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that all Members may have 5 legislative days in which to extend their remarks on the life and character of Mrs. Gore.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

DAVIDSONVILLE, MD., NIKE SITE

(Mr. DANIELS asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. DANIELS. Mr. Speaker, I, with four of our colleagues, recently traveled by helicopter to the nearby U.S. Army Nike site at Davidsonville, Md. This visit proved interesting, informative, and reassuring.

We were met at the site by Brig. Gen. Stephen M. Mellnik, commanding general of 1st Region, Army Air Defense Command, and Brig. Gen. John D. Stevens, commanding general of the 35th Artillery Brigade. In their concise briefings these gentlemen explained how Army air defense units, composed primarily of a multitude of Nike-Hercules missile site nationwide, combine with elements of the U.S. Air Force, the U.S. Navy, and the Canadian Armed Forces to form a virtually impregnable shield against enemy aerial attack on the United States. I wonder how many of our citizens understand the true magnitude of this great system which extends from the Arctic Circle to the Gulf of Mexico. I wonder, too, how many comprehend the depth with which our long-range radars penetrate, and the number of layers of smaller radars which are capable of triggering into action hundreds of interceptor aircraft, area type antiaircraft missiles, and pinpoint type missiles, of which the Nike-Hercules is the principal one.

A demonstration of the Nike-Hercules in action by members of Battery B, 71st Artillery Regiment, commanded by Capt. Charles Nash, impressed upon us the great efficiency of the system, and particularly the high caliber of personnel who operate it 24 hours a day. The American people have every reason to be proud of the dedication, alertness, and proficiency of these men who man our air defense installations. It is comforting to see first hand the validity of their boast that the odds for blasting an enemy aircraft from the skies are "closer to 100 percent than a certain brand of soap is to purity."

COMMITTEE ON RULES

Mr. COLMER. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain privileged reports.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

PERSONNEL SECURITY IN THE NATIONAL SECURITY AGENCY

Mr. COLMER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 334 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 950) to amend the Internal Security Act of 1950. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Un-American Activities, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. COLMER. Mr. Speaker, I yield the usual 30 minutes to the gentleman from California [Mr. SMITH] and pending that I yield myself such time as I may consume.

Mr. Speaker, this is a resolution providing for an open rule and 1 hour of general debate on the bill, H.R. 950.

Mr. Speaker, the purpose of the bill briefly is to establish a legislative base for enforcing a strict security standard for the employment and retention in employment of persons of the National Security Agency and to achieve maximum security for the activities of the Agency, to strengthen the capability of the Secretary of Defense and the Director of the Agency and to provide for such by authorizing the Secretary of Defense summarily to terminate the employment of any officer or employee of the Agency wherever he considers that action to be in the interest of the United States, and by expressly excepting appointments to the Agency positions from the Civil Service Act of 1883 and from provisions of the Performance Rating Act of 1950.

Now, Mr. Speaker, that in brief is the purpose of the proposed legislation. I might add that this bill was passed by the House late in the last session of the Congress by a vote of 351 for and 24 against.

Mr. Speaker, I should also like to add further that this bill is sponsored by the distinguished gentleman from Pennsylvania, [Mr. WALTER], the chairman of the Committee on Un-American Activities of the House. Unfortunately, the gentleman from Pennsylvania [Mr. WALTER] is unable to be here because of certain physical handicaps at this time to present the bill and explain it at the proper time. But I understand that my distinguished and also very capable friend, the gentleman from Louisiana [Mr. WILLIS], will handle the matter at the proper time.

Mr. Speaker, I am sure that we all deeply regret the infirmities that have beset our great leader, the gentleman from Pennsylvania [Mr. WALTER], as chairman of the House Un-American Activities Committee, who has served in this House for now in excess of 30 years, and who is one of the highly respected Members of this House.

I am sure that I express the wish and fervent hope of the membership of the House, the entire membership, that our friend, the gentleman from Pennsylvania [Mr. WALTER], may soon recover and be back with us to continue rendering yeoman service for the welfare of his country, to which he is so devoted.

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. COLMER. I am happy to yield to the distinguished majority leader.

Mr. ALBERT. Mr. Speaker, I want to join the distinguished gentleman from Mississippi in his remarks. I visited "TAD" WALTER in the hospital last week. I would like to report that he was in fine spirits. He had all of that courage and determination that has always characterized that great and fighting American. He had confidence that he would soon be back with us. I assured him that every Member of the House was praying for his speedy recovery.

Mr. COLMER. I am sure the House appreciates this message from the majority leader.

Mr. FULTON of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. COLMER. I yield to the gentleman from Pennsylvania.

Mr. FULTON of Pennsylvania. We in Pennsylvania, regardless of party, are proud of "TAD" WALTER who has been a wonderful servant of the people and a fine Congressman. We are glad to hear that he is getting along well and will soon be back.

Mr. ALGER. Mr. Speaker, will the gentleman yield?

Mr. COLMER. I yield to the gentleman from Texas.

Mr. ALGER. Mr. Speaker, I thank the gentleman from Mississippi for yielding to me. I realize that this subject will come up in debate and be discussed thoroughly, but during the debate on the rule, I wonder if the gentleman can tell us if attention was directed to this bill as it relates to the termination of employment and the protection that is accorded a person who is summarily dismissed. Last year, since I was one of those who, surprisingly enough to my colleagues, opposed the passage of the bill, I raised this question, because of mistaken identity or other problems, could not the Secretary of Defense, as a dictator in this instance, summarily fire anyone, never give the reason for it, never give an accounting of it. There is no board of appeal, as I understand, unless the bill has been changed, to consider these matters. I see on page 5 of the report, this statement:

> Such a determination of the Secretary shall be final and the basis for the determination will not be subject to review in any administrative or judicial proceeding. This authority is to be exercised circumspectly, and only when removals should not, because of the paramount national security interests, be carried out under Public Law 733 of the 81st Congress with respect to security ground cases, or under section 14 of the Veterans' Preference Act with respect to suitability ground cases.

In directing this inquiry I want to make it perfectly plain that I, like every Member of this body, do not believe we should help fellow travelers or Commu-

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nists, but I am struck with the thought, what about mistaken identity and a Secretary of Defense, who being a man of action summarily dismisses somebody in error; this person could not be heard nor his good name cleared. I wonder if the gentleman took this matter up in consideration of granting a rule?

Mr. WILLIS. Mr. Speaker, will the gentleman yield to me?

Mr. COLMER. I yield to the distinguished gentleman from Louisiana, from the committee that reported the bill.

Mr. WILLIS. Mr. Speaker, in answer to the question of my good friend from Texas I would say this. The bill does establish boards of appraisal to assist the Secretary of Defense in the discharge of his personnel responsibilities. I think possibly I should preliminarily mention the basic provision in the first part of the bill. The bill requires a full field investigation of all employees of the National Security Agency in whatever capacity employed. It requires a more careful screening than has been the practice up until a year or so ago when we were faced with the defection of Martin and Mitchell from that Agency. It will compel a thorough examination of a person's background before he is hired.

Now, that procedure would certainly reduce the possibility of someone facing an exercise of the ultimate power of discharge under this bill.

In addition, any charge against an employee is so thoroughly checked out that the possibility of mistaken identity is, for all practical purposes, nil.

I have never heard of a single case in which an employee of any U.S. security agency has ever been discharged because he was mistakenly identified as someone else, or vice versa.

So actually very few persons, if any, may be involved. I understand that for the purposes of due process of law, when applicable, one would be too many. I am talking about the practicality of this bill. When an employee undergoes investigation, with the assistance of our security people, the FBI and others, and reports are made with reference to the particular activities of that person, there is little likelihood that an exercise of the summary power will be necessary. Moreover, of course the bill does not bar departmental hearings. The Secretary of Defense will under the bill promulgate rules and regulations, and there will be departmental proceedings, including, in most cases, testimony and statements of the persons involved. But ultimately there may and can be exceptional cases when, upon the certificate of the Secretary of Defense, in person, and because of the national interest and security, normal procedure cannot be followed. Then it is possible summarily to dismiss. But to assume that the Secretary of Defense will capriciously and arbitrarily exercise this power is, I think, to assume a course of action that no person in that high station in life will take.

Finally, talking in terms of due process, let me advise the gentleman that there are other statutes on the books similar to the provisions of the bill—particularly the statute granting similar power to the CIA. They have been on the books for many, many years. These specific provisions of the bill have been tested by the courts. Let me suggest to the gentleman that he read a passage in a decision by the Circuit Court of Appeals in the case of Bailey vs. Richardson, affirmed by the Supreme Court, involving a situation exactly along the lines of this bill on the issue of due process. The Court said this:

> In the absence of statute or ancient custom to the contrary, executive offices are held at the will of the appointing authority, not for life or for fixed terms. If removal be at will, of what purpose would due process be? To hold office at the will of a superior and to be removable therefrom only by constitutional due process of law are opposite and inherently conflicting ideas. Due process of law is not applicable unless one is being deprived of something to which he has a right.

No person has a right to be hired in the National Security Agency. Despite all the precautions we have taken to see to it that there will be investigations, boards of appraisal, or a careful screening, the Secretary of Defense may be required to exercise that power ultimately, to fire someone without court tests or litigation.

Mr. ALGER. I appreciate the statement of the gentleman from Louisiana. I understand the problem involved. Without developing that further at this time, let me ask another thing. Is the reason that there cannot be a review of this decision by the Secretary, whose decision is final, because of the security nature of the material? My next question would be of the gentleman, Would a man who is fired or summarily dismissed for good reason, but whose name is Bill Jones or Jack Smith, as a case of mistaken identity, then he appeals, the Secretary does not have to give an accounting because of the security nature? I think that was the answer last year.

Mr. WILLIS. Not only because of the security nature, but the Secretary of Defense must make a specific determination before he can act. He must certify that those procedures and laws authorizing termination of employment normally applicable cannot be followed, because it is against the national interest and security so to do.

So far as the termination of employment is concerned, the bill does provide that termination of employment under the bill shall not affect the right of the officer or the employee involved to seek or to accept employment with any other department or agency of the United States, if he is declared eligible for such employment by the U.S. Civil Service Commission.

Mr. ALGER. If I understand the gentleman, it means, therefore, and I am certainly not arguing the point because I see the problem, the Secretary when he terminates such employment must say so in writing but he does not need to say anything except that it is in the interest of the U.S. security; is that correct?

Mr. WILLIS. Exactly.

Mr. ALGER. And he does not have to give the grounds for such removal?

Mr. WILLIS. Exactly, because to do so would be to make disclosures not in the national interest. This authority resides in the Secretary alone. For him to say more would be for him to disclose things that some people would like to know but are not entitled to know.

Mr. ALGER. One final question then. We are up against the hard fact that we are in a free country with self-imposed security measures and there could be the case where the Secretary on the one hand could be an arbitrary dictator and on the other hand a person could be summarily dismissed who is innocent, yet we are up against the hard fact that there is an irreducibile minimum in security matters. But that clearly is the situation we are in. A dictatorship is possible on the one hand and dismissial without recourse or reevaluation of the grounds of dismissal on the other hand; is that not correct?

