizations designated in or approved by him under section 551 of this title under such rules and regulations as he may prescribe. June 7, 1924, c. 320, Title I, § 30, 43 Stat. 615; July 3, 1930, c. 849, § 7, 46 Stat. 994; July 3, 1930, c. 863, §§ 1, 2, 46 Stat. 1016.

TITLE 39—THE POSTAL SERVICE

CHAPTER 20—POSTAL SAVINGS DEPOSITORYES

§ 762. Funds kept separate; accountability therefor; application of laws relating to postal receipts; additional bonds of postmasters

Postal savings depository funds shall be kept separate from other funds by postmasters and other officers and employees of the Postal Service, who shall be held to the same accountability under their bonds for such funds as for public moneys; and no person connected with the Post Office Department shall disclose to any person other than the depositor the amount of any deposits, unless directed so to do by the Postmaster General. All statutes relating to the safekeeping of and proper accounting for postal receipts are made applicable to postal savings funds, and the Postmaster General may require postmasters, assistant postmasters, and clerks at postal savings depositories to give any additional bond he may deem necessary. (June 25, 1910, c. 386, § 12, 36 Stat. 818.)

TITLE 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 6A—THE PUBLIC HEALTH SERVICE

§ 260. Addicts admitted to hospitals as voluntary patients; examination; payment of charges; length of confinement; forfeiture of civil rights

(d) Any addict admitted for treatment under this section shall not thereby forfeit or abridge any of his rights as a citizen of the United States; nor shall such admission or treatment be used against him in any proceeding in any court; and the record of his voluntary commitment shall, except as otherwise provided by this chapter, be confidential and shall not be divulged. July 1, 1944, c. 373, Title III, § 344, 58 Stat. 701; June 25, 1948, c. 654, § 5, 62 Stat. 1018; July 24, 1956, c. 676, Title III, § 302 (b), 70 Stat. 622.

§ 674. Public disclosure of information

Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this chapter or of information obtained by the Board, or the Administrator of Civil Aeronautics, pursuant to the provisions of this chapter, stating the grounds for such objection. Whenever such objection is made, the Board shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public. The Board is authorized to withhold publication of records containing secret information affecting national defense. June 23, 1938, c. 601, Title XI, § 1104, 52 Stat. 1026; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F. R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F. R. 2421, 54 Stat. 1235.

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