Mr. WILLIS. Well, I do not assume the possibility of a dictatorship. It is inconceivable to me that the Secretary of Defense would be capricious or arbitrary and would exercise that power simply to be a dictator and to do harm to anybody.

Mr. ALGER. If I may ask my colleague one further question. Does the gentleman know if there is any other procedure without violating security measures, discussed in your committee deliberations, that could be imposed after the decision in the bill which is called final and from which no appeal is possible, is there any further protection to American citizens against the case of mistaken identity. For example, where the Secretary knowing that a man's record is subversive accidentally transfers that file to another man with the same name. Does the gentleman see any possibility of that?

Mr. WILLIS. Of course, if the gentleman insists on that narrow possibility, that a person who is an employee, whose life has been checked and is in the records of the Department, who has been under surveillance, where they see him every day, and he is in fact the person involved—if despite that, the gentleman feels there can be a case of mistaken identity, then we must reach a point which I cannot conceive happening.

I would say to the gentleman, this is a situation, which to me is inconceivable. Should it arise, I feel certain that somehow redress could be found for this wrong. I believe the Secretary, of course, on his own motion would redress this wrong and on his own motion he could say, "I made a mistake." But I do not think such a mistake as that could happen.

Mr. ALGER. Mr. Speaker, I thank the gentleman from Louisiana and the gentleman from Mississippi for yielding. I wanted to develop this situation. I know that the gentleman in his own mind believes that such a comedy of errors is impossible.

I am inclined to share his view, but I think this is the time and place to thrash it out, because no man here intends that any harm be done anyone, and this gentleman does not in this instance.

Mr. WILLIS. I know very well that the gentleman addressing the question to me feels as I do about what would happen.

Mr. WATSON. Mr. Speaker, I should like to associate myself with the remarks of my distinguished colleague from Mis-

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sissippi in giving my wholehearted support for this amendment to strengthen the Internal Security Act. This measure meets a long overdue need in the security posture of America, and I commend the Un-American Activities Committee and its able charman for its introduction.

Too long we have coddled those who are wittingly and unwittingly seeking to subvert the security interests of our Nation. It is fitting that Congress face squarely up to this matter with the summary discharge method as proposed in this bill. We can no longer rely upon the courts for during recent years they have demonstrated a dangerous propensity for ignoring the best interests of national security in favor of the protection of Communists and their fellow travelers.

Some of the opponents of this measure are critical because it provides for the immediate removal of any employee of the National Security Agency when that employee is deemed by the Secretary of Defense to be a security risk. I submit that we cannot move too quickly in removing a traitor from accessibility to top secret information involving our national security. There can be no tolerance for the Communists.

When the national security or our very survival is at stake we cannot afford to take a chance with any security risk. Not only should we ferret out subversive agents who are conspiring with the Godless Communists but it is unconscionable to think that we would tolerate for one moment any Communist sympathizer within the ranks of our Federal employees.

Frankly, Mr. Speaker, 'this bill could very well be strengthened by the additional mandatory forfeiture of all salaries which may be due the discharged security risk as well as a permanent prohibition against future employment in the Federal service. In this measure we have the opportunity to choose between the best interests of America and that of a Communist sympathizer. As for me and other loyal Americans the choice should not be a difficult one.

Finally, as drastic as the provisions of this measure may be in the discharge of any security risk I must reiterate that we have too long coddled and overly protected those who are seeking to undermine our democratic way of life.

Mr. COLMER. Mr. Speaker, I yield to the gentleman from California.

Mr. ROOSEVELT. Mr. Speaker, may I say to the gentleman from Texas that while he and I have not agreed on too many things that have come up in the House, I want to congratulate him on his interest in the preservation of the rights of individual American citizens, whether they are in Government by appointment or by right or by whatever it may be. I grant the fact no one has the right to be employed by the Federal Government, but if you are employed by the Federal Government and you lose that employment under some kind of a cloud, I am sure the gentleman will agree that could be detrimental if not fatal to the entire career of that individual.

I would like to ask the gentleman whether he will reserve his opinion, his final opinion, until he has listened to the debate on the floor. There is a very good part of the bill, the part that requires more careful screening of people to be hired by the agency. There is no question but what that part of the bill is well written and well conceived. But before we come to final action, I hope the gentleman will reserve his opinion, because I think we have an answer to the arguments made by the distinguished gentleman from Louisiana.

Mr. COLMER. Mr. Speaker, I yield to the gentleman from Illinois [Mr. SPRINGER].

Mr. SPRINGER. I direct this question to the chairman of the committee handling the bill, the gentleman from Louisiana [Mr. WILLIS].

Does this bill cover only the Department of Defense?

Mr. WILLIS. It does not cover all of the Department of Defense. It covers the National Security Agency in that Department.

Mr. SPRINGER. Over what does the National Security Agency have jurisdiction for security purposes?

Mr. WILLIS. I will come to that in general debate right soon.

Mr. SPRINGER. The reason I ask that question is this: Some of our security problems in the past 20 years have come not from the Department of Defense but from the State Department.

The reason I raise this question is that just before I came to the Congress I went down to talk to the Chief Counsel for the State Department, and I found out they did not make a full home and background investigation. Will the gentleman tell the House whether or not the State Department now makes such an investigation?

Mr. WILLIS. To be perfectly frank about that, I am not completely familiar with the practices in the State Department. We did not look into that. This bill has to do only with the National Security Agency.

Mr. SPRINGER. This last question: Who drew up this bill, the Department of Justice, the gentleman's committee, or some individual on the committee?

Mr. WILLIS. This is the handiwork of our committee and committee counsel after hearings. This is not a downtown bill. Of course the Department of Defense has collaborated. This bill, by the way, has the recommendation of the Department of Defense, it has the approval of the Department of Justice and the Civil Service Administration, and appropriate agencies to which we normally refer legislation of this kind.

Mr. SPRINGER. At the present time, is a field investigation, including home and background, required by the National Security Agency?

Mr. WILLIS. By the National Security Agency?

Mr. SPRINGER. Yes.

Mr. WILLIS. I know improvements have been made since the hearings, and I will come to that in general debate. Reforms have been made. The type of full field investigation that this bill contemplates is now fully made by the Agency.

Mr. SMITH of California. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. SPRINGER].

Mr. SPRINGER. I do not want to take up any more time than is absolutely necessary, but so that you will understand what I mean, in the case of William T. Martin, who attended the University of Illinois, from my own knowledge of the background of the case, may I say that had a full investigation, including home and background investigation, been made of William Martin before he was employed by the Defense Department or the NSA, all of the weaknesses which this man had would have been revealed, and I think that any security check made by the judgment of any qualified officer would have shown that he could not be employed for either classified or security information of this kind.

Mr. WILLIS. May I say this, that I agree with the gentleman, and that is the purpose of the bill. A while ago the gentleman asked me whether a full field investigation was now required by NSA. Counsel now reminds me that since our hearings, yes, a full field investigation is now being conducted and required and has been for the last 2 years. We have not heard of any adverse results from it. But, this bill would give a legislative sanction and mandate for thorough investigations.

Mr. SPRINGER. If this is so true of this agency, may I say to the distinguished gentleman from Louisiana why is not the same thing required of every other service agency having jurisdiction over matters which vitally affect us in the world? Has this committee gone into what is being done in the State Department or the other agencies? In fact, there are other agencies that need it even worse than this one.

Mr. WILLIS. I will say to the gentleman that the comparable agency to this one is the CIA. The statute established for that agency, is the pattern of this bill. As to other agencies, we will have to take them one at a time.

Mr. SMITH of California. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. JOHANSEN].

Mr. JOHANSEN. Mr. Speaker, if I may have the attention of the gentleman from Illinois, in response to one comment that he made—I forget whether it was Martin or Mitchell.

Mr. SPRINGER. Martin.

Mr. JOHANSEN. The very information that the gentleman referred to was developed fully in the hearings. I associate myself with the gentleman from Louisiana, and I am in agreement with him, and I will say to the gentleman from Illinois that one of the reasons for this requirement and provision of this bill is the outgrowth of the information developed in the hearings.

Mr. SMITH of California. Mr. Speaker, I yield 1 minute to the gentleman from New Hampshire [Mr. WYMAN].

Mr. WYMAN. Mr. Speaker, I would like to ask the gentleman from Louisiana whether or not this bill is something the Department of Defense wants to have and says it needs to have for the security of the country?

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Mr. WILLIS. The answer is "Yes."

Mr. WYMAN. Has the Department taken the position that as to those people about whom the gentleman from California spoke, that were already in the agency, and to whom this formula will apply, that as to those people it is necessary that in the public interest and for the national security they should be able to be removed without notice and hearing?

Mr. WILLIS. Yes, definitely.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, House Resolution 334 provides for an open rule with 1 hour of general debate on H.R. 950. The gentleman from Mississippi [Mr. COLMER] has described the purpose of this bill and, in my opinion, absolutely correctly.

I concur in the statement he has made and I associate myself with his remarks, particularly do I associate myself with his remarks regarding the distinguished gentleman from Pennsylvania [Mr. WALTER], a fine friend of mine, and one of the most distinguished Members of this body, and I certainly wish him well and hope he will return very shortly. We have covered this rule quite thoroughly here in the discussion.

Mr. Speaker, I do have a request for time, but I know of no objection to the rule. However, there will be opposition to certain parts of the bill, I understand.

Mr. ROOSEVELT. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from California.

Mr. ROOSEVELT. I would like to say that I wish to join in the comments of the gentleman from California [Mr. SMITH], and the gentleman from Mississippi concerning our distinguished colleague, the gentleman from Pennsylvania [Mr. WALTER], and join in the hope that he may have a very speedy recovery and rejoin us soon.

Mr. Speaker, may I also say one word to the gentleman from New Hampshire [Mr. WYMAN], who asked whether or not this had been requested and was considered necessary by the Department of Defense, implying that any time the Department of Defense requested something that that automatically would make it desirable. I believe that there will be some gentlemen on the other side of the aisle who will think at times the Department makes decisions, whether they are in the national interest or otherwise, which may not be completely 100-percent correct just because they make them.

Mr. Speaker, I think we should not, therefore, take the position that the Department of Defense and particularly the Secretary of Defense, as one man, can always be infallible. I think that will be well brought out in the debate.

Mr. SMITH of California. Mr. Speaker, I have no further requests for time.

Mr. COLMER. Mr. Speaker, much of the discussion of the bill has already taken place here on the rule, which is very well. But I just wanted to say, supplementing my remarks, that I am very strong for this bill. The fact of the business is that it is one of the few bills that has been reported out by my committee, the Committee on Rules, which I felt any interest in handling at this session of Congress.

Mr. Speaker, I think this bill should pass. I think it will pass. I would like to express my agreement with the gentleman from Illinois [Mr. SPRINGER] that we should have somewhat similar legislation—or that was the implication, at least, of the gentleman's remarks—covering other departments. I think the security of this Nation should be foremost in all of our deliberations.

Mr. Speaker, I urge the adoption of the resolution.

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. WILLIS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 950) to amend the Internal Security Act of 1950.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana.

The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 950, with Mr. DAVIS of Georgia in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

Mr. WILLIS. Mr. Chairman, I yield myself 10 minutes.

(Mr. WILLIS asked and was given permission to revise and extend his remarks.)

Mr. WILLIS. Mr. Chairman, I would like the great privilege of reading to you a short statement of our colleague from Pennsylvania, the Honorable FRANCIS E. WALTER, distinguished and capable chairman of the House Committee on Un-American Activities:

> Mr. Chairman, I deeply regret that I cannot be on the floor today to speak in behalf of H.R. 950, a bill which I consider so vital to our national security, and to personally cast my vote for it.
>
> Our security rests primarily and essentially on the loyalty to this country which resides in the hearts of the overwhelming majority of our citizens. But it does not rest on that alone. It also rests on the procedures, methods and techniques we devise to prevent employment by our Government—particularly in those agencies dealing with highly classified information—of persons who are knowingly disloyal, or who, for a variety of other reasons, constitute a threat to the security of all.
>
> Effective security, insofar as it depends upon such procedures rather than on loyalty, must begin with and be most highly developed in the intelligence agencies of our country.
>
> We know that NSA is one of the most sensitive of our intelligence agencies. We know that effective security has not prevailed in that agency in the past. We know that it is our duty to see that it prevails in the future.
>
> I trust that the House, most of whose Members have previously weighed the merits of this bill, will vote overwhelmingly for it, as it did for an identical bill in the last Congress.

Mr. Chairman, I would like to address myself to three questions relating to H.R. 950.

First. What are we dealing with in this bill?

Second. Why are we concerned with the subject matter of the bill?

Third. What will we do through this bill?

First. What are we dealing with?

We are dealing with the National Security Agency, successor to the Armed Forces Security Agency, an element of the Department of Defense which ranks with the Central Intelligence Agency in the sensitivity of its operations. The National Security Agency plays so highly specialized a role in the defense and security of the United States and its operations are so highly sensitive that no outsider can actually describe its activities. They are guarded not only from the public but from other Government agencies as well. The Civil Service Commission, which audits all Government positions, is not allowed to know what NSA employees do. By section 6, Public Law 36, of the 86th Congress, no law is to be construed to require the disclosure of any NSA functions or activities.

This is what the Department of Defense, which administers the NSA, says of that Agency:

> The Agency is faced with enormous security responsibilities. The missions assigned to the Agency seek to fulfill basic requirements of our national security. All activities conducted by NSA to carry out these missions are highly classified. Disclosure of the nature of these activities or portions of them could seriously impair the success of the Agency's efforts. Despite separation of tasks into work compartments and other precautions, the large majority of personnel of the Agency by virtue of their duties are exposed to, or have access to, uniquely sensitive information. The improper use, handling, or disclosure of this information could have adverse effects upon the national security."

These facts speak for themselves, Mr. Chairman. There can be no doubt in anyone's mind that the National Security Agency, which is dealt with in H.R. 950, carries out the most delicate type intelligence operations of our Government. This being so, there is unqualified need for the best possible security in that Agency.

The second question: Why are we concerned with NSA security procedures?

On August 1, 1960, the news broke that two NSA mathematicians had disappeared. They had not returned from a supposed vacation trip they were taking together. A few days later, the Department of Defense reluctantly admitted in a press release that "it must be assumed that there is a likelihood that they have gone behind the Iron Curtain."

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On September 6, 1960, these two men appeared at a carefully staged press conference in Moscow. In the course of this conference, they reviled their country and gave full support to a Soviet propaganda attempt to discredit this Nation in all parts of the world.

These two men, Bernon F. Mitchell and William H. Martin, had access to highly classified information. There could be little doubt in anyone's mind, in view of their behavior, that they had told everything they knew to intelligence officials of the Soviet Union.

The Committee on Un-American Activities undertook an investigation to determine what was wrong at the National Security Agency—why and how these two men, who never should have been given access to any classified information, were employed by so sensitive an intelligence arm of the U.S. Government.

The committee's investigators spent 2,000 man-hours and covered 15 States and the committee held 16 separate executive session hearings in getting at the facts of NSA security procedures.

When the committee's report was published in August of 1962, the Director of Personnel for NSA had been dismissed, the Director of Security and two others in its Office of Security Services had "resigned," and 26 other employees had been dropped for reasons of sex deviation.

In issuing its report, the committee stated that it was "amazed and shocked" by the results of its investigation which revealed that extremely lax security measures were in effect when Mitchell and Martin were hired and even at the time the investigation was undertaken.

The most important part of the investigation, however, was the aftereffects of it—the fact that 22 reforms were instituted by the NSA to correct the weaknesess and failures uncovered by the committee's investigation.

This, Mr. Chairman, is why we are dealing with the National Security Agency today, why we have before us H.R. 950. We are considering this bill because, beyond all question, the committee's investigation revealed that there was a need to do something to permanently correct the deplorable security conditions that had existed in the Agency, to see that such conditions will never develop again.

The third question: What does H.R. 950 do?

Its major purpose is to provide a legislative base for continuing permanent enforcement of strict personnel security standards in the National Security Agency.

The bill has five main provisions:

First. It provides that no one shall be employed in, or detailed or assigned to NSA and given access to classified information unless such employment, detail or access is "clearly consistent with the national security."

Second. It prohibits the employment of any person in the Agency unless he has been cleared for access to classified information after a full field investigation.

Third: It establishes boards of appraisal to be appointed by the Director of the Agency to assist him in discharging his personnel security responsibilities. The Director will refer to such boards doubtful cases which, in his opinion, warrant further inquiry as to the suitability of the employee's appointment to, or retention in, employment.

No one at NSA may be given access to classified information, contrary to the recommendations of these boards, unless the Secretary of Defense or his designee states in writing that such access is "in the national interest."

Fourth. It gives to the Secretary of Defense the summary power, when needed, to terminate the employment of any employee of the Agency. However, he will exercise this summary power only "in the interests of the United States" and after determining that procedures prescribed in other laws governing termination of Government service cannot be invoked "consistently with the national security."

Fifth. It excepts appointments to the Agency from the provisions of the Civil Service Act of 1883 and from provisions of the Performance Rating Act of 1950. These exceptions are now administratively executed but it is deemed necessary to give statutory exemption to preclude the withdrawal of the authority. Other sensitive agencies are already excepted by statute from the requirement of similar disclosures.

Before concluding my remarks, there is one other important point about this bill that I want to stress. It is this: From the practical viewpoint, all these provisions speak for themselves. It is apparent to every reasonable person that they are desirable elements in establishing effective security for any highly sensitive agency.

The only question then is that of whether or not these provisions are constitutional. On this most important point, I wish to stress the fact, Mr. Chairman, that there is nothing new or untried in this bill from the constitutional angle. Every one of its provisions exists in legislation previously adopted by the Congress and tested in the courts of this land. This bill does not give the Secretary of Defense, the ultimate boss of the National Security Agency, any power that has not already been given to other officials of the Government and which, as I indicated a moment ago, has not been tested and upheld by the courts.

An identical bill, H.R. 12082, passed the House in the 87th Congress, under suspension of the rules, by the overwhelming vote of 351 to 24. In the course of the debate on the bill on that occasion, every single objection to it centered on the provision granting summary dismissal power to the Secretary of Defense. It has been publicly announced that an amendment will be offered to strike this provision, contained in section 303, from the present bill. For that reason, I will address myself now to the constitutional issues contained in this section. Because we are dealing with a sensitive intelligence agency, there can be no question, I believe, of the practical value and desirability of summary dismissal power.

In the National Security Act of 1947, Public Law 253 of the 80th Congress, in section 102(c), the Congress gave the same summary dismissal power to the Director of the Central Intelligence Agency. We have checked the House and Senate debates on that bill, and the House and Senate reports on it. Nowhere did we find a single objection or a single question raised about the grant of summary dismissal power. Both the House and the Senate apparently were in unanimous agreement that such power was not only desirable in an intelligence agency, but also that it would meet the test of constitutionality. I might add that to the best of my knowledge, since that time, repeal of this summary dismissal power granted to the Director of the Central Intelligence Agency has never been recommended by a single Member of Congress.

The CIA Director has since exercised his summary dismissal power on a variety of occasions. That power has been challenged. Last year, in the case of Torpats against McCone, the Court of Appeals for the District of Columbia upheld this summary dismissal power, and the Supreme Court subsequently denied certiorari in the case.

More important, in the case of Bailey against Richardson, the courts of our land went directly to the question of due process in the dismissal of Federal employees—the question of whether a hearing, confrontation or cross-examination of witnesses were necessary before a Government employee could be dismissed.

In this case, the Court of Appeals for the District of Columbia, in 1950, after giving full and comprehensive consideration to the principle of due process, held that a hearing, confrontation or cross-examination of witnesses were not required by due process and that a Federal employee could be dismissed without them. On April 30, 1951, the Supreme Court affirmed this decision.

That decision stands today as the law of this land. It has not since been reversed. For this reason, we can only conclude that claims that the summary dismissal power is a violation of due process are completely lacking in judicial support and are no more than a new and novel interpretation of due process.

In this respect, it is interesting to note when the Commission on Government Security found in 1957 after the most thorough review of U.S. security procedures ever undertaken in the history of our Nation. Its report, issued in pursuance to Public Law 304 of the 84th Congress, as amended, states:

> Proceedings for screening out, transferring, or discharging employees necessary in the maintenance of national security are not judicial, or adversary in character. They do not establish guilt or mete out punishment. They merely determine suitability from a security viewpoint.
>
> In the interests of justice and fairness, however, the proceedings must be such as will secure, as far as it is humanly possible, that decisions are reached which are in accord with the facts and that these be no arbitrary, ill founded, or capricious denials of employment, transfers, or discharges in the name of security.

I know of no court holding which contradicts this statement.

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The issue before us, Mr. Chairman, is very clear. Do we want to provide security procedures in the National Security Agency or do we not? By our votes, we will each give our answer to this question.

Mr. Chairman, the following are synopses and discussions of four or five court decisions dealing with the kind of cases covered by this bill:

First. Torpats against McCone, decided March 23, 1962, in the Court of Appeals for the District of Columbia; certiorari denied by the U.S. Supreme Court, November 5, 1962—this case applicable.

Torpats was employed by the Central Intelligence Agency from 1949 to 1958. He was in conflict with his superiors. The decision does not give further facts. On January 30, 1961, Torpats received notice that his employment was "terminated pursuant to authority contained in section 102(c), National Security Act of 1947. This termination does not affect your right to seek or accept employment in any other department or agency of the U.S. Government if you are declared eligible for such employment by the U.S. Civil Service Commission."

The National Security Act of 1947 gives a summary power of dismissal similar to that provided in section 303 of the bill, H.R. 950. Pursuant to this statute the CIA adopted regulations calling for an impartial review by the director of all pertinent information upon which he relies in terminating "to the extent that is consistent with the interests of the United States." The court held that the termination of employment was within the authority of the director conferred upon him by Congress and in accordance with his own regulations. The court said that this termination was to be distinguished from a so-called security discharge such as was involved in *Service* v. *Dulles*, 354 U.S. 363 (1957), and related cases. The Supreme Court denied certiorari.

Second, *Greene* v. *McElroy*, 360 U.S. 474 (1949), not applicable.

This case related to a security program in connection with classified Government contracts in private industry. A security program was established by the Secretary of Defense, regulating access to classified information by employees in private industry who were engaged in working on Government contracts. The decision was limited to the holding that such regulations were invalid because they had not been authorized either by Congress or the President.

In H.R. 950, we are seeking to establish congressional authorization for procedures relating to employment in a highly sensitive agency of the U.S. Government.

Third, *Service* v. *Dulles*, 354 U.S. 363 (1957), not applicable.

The statute, commonly referred to as the McCarran Rider provided:

> Notwithstanding the provisions of * * * any other law, the Secretary of State may, in his absolute discretion * * * terminate the employment of any officer or employee of the Department of State or of the Foreign Service of the United States whenever he shall deem such termination necessary or advisable in the interests of the United States.

Under the authority of this rider, the State Department issued regulations for dismissal from employment relating to first, loyalty and second, security cases. The regulations set up a hearing and review procedure. Under the regulations the Secretary of State had no right to dismiss an employee unless and until the Deputy Undersecretary, acting upon findings of the Department's Loyalty-Security Board, had recommended dismissal.

The Secretary dismissed Service without compliance with the requirements of his own regulations. The holding of the court was limited to the single point that the discharge of Service was invalid because it violated the regulations of the Department of State which were binding upon the Secretary. The court expressly stated that its holding was limited to this single conclusion.

Fourth. *Bailey* v. *Richardson*, 182 F. 2d 46, decided in the Court of Appeals for the District of Columbia, March 22, 1950; affirmed by the Supreme Court on certiorari by an equally divided court, Justice Clark not participating—applicable.

Miss Bailey was employed in the Federal Security Agency, now abolished, which was a grouping of agencies whose major purposes related to promotion of social and economic security, educational opportunity and health. The Government notified her that it had received information to the effect that she was a member of the Communist Party and affiliated with subversive organizations. She was given a hearing and the procedures before the Loyalty Boards conformed with the requirements of the Executive Order 9835, which required that the names of confidential informants be kept confidential. As a result of the hearing, the Loyalty Board found that on all the evidence reasonable grounds existed for the belief that Miss Bailey was disloyal to the Government of the United States, and she was discharged from employment. While Miss Bailey was given a general statement of the charges, she claims that this information did not include the names of informants against her or the dates or places of her alleged activities, and that her constitutional rights had been violated. The court said:

> In the absence of statute or ancient custom to the contrary, executive offices are held at the will of the appointing authority, not for life or for fixed terms. If removal be at will, of what purpose would process be? To hold office at the will of a superior and to be removable therefrom only by constitutional due process of law are opposite and inherently conflicting ideas. Due process of law is not applicable unless one is being deprived of something to which he has a right.
>
> Constitutionally, the criterion for retention or removal of subordinate employees is the confidence of superior executive officials. Confidence is not controllable by process. What may be required by acts of the Congress is another matter, but there is no requirement in the Constitution that the executive branch rely upon the services of persons in whom it lacks confidence.

To the argument of Miss Bailey that even if the executive had power to dismiss her without a judicial hearing, they had no power to call her disloyal while doing so, the court said:

> If Miss Bailey had no constitutional right to her office and the executive officers had power to dismiss her, the fact that she was injured in the process of dismissal neither invalidates her dismissal nor gives her right to redress; this under a rule of law established long ago.

The court quoted from Judge Learned Hand and pointed out that, as is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. The reason for the rule is the same as that which permits a person to be publicly stigmatized by utterances on the floor of the Congress without any opportunity in any established forum to deny or to refute. The court said that these harsh rules "have always been held necessary as a matter of public policy, public interest, and the unimpeded performance of the public business."

Mr. JOHANSEN. Mr. Chairman, I yield myself 10 minutes.

(Mr. JOHANSEN asked and was given permission to revise and extend his remarks.)

Mr. JOHANSEN. Mr. Chairman, we are on notice that an amendment will be offered to strike section 303 from the bill, H.R. 950.

This is the section which grants to the Secretary of Defense the power of summary dismissal of a National Security Agency employee "whenever he—the Secretary—considers that action to be in the interest of the United States, and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of that officer or employee cannot be invoked consistently with the national security.

The issue of the retention or elimination of this section is the principal, if not sole, matter in controversy here this afternoon—as it was last September when a similar bill passed the House by a vote of 351 to 24.

I might add that this provision is also one of the most vital features of H.R. 950 from the standpoint of safeguarding both the security of this agency and the security of the United States. Make no mistake about that.

Let us see first of all precisely what H.R. 950 and section 303 does not do:

It does not bar or ban hearings, confrontation and cross examination for NSA employees generally.

It does not alter the fact that NSA, as a part of the Department of Defense, is generally subject to overall Defense Department regulations controlling dismissal of employees and is also generally subject to Executive Order 10450, the security directive issued by President Eisenhower which provides for notification, hearing, right of counsel, and so forth, for an accused employee. This is, and under H.R. 950 will continue to be, the procedure normally followed by NSA in terminating employment of personnel judged to be security risks.

The truth is that, broadly speaking, H.R. 950 provides a legislative basis for administrative regulations which im-

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prove and strengthen these normal procedures in terminating employment of personnel judged to be security risks.

It provides a legislative basis for promulgation of regulations granting hearings and related rights to NSA employees insofar as such procedures are consistent with the agency's security responsibilities.

Indeed, the boards of appraisal provided for in section 302(b) represent an additional protection of the interests and rights of NSA employees as well as an additional protection of the security of our country. The fact that all doubtful cases will be referred to these boards of appraisal is, itself, a guarantee against hasty, ill considered, or abitrary dismissals based on unsubstantiated, derogatory information.

The truth is that in view of the court decisions referred to by the gentleman from Louisiana [Mr. WILLIS] this bill gives NSA employees more protection than the law requires.

To allege that H.R. 950 or section 303 gives the Secretary of Defense power, willy nilly, to fire any NSA employee at all on the basis of gossip, hearsay, suspicion, or anonymous accusations, is to grossly distort the meaning and import of this bill.

Now as to precisely what section 303 does do. It provides only that in exceptional cases, when hearings cannot be granted without injury to our country, the Secretary will have power to deny such hearings and to exercise summary dismissal.

It provides that this power is to be exercised only when the Secretary "determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of an officer or employee cannot be invoked consistently with the national security."

Without this minimum reservation of discretionary authority on the part of the Secretary of Defense, he could, and would be, confronted with a choice of disclosure of confidential sources or even exposure and destruction of our own vital espionage activities, on the one hand, or the retention by NSA of an employee known to be a security risk and the continuation of access on the part of that known security risk to the most highly classified information of the U.S. Government.

This, of course, is an intolerable dilemma. Is is unthinkable that in one of the two or three most sensitive intelligence agencies of our Government, the top official of that agency—the Secretary of Defense—should be denied the means of avoiding and resolving such a dilemma.

I know of no other way of so resolving the dilemma than is provided in section 303. The Members of this House who oppose section 303 propose no alternative means of resolving this dilemma. By proposing to eliminate this section they underwrite and insure the perpetuation of the possibility of such a dilemma.

I cannot believe that this House will go along with such a proposal as this.

No. 69——2

Now let me address myself to the main argument and claim of opponents of section 303. In substance it is that this section "vests the Secretary of Defense with the summary and unreviewable power to discharge any employee of the National Security Agency with no hearing whatever." In other words it is charged that this is a violation of the due process rights of the employee.

I would point out that due process is no more an absolute right than are the first amendment rights to free speech, assembly and religion. Repeatedly the courts have held that no right is absolute and unlimited.

Recently Dean Griswold of Harvard Law School, lecturing at the University of Utah Law School, offered some penetrating criticism of the absolutist approach in the field of law. In this lecture Dean Griswold said:

> The absolutist approach involves, I submit, a failure to exercise the responsibilities—and indeed the pains—of judging. By ignoring factors relevant to sound decision it inevitably leads to wrong results.

Mr. Chairman, we must avoid the absolutist approach to the question of due process because we must avoid the wrong results which, as Dean Griswold pointed out, flow from such an approach.

The absolutist approach is a species of fanaticism as opposed to the approach of reason. Justice Oliver Wendell Holmes once observed that a man is correct in extending his private property rights to the air above his plot of ground to build, for example, a house 100 feet high. But it is an absolutist absurdity to argue that his property rights to the air reach all the way to outer space.

In this present argument it is an absolutist excess to argue that a valid principle such as the confrontation of cross-examination elements of due process extends to the preposterous length of claiming that there can never be any limitation on those rights.

The question then becomes, When and to what extent is it proper to limit this right or these elements of due process?

In my humble judgment the answer is when and to the extent that such limitation is dictated by considerations of the basic security and indeed survival of the Government and of the freedom of 188 million people.

Freedom cannot survive if it is to include the freedom of enemies of freedom to destroy freedom.

One final and extremely important point.

As I remarked during the debate on this bill last year it seems to me the gentlemen who are opposing section 303 of this bill are attempting to refight a 16-year-old battle and issue.

Section 102(c) of the National Security Act of 1947 provided that notwithstanding the provisions of any other law, "the Director of Central Intelligence—Agency—may, at his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interest of the United States."

As with section 303 of this bill, the 1947 act provided that such termination shall not affect the right of the person involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the U.S. Civil Service Commission.

The summary dismissal authority granted in the 1947 act was sustained by the Court of Appeals for the District of Columbia in Torpats against McCone March 23 of last year, and certiorari was denied by the U.S. Supreme Court November 5 of last year.

I do not believe it can be claimed with any validity that the National Security Agency is any less sensitive than the CIA.

Unless the opponents of section 303 are disposed to argue this point, I must conclude that the logic of their opposition to section 303 is that they advocate the repeal of section 102(c) of the National Security Act of 1947.

I do not see how they can have it any other way.

I do not see how they can deny that they are, in effect, asking that we turn the clock back with respect to the personnel security of CIA by repealing the 1947 provision for summary dismissal.

And to do this would be to enthrone an interpretation of the constitutional guarantees of due process which the court of appeals and the U.S. Supreme Court refused to acknowledge or enthrone by virtue of the decision in Torpats against McCone.

I am sure that this House will not commit itself to such a course of action. I am confident the House will retain section 303 and overwhelmingly approve H.R. 950.

Mr. SCHADEBERG. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. I am glad to yield to the distinguished gentleman from Wisconsin.

Mr. SCHADEBERG. I would like to associate myself with the remarks which have been made by the gentleman from Michigan, [Mr. JOHANSEN].

The CHAIRMAN. The time of the gentleman has again expired.

Mr. JOHANSEN. I yield myself 2 additional minutes, Mr. Chairman.

Mr. SCHADEBERG. If the gentleman will yield, I would like to ask a few questions of the gentleman from Michigan.

Is it true that an applicant for a job in any agency of the U.S. Government does not have a right to know why he was not hired by the Government agency in which he sought employment? In other words, there is no opportunity for him to have a hearing to give him the right to furnish information as to why he was not hired?

Mr. JOHANSEN. To my knowledge there is no provision which guarantees such an alleged right. Certainly there is no provision which guarantees that right, if in compliance with the request for that information a violation of the security or the national interest of the country is involved.

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Mr. SCHADEBERG. If the gentleman will yield further, the second question is this: This holds true, does it not, with reference to the National Security Agency?

Mr. JOHANSEN. Certainly.

Mr. SCHADEBERG. And if a person applies for a position with this agency and investigation reveals there is reasonable doubt as to his loyalty or his character or his ability or whatever might cause him to be a security risk, and after having been given a job with this agency, he has no recourse, has he, but to accept the fact that he was not given employment?

Mr. JOHANSEN. Precisely.

Mr. SCHADEBERG. Permit me to propound a hypothetical question to the gentleman:

Suppose that John Doe is hired by this very sensitive security agency, the NSA, on, say, May 1, 1963, and he has successfully concealed information about himself which if it had been revealed would be sufficient for him not to be hired, and this information which he withheld comes into the possession of NSA on the 10th of May, 10 days later, is there any legitimate reason that the agency should not have the right to discharge him because he is a security risk if it has a right not to hire him?

Mr. JOHANSEN. That question could not be answered in my judgment with a simple yes or no, because of the rights or privileges or however you wish to define them, which have been spelled out. There are restrictions, very definite restrictions, as to arbitrary dismissal.

The CHAIRMAN. The time of the gentleman from Michigan has again expired.

Mr. JOHANSEN. Mr. Chairman, I yield myself 2 additional minutes.

The facts of the matter are that not only rights but the procedures are established by law which must be complied with and are complied with in the overwhelming instances of termination of employment. The thing that this proposed legislation does is to spell out that in one situation, to wit: where it is determined that the exercise of those normal procedures would be violative or potentially violative of the national security, then the right of the responsible official of the Department of Defense to dismiss summarily is underscored and affirmed.

Mr. SCHADEBERG. Mr. Chairman, I want to thank the gentleman from Michigan for his comments and to add this observation. In an agency so vitally important to the security of our Nation as is the NSA, it seems to me that employees should, like Caesar's wife, be beyond reproach. Should we by mere technicalities deny this Nation the right, the opportunity, and the responsibility to adequately defend itself from those who would destroy freedom, we who represent the people would be derelict in our duty.

Mr. JOHANSEN. I thank my colleague on the Un-American Activities Committee.

Mr. COHELAN. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. I yield to the gentleman.

Mr. COHELAN. I thank the gentleman for yielding to me. I should like to get right at the heart of the dilemma that he describes and which may separate us on one portion of this bill. I ask the gentleman to tell me what happens if the Secretary of Defense makes a finding under the provision that is in the law and then subsequently the person who has been separated as a security risk—remember, we have used this term "security risk"—the individual separated, and properly under this bill, as a security risk, seeks remedy in the courts of this land and is found not to be a security risk. Where do we stand then?

Mr. JOHANSEN. Let me say first of all that I think we stand as was pointed out in the colloquy during the debate on the rule, that the effect is to find that a miscarriage of justice or a wrong was done. I would assume, therefore, that it would be the responsibility of the Secretary of Defense and he would respond to that responsibility by correcting that wrong.

Mr. COHELAN. But I would ask the gentleman, would it not be better if we could incorporate these procedures into this bill? The gentleman has a good bill. I think the committee is to be commended, particularly in the terms of the field investigation. But the question of working out administrative due process procedures—and at the appropriate time I shall argue this—it seems to me we would avoid this business of the possibility of separating a person who claims to be innocent and who might subsequently prove himself to be innocent.

Mr. JOHANSEN. I shall respond very briefly to that, because there will be the opportunity to pursue this further. This procedure, this right of recourse, some kind of right of review, has got to terminate somewhere. The action of the Secretary of Defense is the termination point, not the beginning, of the procedures under this bill.

Mr. COHELAN. Mr. Chairman, will the gentleman yield further?

Mr. JOHANSEN. Mr. Chairman, I decline to yield further out of fairness to other gentleman who are on their feet.

Mr. ALGER. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. I yield to the gentleman from Texas.

Mr. ALGER. The good sense of the gentleman's remarks is quite apparent. In order to get away from the possibility of dictatorship on the one hand and making an error on the other, what would the gentleman think of an amendment of this nature to section 303? I would also ask for better language than this. Under section 303, subparagraph (a), at the end of that paragraph it says:

Such a determination is final.

Suppose we said something like this, "reviewable only by a three-man appeals board should the person dismissed appeal the decision, such appeals board designated by the President"?

Does the gentleman not feel that this would clear the Secretary of Defense possibly of being a dictator on the one hand and making an error on the other, and throw this into an appeal level, in this case a board? It does not have to be public. It can be secret and the man would have a chance to be heard. What does the gentleman think of such an amendment?

Mr. JOHANSEN. The gentleman thinks he would have to think about that amendment a few moments before responding to the suggestion. I will say to the gentleman from Texas I will proceed to do same.

Mr. ALGER. I thank the gentleman.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. I yield to my colleague on the Committee on Un-American Activities.

Mr. ASHBROOK. I would ask the ranking member of our Committee on Un-American Activities two questions. First, is it not true that the two NSA employees, Bernon F. Mitchell and William H. Martin, who defected to the Soviet Union with valuable secrets, had a questionable record of conduct up to the time of their defection but, while they had this record, which merited their discharge in the national interest, this could not be accomplished because the law protected their right, in effect, to engage in traitorous activity against their own Government, because of the proceedings that would be necessary?

Mr. JOHANSEN. Yes.

Mr. ASHBROOK. Secondly, is it not true that had legislation of the type which is contained in H.R. 950 been on the statute books at that time, Mitchell and Martin could have been summarily fired by the appropriate officials, and there would not have resulted the loss of secrets in this sensitive area?

Mr. JOHANSEN. I think that is true, but I think more my point in connection with this legislation is that they would not have gotten on in the first place because of the provisions for investigation under section 302.

Mr. ASHBROOK. I certainly associate myself with the ranking minority member of the House Committee on Un-American Activities in his remarks. I only want to add that the National Security Agency is supersecret in its operations. It is not inconsistent that hiring and firing practices should be covered with the same cloak of secrecy to protect our national interest. This is an awesome grant of power, I agree, and should be granted only with evidence that indicates an overpowering need. I suggest that the evidence so indicates, and I support H.R. 950. I supported H.R. 12082 last fall when it passed this body by a vote of 351 to 24, and I trust it will get the same resounding support today.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. I yield to the gentleman from Michigan.

Mr. DINGELL. I want to commend my friend for his sincere interest in protecting the United States, but I should like to have him tell me very briefly where there is any limitation in this bill on the absolutely untrammeled and unrestricted, absolute discretion of the agency and the agency head to discharge

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any individual without hearing or the right of review, and without any superintendence or supervision over that course.

Mr. JOHANSEN. Certainly there is a limitation, No. 1, in the establishment of the boards of appraisal.

Mr. DINGELL. I am talking about discharges, now. Because our time is scarce, and I know the time of the gentleman is limited, I would like to ask him not to state that on the floor but put it in the record of the debate, to tell this House where in this bill there is language or anything which would authorize any individual in construing this legislation to say there is a limitation on the discharge authority. I do not think there is any limitation on the absolute discretion of the agency head to discharge.

Mr. JOHANSEN. I cannot yield further to the gentleman. I will say this, there is very specifically stated the express limitation that there must be a finding and certification by the Secretary of Defense. There is a specific requirement provided that the Secretary must certify with respect to the requirements of national security.

Mr. WILLIS. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. ROOSEVELT].

Mr. ROOSEVELT. Mr. Chairman, in 2 minutes it is rather obvious I cannot be too specific.

I want to get back to the argument of my good friend from Michigan, which is fundamental in what we are talking about. I want to emphasize that so far as I know there is nobody opposing the sections of this bill that deal with trying to make sure that we hire the proper personnel in the first instance. What we are talking about is, after they are hired, after they have gone through the screening process, then, as my friend from Michigan [Mr. DINGELL] says, I can find nothing in section 303 that requires that anywhere there be a written decision, anywhere there is anything said that there be a determination that the Secretary shall not suspend every other kind of normal procedure and fire the individual.

Now this individual has been carefully screened—remember. I will say to my friend, the gentleman from Louisiana [Mr. WILLIS] the very reason that he gave, that this will not happen often, is the very reason I want to be sure about this. We have already done all we can to see that the right kind of people are hired. Then here we would turn around and give to the Secretary, without any provision for notifying the individual, the right to fire that individual and to say that somewhere they have found something that makes that employee a security risk and that then the employee can be fired without ever knowing what kind of charges were made against him.

I want to say to my friends in all honesty, do you really believe, even if it is a privilege to work for the Government, that you should hire somebody in this kind of sensitive position and then put one person in the position to fire that employee without letting the employee know what he is charged with, and to just simply state that the employee is fired without having to explain why—all the Secretary has to do is say that this is a man who is dangerous to the security of the country.

Suppose that happens to an individual? Where is that individual ever again going to get a job in our United States?

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. WILLIS. May I say to my colleague, the gentleman from California, on checking my schedule here I find that I can yield him 1 more minute.

Mr. ROOSEVELT. I am very grateful to my colleague.

Mr. Chairman, there is a provision in this bill in section 302(a) which provides that persons can be employed by the agency prior to their full field investigation so long as they do not have access to sensitive or cryptological information or material. Then why cannot you just take this person away from any sensitive information if he is already there? You cannot remove from him what he already knows. That is already in his mind, and when you fire him you are not going to be able to blank out his mind. He has that information. But if you want to protect yourself in the future, then take him away from any kind of work having to do with that kind of sensitive information and give him a fair chance to know what he is accused of and give him a fair opportunity then to present his case at least.

In section 303 you do not even make any attempt to do that.

Lastly, Mr. Chairman, because the time is so limited, let me point out that in 5 U.S.C. 22 the Secretary now has the authority to fire somebody out of the National Security Agency. We are not taking away his right to fire people who he finds are disloyal to the United States. It seems to me all we are asking for is a reasonable opportunity not to do an injustice to somebody unreasonably. We must ask where can that employee who is discharged go? How can be possibly rectify the record when there is no record to rectify?

Mr. Chairman, I do not think that is the way we operate in the United States.

Mr. WILLIS. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. RYAN].

(Mr. RYAN of New York asked and was given permission to revise and extend his remarks.)

Mr. RYAN of New York. Mr. Chairman, I rise in opposition to H.R. 950. On September 4, 1962, I objected to an identical bill when it appeared on the Consent Calendar, and on September 19, 1962, I voted against the measure when it passed the House under Suspension of the Rules. My opposition to the bill on those occasions and at present is based on the fundamental denial of constitutional rights involved in any procedure which would give the power of summary dismissal to the Secretary of Defense.

Under section 303(a) of H.R. 950 the Secretary of Defense would have the authority to terminate the employment of any officer or employee of the National Security Agency whenever he considers "that action to be in the interest of the United States, and he determines that the procedures prescribed in other provisions of law that authorize the termination of employment of that officer or employee cannot be invoked consistently with national security." Under the provisions of the bill, such action by the Secretary of Defense would be final.

This bill violates basic constitutional concepts and is totally inconsistent with the principles of Anglo-Saxon jurisprudence. It gives the Secretary of Defense the authority to fire any employee of the National Security Agency without a hearing, without the right of cross-examination, without the right to have any information against him, without the right of appeal, and without even the right to know why he is being fired.

An employee who is fired under the provisions of the bill has the right to go to the Civil Service Commission and present himself for other Federal employment. This provision is ludicrous. It is inconceivable that the drafters of this bill seriously thought that a person fired for unknown "security reasons" would have a chance of getting other Federal employment. In fact, a person whose employment was terminated under the provisions of this bill would hardly have a chance to obtain private employment. Because he is denied his basic right to know why he is fired, it would be impossible to explain the loss of employment to a prospective employer.

Mr. Chairman, Andrew J. Biemiller, director of the Department of Legislation of the AFL-CIO, has sent the following telegram to our colleague, Congressman ROOSEVELT, of California, who will offer an amendment to strike section 303(a):

> Urge you vote in favor of the Roosevelt amendment to H.R. 950 to strike the authorization for summary dismissal of Government employees. Experience shows no need for this drastic denial of fair procedure.

Mr. Chairman, the provisions of this measure are inconsistent with the due process provisions of the Constitution. The measure is a product of cold war hysteria and should be rejected. In our fight for liberty, let us not lose our liberty.

Mr. JOHANSEN. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ALGER].

Mr. ALGER. Mr. Chairman, I would like to direct some questions, if I may, to the gentleman from Louisiana and other members of the committee to help my understanding, recognizing that we have the double problem of maintaining security and not giving aid and comfort to the enemy, and at the same time not defame the character of any person without appeal.

I submit this amendment to the gentleman from Louisiana for his comment, his counsel, or such other advice as he may choose to give me.

If you will look at the bill on page 5, after the word "final," I suggest the following:

> Except any employee whose employment is so terminated, shall have the right of appeal to an Appeal Board, such Appeal Board shall consist of three persons, appointed by the President, and who are cleared by the

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Director of the National Security Agency for access to classified information.

My intention in this language is that the President may designate the man with the highest security clearance. It would be perfectly all right if the Secretary of Defense appointed these men. It would not be public. They would go into it if the person demands an appeal. It would not violate security, but it would give the man a chance to be heard and remove from the Secretary the onus of the charge of being a dictator or of making an error singlehandedly.

What does the gentleman think of such an amendment?

Mr. WILLIS. I think it bad, for this reason:

As the gentleman from Michigan [Mr. JOHANSEN] has said, you must have finality at some point. A Review Board of three is designated by the amendment proposed. Conceivably, that Board can also make a mistake if the Secretary can make a mistake. Then shall the discharged employee have the right to go to court? The court may make a mistake. Do you go to the next highest court? The question is, What is to be final?

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. WILLIS. Mr. Chairman, I yield 2 minutes to the gentleman from California [M. COHELAN].

(Mr. COHELAN asked and was given permission to revise and extend his remarks.)

Mr. COHELAN. Mr. Chairman, obviously in 2 minutes one cannot begin to argue this very, very difficult question. I am very pleased that our colleagues, the gentleman from Louisiana [Mr. WILLIS], and the gentleman from Michigan [Mr. JOHANSEN], have drawn the issue as well as they have; and, if I may have the attention of the gentleman from Texas, I am delighted to hear this gesture in terms of an amendment, because what I will talk about when I have a chance to speak more extensively is that some type of administrative due process must be provided.

Those of you who were here last year will remember that I argued the question, and I want to refer you to the RECORD of the 87th Congress, beginning on page 18509, where I discussed this point. You will recall I pointed out at that time that this argument was not made lightly; that it was made in consultation with some of the most distinguished lawyers in my State, and the University of California. I inserted an article in the RECORD by Prof. Frank Newman, the very learned dean of the Boalt Hall Law School at the University of California, which goes into the question of due process and the question of rights and privileges in this specific kind of problem.

One of the things I want to say, if I have time, is this: The distinguished chairman of the committee has pointed out and made a great fuss about the two NSA employees who defected. The simple fact of the matter is and the record has proven the point, that these men should not have been hired in the first place.

Mr. JOHANSEN. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. MATHIAS].

(Mr. MATHIAS asked and was given permission to revise and extend his remarks.)

Mr. MATHIAS. Mr. Chairman, I have a special interest in this legislation. I doubt if any Member of this House represents more Federal employees than I do. I know these employees to be dedicated public servants. They deserve better of the Congress than this bill.

Now, I am particularly interested by two of the supporting letters which appear in the report on this legislation. One of these letters is from the Justice Department. In that letter the Deputy Attorney General, Mr. Katzenbach, gives his full approval to the bill. He approves its passage, but in his letter he does not mention in any way the unusual summary termination procedures provided in the bill. He apparently has no concern whatever about the fact that employees can be summarily dismissed without an iota of information of the reason for their dismissal. Likewise, the Chairman of the Civil Service Commission devotes his attention in his letter to other parts of the bill, and there is no mention whatever of the summary termination provisions.

The Congress must consider carefully the unusual and drastic provision in this bill for summary termination of employment which can work untold injustic to Federal employees. I think the fact that the Justice Department has chosen not to deal with the termination provision is in itself an indication of the unsavory nature of the provision. I think the fact that the Justice Department does not want to talk about it indicates that it is something that it feels ought to be swept under the rug, and I do hope we sweep it under the rug by defeating this bill, unless it is amended to provide some reasonable form of due process prior to summary termination of employment by the Secretary of Defense.

Mr. JOHANSEN. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana [Mr. BRAY].

Mr. BRAY. Mr. Chairman, I hesitate to speak on this bill because I am not on that committee, and the knowledge I have of the bill is what I heard in debate last year and the debate today and information I received by reading the report and the bill. But, I did have some experience in the study of the Martin-Mitchell case of the two defectors from the National Security Agency to Russia which has been mentioned here earlier.

Matters coming before the National Security Agency are very supersecret, about as secret as you can get. A high degree of security is demanded, and there should not be the slightest suspicion on anyone connected with the Agency. No one is forced to go into it. They know the background when they go in.

The very slightest suspicion, or any grounds for such suspicion, should certainly preclude that person from handling supersecret matters, so secret we do not want to discuss them here.

In studying the Martin case, evidence developed before his disappearance that would have justified his dismissal but, frankly, there was not sufficient evidence developed to have been able to make a good case before a board. I do not know whether there was any consideration of dismissing Martin but there was enough evidence to have justified such consideration. In the Army, as many of you know, an officer can remove from command anyone under him summarily at any time. He makes no excuse. Later he may have to defend his action, but that authority in the commander must exist. The same reasons exist for having such authority in such a secret organization as the National Security Agency.

Mr. Chairman, I do not believe there is a Member in this body who has shown any more interest in defending the rights of civil service employees from being unfairly dismissed than I have. Time after time I have taken a personal interest in specific cases. But let us realize first that this is a very secret—I want to repeat again—supersecret organization on which the very security of America may depend. Many times the person in charge can become aware of a deterioration in a subordinate. There isn't enough evidence to make a case but in a supersensitive organization as the National Security Agency we cannot always safely set up the same safeguards to job retention that we do in the regular civil service. There are many people in America, honest people, who have traits in their character or background who should never be employed in the National Security Agency or in the CIA.

Mr. WILLIS. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana [Mr. WAGGONNER].

(Mr. WAGGONNER asked and was given permission to revise and extend his remarks.)

Mr. WAGGONNER. Mr. Chairman and Members of the House, I rise in support of this legislation much the same as I did last year.

Mr. Chairman, there seems to be two or three points of discussion here. First of all there seems to be a point of view that we can no longer delegate authority to any of our Secretaries because they cannot be trusted. However, it seems the least we could possibly do in this particular case would be to be consistent, because I do not assume to begin with that our Secretaries are a bunch of scoundrels and are not going to give anyone fair and equitable treatment.

Mr. Chairman, the other is that people are going to be dismissed without being in formed of what their crimes might possibly be. It is my firm opinion that a man guilty of subversion need not be told because he knows full well to begin with for what he is being dismissed.

Again, Mr. Chairman, there is the idea and I will ask the chairman of the committee, my colleague, the gentleman from Louisiana [Mr. WILLIS], about this—that there is a constitutional right which is inherent and guarantees the right to work for the Government or for some such agency as this for all individuals, and that due process is involved. I would like to ask the gentleman from

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Louisiana if he would clarify this particular point.

Mr. WILLIS. I am delighted that the gentleman has made the inquiry. That very issue was decided by the Supreme Court of the United States in the case of *Bailey* v. *Richardson*, 182 F. 2d 46, first decided in the Court of Appeals for the District of Columbia, March 22, 1950; and affirmed by the Supreme Court on certiorari by an equally divided court, Justice Clark not participating.

Miss Bailey was employed in the Federal Security Agency, now abolished, which was a grouping of agencies whose major purpose related to promotion of social and economic security, educational opportunity and health. The Government notified her that it had received information to the effect that she was a member of the Communist Party and affiliated with subversive organizations. She was given a hearing and the procedures before the loyalty boards conformed with the requirements of the Executive Order 9835, which required that the names of confidential informants be kept confidential. As a result of the hearing, the loyalty board found that on all the evidence reasonable grounds existed for the belief that Miss Bailey was disloyal to the Government of the United States, and she was discharged from employment. While Miss Bailey was given a general statement of the charges, she claims that this information did not include the names of informants against her or the dates or places of her alleged activities, and that her constitutional rights had been violated. The court said:

> In the absence of statute or ancient custom to the contrary, executive offices are held at the will of the appointing authority, not for life or for fixed terms. If removal be at will, of what purpose would process be? To hold office at the will of a superior and to be removable therefrom only by constitutional due process of law are opposite and inherently conflicting ideas. Due process of law is not applicable unless one is being deprived of something to which he has a right.
>
> Constitutionally, the criterion for retention or removal of subordinate employees is the confidence of superior executive officials. Confidence is not controllable, by process. What may be required by acts of the Congress is another matter, but there is no requirement in the Constitution that the executive branch rely upon the services of persons in whom it lacks confidence.

To the argument of Miss Bailey that even if the executive had power to dismiss her without a judicial hearing, they had no power to call her disloyal while doing so, the court said:

> If Miss Bailey had no constitutional right to her office and the executive officers had power to dismiss her, the fact that she was injured in the process of dismissal neither invalidates her dismissal nor gives her right to redress; this under a rule of law established long ago.

The court quoted from Judge Learned Hand and pointed out that, and is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. The reason for the rule is the same as that which permits a person to be publicly stigmatized by utterances on the floor of the Congress without any opportunity in any established forum to deny or to refute. The court said that these harsh rules "have always been held necessary as a matter of public policy, public interest, and the unimpeded performance of the public business."

Mr. WAGGONNER. I thank the gentleman.

Mr. JOHANSEN. Mr. Chairman, I yield myself the remaining time on this side of the aisle, just to point out and to underscore what seems to me is the very much overlooked provision of this legislation and the provision of the law governing CIA, that termination under this summary dismissal procedure does not affect the individual's right to seek or accept employment in any other department or agency of the U.S. Government.

This is a major safeguard against stigmatizing a person unfairly or depriving him unfairly or improperly of Government employment. But at the same time it provides that flexibility which in certain cases is essential if the Secretary of Defense and the head of the CIA are to meet their very heavy responsibility.

Mr. Chairman, I offer one other observation. As the gentleman from Louisiana [Mr. WILLIS] has pointed out, of course there is possibility of error. There is possibility of error in judicial process. Does that argue therefore that trial by jury, judicial process, and the courts are to be abolished because the power inherent in them has a potential of human fallibility?

Mr. WILLIS. Mr. Chairman, I yield the gentleman from Virginia [Mr. TUCK], a member of this committee, 5 minutes.

At this time I ask unanimous consent that, following the presentation of the gentleman from Virginia [Mr. TUCK], all Members who so desire may extend their remarks in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TUCK. Mr. Chairman, I thank my friend, the gentleman from Louisiana, for yielding to me at this time. I want to say, too, that I am in wholehearted accord with the statements the gentleman has made relative to this bill. I favor the passage of the bill as reported to the House from the Committee on Un-American Activities. This bill passed the House of Representatives in the last Congress, during the latter part of the session, but was not acted upon on the other side, supposedly because they did not have time in which to act.

Mr. Chairman, security and freedom are the bedrock upon which our liberty is based. Our Government was established for the purpose of guaranteeing to our citizens both freedom and security. They constitute what we call our American way of life. Each is dependent upon the other and without both we have neither.

Among the most important weapons we have to protect our security and freedom are those laws designed to prevent infiltration of our Government by enemies of the Nation. Exiles from Czechoslovakia tell us that their country lacked both effective security laws and the will to employ them. That is the one reason why there was a takeover of the Czech Government in 1948 by these despicable Communists.

The jugular vein of every nation is the government. The bureaus and the agencies of the government constitute the principal target of Communist infiltration. We have a great democratic Government here. We must preserve it. In order to do so, top priority must be given to securing that Government from infiltration by the enemy.

Mr. Chairman, I have always contended that it is a privilege for a citizen to be employed by the U.S. Government. It is not a right. A person so occupied and employed is indeed a servant of the people. The least that can be demanded of that person is that he will not betray the trust of his fellow citizens.

It is the right and the duty of the Government to take firm and resolute action to assure that it employs only individuals who are loyal and who continue to be loyal to the form of government which we enjoy here in America today.

Despite all its imperfections, our system of Government under which we are privileged to live has provided more genuine freedom to a greater number of people over a longer period of time than any other system in the history of the world. We in this House have a bounden duty today to keep it that way. This may sound like flag waving, but if it is, I would rather wave the flag of my country than to be guilty of contributing to a wavering of that flag. Our flag, the Stars and Stripes, has never trailed in the dust of defeat and it never will, as long as we produce men and women who are determined to protect the best interest of this country. Not only in civil life and in our Government, but on the battlefields and battle seas of the world.

Let me remind you that, in the name of the people, the House of Representatives helped to create the National Security Agency as a vital and necessary part of a $50 billion a year defense program to preserve this Nation. It is our duty to take such further action now as may be necessary to assure the people that the National Security Agency will be used in their behalf and will not be infiltrated and utilized against them by the enemies of the United States, such as was done not long ago by Martin and Mitchell.

The issue before us is a clear one. If there is a conflict between the Government of the United States and the individual, then I say it is more important to preserve the freedom and the security of America than it is to guarantee a job to some faithless, perfidious person employed by that Goverment and who cannot be trusted as a security risk.

I have no concern for the protection of the so-called rights of such persons as Martin and Mitchell. They have no rights other than to be punished as criminals and traitors.

I am reminded, in conclusion, of the story that was one of the favorite stories of the late distinguished Senator from

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Kentucky, Senator Barkley. He said that out in one of the legislative districts of Kentucky a young man was a candidate for the Democrtaic nomination for the House of Representatives of Kentucky. He was down in one of the counties where they were raising sheep, where the dogs had killed almost all the sheep there were in that county. Of course, the dogs were quite unpopular there. This young man was making his speech before his constituents there in that county and he said, "Gentlemen, I favor a strong dog law. I am in favor of a dog law so strong it will exterminate dogs and thus save the sheep."

The farmers liked that.

The next day he went on to the adjoining county, which was the fox hunting country where they rode behind the dogs and where they had no sheep but plenty of beautiful and expensive dogs. So he was getting along pretty well, until finally one of the men over there got up and said: "Let me ask you a question, sir? Will you tell the people here what sort of dog law it is that you favor? What are you going to do to the dogs to protect the sheep?"

He said, "Oh, my friends, I am glad you asked me that question. I am in favor of a dog law. I am in favor of a strong dog law. But I am in favor of a dog law that will protect the sheep and not hurt the dogs."

Mr. Chairman, if in this case it is necessary to hurt a few persons of questionable security risk in order to protect the people of the United States of America, I am in favor of America first.

Mr. ROGERS of Florida. Mr. Chairman, I rise in support of this legislation. The bill offered by the distinguished chairman is the result of extensive hearings and examination by the House Un-American Activities Committee.

The legislation under consideration has the support of the Department of Defense, the Civil Service Commission, the National Security Agency, and the Department of Justice, all of which presented their views to the Committee during formulation of this legislation.

One of the purposes of this bill is to allow the Secretary of Defense to recruit and terminate employment of NSA personnel, with the counsel of an advisory board. Such machinery is necessary in governmental agencies which have been exempted from normal civil service procedures because of the classified nature of their functions.

Careful note has been made in the committee report to state that the advisory board is not established for the purpose of protecting the employees of this particular agency as much as to provide mature disposition of doubtful security cases.

I am advised that similar personnel procedures are prescribed for the Central Intelligence Agency, an agency charged with even more critical and sensitive functions than NSA.

The defection of NSA employees, Bernon F. Mitchell and William H. Martin, both of whom had been employed in highly sensitive areas, in 1960 gave rise to the investigation which produced the bill before us now. What precautions have been taken to prevent future occurrences involving CIA personnel?

Mr. Chairman, when Congress established the Central Intelligence Agency in 1947 it exempted that agency from virtually all normal controls applied to other governmental operations. As we see here today, Congress is providing for procedural changes in the NSA some 11 years after this agency was established in 1952. Time has run its course on the CIA, and the Congress would improve the role of that agency through the establishment of a joint House-Senate watchdog committee on CIA.

Such a committee is proposed in House Joint Resolution 211, and would be similar to the present Joint Committee on Atomic Energy, which was established in 1946 to give congressional review to the highly sensitive operation of the Atomic Energy Commission. A watchdog committee as proposed in House Joint Resolution 211 would also improve communications between Congress and CIA, lessening the possibilities of misunderstanding and undue criticism of that agency.

I commend the efforts of this committee, and am pleased to support its work.

Mr. GILL. Mr. Chairman, I am sure that most of us who will vote against this bill do so without any particular disagreement with those provisions requiring full field investigation and appraisal of persons to be assigned to or employed by the National Security Agency.

However, I emphatically join my colleagues who oppose that portion of the bill which would eliminate any and all rights of appeal or hearing for an employee whose employment is terminated. The failure of the Committee on Un-American Activities, and this House, to accept the various amendments offered which would have in some degree preserved the constitutional right to due process of law for terminated employees, makes the total bill defective and unacceptable.

The processes established under existing law (5 U.S.C. 22-1 and 863) make ample provision for the protection of the security interests of the United States; to eliminate even these restricted rights of due process, as H.R. 950 would do, goes far beyond the limits of reason. It opens the door, as even some of our conservative Republican colleagues have pointed out, to arbitrary and capricious action on the part of Government administrators.

There has been much said about danger to the national security. Democracy itself is a dangerous form of government and in its very danger lies its strength. The protection of individual rights by the requirement of due process of law, which has long endured in this Nation of ours, is a radical and dangerous idea in most of the world today. This dangerous concept is outlawed in the Soviet Union, in Red China, in Castro's Cuba, indeed, in all of the Communist bloc and many of those countries alined with it.

I think we might well ask: How does one destroy his enemy by becoming like him?

Mr. O'HARA of Illinois. Mr. Chairman, from the experiences of mankind in many unhappy centuries have come lessons that guided the thinking of our forefathers when they gave to the world the Constitution of the United States as the most perfect political doctrine within the power of man to create.

It recognizes the frailty of the wisest and the best of human kind. Even the most prudent and the most dedicated of men can go astray in the exercise of power unlimited and unchecked. So under our Constitution we have a government of checks, a check by one branch of government upon another branch and as well a check upon each individual citizen by other citizens. Unless there be that check men of the warmest hearts and of the best of intentions may trespass upon the rights of other men.

The principle that no man shall be deprived of his reputation, his goods, his job, or of any possession that gives sustenance, substance, some measure of contentment and of dignity to his existence, shall be taken from him without the opportunity of facing his accusers is deeply rooted in our law and in the American concept.

No man is infallible. All men have their friends and their acquaintenances, and all men at times find themselves influenced by things that have been whispered into their ears and on which they have had no opportunity of making their own investigations. This is true of men on all levels of intelligence and of position and men of the highest moral motivation as well as those of the lowest. All of this our forefathers envisioned when they referred to the frailties of human nature, and sought by words that they placed into the Constitution of the United States to guard against by constitutional guarantees and by laws.

The bill we have under discussion is a good bill in intention. No one should have access to secrets vital to the security of this Nation that is not entirely trustworthy. Certainly no one should have access to secrets the divulgence of which could do harm to the security of our Nation unless in every sense he had the same loyalty to and love of country that fills the very being of a man willing to give his life for his country.

I think we all agree that the Secretary of Defense and the Director of the Security Agency, responsible for the safekeeping of the Nation's secrets, should have every reasonable means of replacing persons of questionable loyalty, of questionable dependability, of questionable discretion.

I think it is possible to obtain the objective sought by this bill if it were amended to preserve the principle, so precious to our American concept of the right of the accused always to face his accusers. I do not think it is possible to do that by amendments offered from the floor. I do not think that ever a bill, reasonably acceptable to everyone seeking the same objective but by conflicting means, can be written on the floor of the House.

I read on page 5 of H.R. 950, subsection b of section 301, and I find here a meritorious effort to protect one discharged from the sensitive National Se-

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curity Agency from prejudice in search for employment in other departments of the Federal Government. It provides that termination of employment by the Security Agency shall not affect the right of the officer or employee involved to seek or accept employment with other department or agency of the United States if he is declared eligible for such employment by the U.S. Civil Service Commission. I take it that the intention of this subsection is to protect the person discharged, without a trial or a hearing or the opportunity of confronting his accusers, when he seeks employment elsewhere in the Federal Government. But the fact is that the person so discharged would find himself fatally handicapped. He might have been discharged without there being in anyone's mind the slightest suspicion of his loyalty. He may have been discharged for what would have seemed a good and sufficient reason to his superiors because he did not have the temperament of one entrusted with confidential matters. Yet the fact that he had been discharged by the Security Agency without any explanation of the reason, without any record on which one could check, would naturally raise a serious doubt with other governmental agencies or departments to which he might apply.

I think it is possible to write a bill that will attain in full the objectives of H.R. 950, the right of a sensitive agency to transfer an employee who is not fitted temperamentally or otherwise for service in the sensitive area. I think this can be done without violation of the American concept of justice that every man shall be protected from divestment of his life or possessions without having the opportunity of facing his accusers. But, Mr. Chairman, I repeat I do not think it can be done by rewriting the bill here on the floor of the House.

I am in full sympathy with the objectives of the bill, but I shall be one of a minority voting against it with the hope that when the measure reaches the other body, it will receive further study to the end that the National Security Agency will have the fullest means of protection and at the same time there will be the fullest possible protection against the possibility of a good and loyal American citizen becoming the victim of gossip, whispers, and charges from an unnamed and unidentified source.

When in the expediency of the moment and in our reaching out for the easy means of attaining desired objectives we wander from the spirit, and as well, the letter of the Constitution, we are entering the uncharted wilderness from which our forefathers sought to protect us.

Mr. MATSUNAGA. Mr. Chairman, the purpose of H.R. 950 is to establish a legislative base for enforcing a strict security standard for the employment and retention in employment of persons in the National Security Agency, to achieve maximum security for the activities of the Agency, and to strengthen the capability of the Secretary of Defense and the Director of the Agency to provide for such by authorizing the Secretary of Defense to terminate the employment of any officer or employee of the Agency whenever he considers such action to be in the best interests of the United States. This purpose, I believe, will not in any way be jeopardized by the amendments proposed by the gentleman from California [Mr. ROOSEVELT], by the gentleman from Pennsylvania [Mr. MOORHEAD], and by the gentleman from Texas [Mr. ALGER]. The proposed amendments would have merely given an employee, once he has been hired, the right of appeal and the right to be heard in his own defense upon being discharged for alleged misconduct.

I have no objection to any other provision of the bill, but I do believe that without the proposed amendments the bill violates a fundamental American right of fair play. One of the most cherished rights in our great democracy has been the right of due process of law. We have long believed in and practiced the principle that no one shall be found guilty of any misconduct without being given "a day in court." Without the proposed amendments, the bill denies an officer or employee of the Agency this fundamental American right.

The amendments would not have effected any lowering of the standard of security because the Secretary would still have retained the right to discharge an employee for good cause. The amendments would have merely extended to such employee the right to defend his reputation and future livelihood. Through capriciousness and arbitrary action, a faithful and loyal employee could be summarily discharged under the provisions of the bill as it now stands and have his whole life ruined.

In all good conscience, therefore, I cannot support the measure in its present form.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

All time has expired.

The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Internal Security Act of 1950 is amended by adding at the end thereof the following new title:

"TITLE III—PERSONNEL SECURITY PROCEDURES IN NATIONAL SECURITY AGENCY

"Regulations for employment security

"SEC. 301. Subject to the provisions of this title, the Secretary of Defense (hereafter in this title referred to as the 'Secretary') shall prescribe such regulations relating to continuing security procedures as he considers necessary to assure—

"(1) that no person shall be employed in, or detailed or assigned to, the National Security Agency (hereafter in this title referred to as the 'Agency'), or continue to be so employed, detailed, or assigned; and

"(2) that no person so employed, detailed, or assigned shall have access to any classified information; unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security.

"Full field investigation and appraisal

"SEC. 302. (a) No person shall be employed in, or detailed or assigned to, the Agency unless he has been the subject of a full field investigation in connection with such employment, detail, or assignment, and is cleared for access to classified information in accordance with the provisions of this title; excepting that conditional employment without access to sensitive cryptologic information or material may be tendered any applicant, under such regulations as the Secretary may prescribe, pending the completion of such full field investigation: *And provided further,* That such full field investigation at the discretion of the Secretary need not be required in the case of persons assigned or detailed to the Agency who have a current security clearance for access to sensitive cryptologic information under equivalent standards of investigation and clearance. During any period of war declared by the Congress, or during any period when the Secretary determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee for such purpose) makes a determination in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment of any person to, the Agency, and may grant to any such person access to classified information, on a temporary basis, pending the completion of the full field investigation and the clearance for access to classified information required by this subsection, if the Secretary determines that such action is clearly consistent with the national security.

"(b) To assist the Secretary and the Director of the Agency in carrying out their personnel security responsibilities, one or more boards of appraisal of three members each, to be appointed by the Director of the Agency, shall be established in the Agency. Such a board shall appraise the loyalty and suitability of persons for access to classified information, in those cases in which the Director of the Agency determines that there is a doubt whether their access to that information would be clearly consistent with the national security, and shall submit a report and recommendation on each such a case. However, appraisal by such a board is not required before action may be taken under section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22–1), or any other similar provision of law. Each member of such a board shall be specially qualified and trained for his duties as such a member, shall have been the subject of a full field investigation in connection with his appointment as such a member, and shall have been cleared by the Director for access to classified information at the time of his appointment as such a member. No person shall be cleared for access to classified information, contrary to the recommendations of any such board, unless the Secretary (or his designee for such purpose) shall make a determination in writing that such employment, detail, assignment, or access to classified information is in the national interest.

"Termination of employment

"SEC. 303. (a) Notwithstanding section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22–1), or any other provision of law, the Secretary may terminate the employment of any officer or employee of the Agency whenever he considers that action to be in the interest of the United States, and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of that officer or employee cannot be invoked consistently with the national security. Such a determination is final.

"(b) Termination of employment under this section shall not affect the right of the officer or employee involved to seek or accept employment with any other department or

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agency of the United States if he is declared eligible for such employment by the United States Civil Service Commission.

"Definition of classified information

"SEC. 304. For the purposes of this section, the term 'classified information' means information which, for reasons of national security, is specifically designated by a United States Government agency for limited or restricted disemination or distribution.

"Nonapplicability of Administrative Procedure Act

"SEC. 305. The Administrative Procedure Act, as amended (5 U.S.C. 1001 et seq.), shall not apply to the use or exercise of any authority granted by this title.

"Amendments

"SEC. 306. (a) The first sentence of section 2 of the Act of May 29, 1959 (50 U.S.C. 402 note), is amended by inserting ', without regard to the civil service laws,' immediately after 'and to appoint thereto'.

"(b) Subsection (b) of section 2 of the Performance Rating Act of 1950 (5 U.S.C. 2001(b)) is amended—

"(1) by striking out the period at the end of paragraph (13) and inserting in lieu thereof a semicolon; and

"(2) by adding at the end thereof the following new paragraph:

"'(14) The National Security Agency.'."

Mr. WILLIS (during the reading of the bill). Mr. Chairman, I ask unanimous consent that the further reading of the bill may be dispensed with, and that the bill be open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. ROOSEVELT. Mr. Chairman, I offer an amendment which is at the Clerk's desk.

The Clerk read as follows:

Amendment offered by Mr. ROOSEVELT: On page 4, strike out line 18 and all that follows down through page 5, line 4 and renumber the sections as necessary.

Mr. ROOSEVELT. Mr. Chairman, I ask unanimous consent that my amendment be amended to include on page 5, line 5, the words "under this section" be eliminated in order to make that subsection (b) conform to the amendment.

The CHAIRMAN. Without objection, the amendment will be so modified.

There was no objection.

The Clerk read as follows:

Amendment offered by Mr. ROOSEVELT: On page 4, strike out line 18 and all that follows down through page 5, line 4, and the words "under this section" on page 5, line 5, and renumber the following sections as necessary.

Mr. ROOSEVELT. Mr. Chairman, I think we have debated this basic subject rather fully this afternoon. I do not intend to take the full 5 minutes but I would like to make a few remarks, if I may, to my good friend, the gentleman from Louisiana [Mr. WILLIS].

The gentleman has pointed out it is possible even when we have judicial review that sometimes we send someone to the electric chair who later proves to be not guilty. The gentleman uses that possibility as a reason that we should abolish any kind of review in these cases. I admire my colleague as a lawyer as well as a wonderful friend, but I cannot see any logical sequitur in that line of argument because we know that the reasons we have our judicial procedures set up is to try to mete out justice to all. Here we do not even take the elemental step—we do not even take the first step to mete out justice. It is true that even if we did give some kind of review that we still might make mistakes, but certainly I can see no reason why that should be used as an argument for giving no judicial review at all. Of course, the fact might be that in the end there is still finally a chance for mistake. In this agency today there can be no case which is not covered by appropriate law which gives all power to the Secretary to remove any individual that he is afraid of away from a sensitive area and to give that individual a hearing and give it to him in secret? That is done over and over again. There can be absolutely no question of security violation. I cannot see any reason why in this instance we would be endangering the security of our country when we are trying to do something to preserve the rights of an individual—even if he is a dog. Now, I do not like to call people dogs, but I do not think we should assume that he is a dog. He might be a pretty good person who for some reason or another has incurred the wrath of somebody through a personality conflict—and in this kind of work personality conflicts arise, perhaps, more quickly than in any other kind of work. It seems to me, all we are saying and all we are asking of the committee is—let us be sure that we hire the right kind of people.

Let us be sure we can remove them, but at least give the person who is accused the right to know what he is accused of, even if you do it in secret, and give him the right to enable him to process an appeal.

Incidentally, if the gentleman from Texas will look on page 3, section 302(b), he will find there are boards of competent people set up. I would even go so far as to suggest one of those boards should be given the responsibility for some kind of appeal. But there is no appeal. How can you in the times in which we exist do this to an American citizen, who was carefully picked to serve his Government, after all kinds of rigidity tests were given to him, and then blacken him without giving some assurance he will get his fair day in court?

I leave it on that basis. I hope my friends will believe that we as everybody else are as strong for the security of our country as anyone can be. You cannot accuse us of less loyalty to our country because we want to stand for the rights of individuals. We believe we are trying to strengthen and maintain basic American ideals and principles.

Mr. ALGER. Mr. Chairman, will the gentleman yield?

Mr. ROOSEVELT. I yield to the gentleman from Texas.

Mr. ALGER. Mr. Chairman, I would like to agree with my colleague from California, but since I do not feel we should strike that section, I ask the gentleman to consider an amendment which I shall propose at the proper time that would give the protection he seeks. I ask him to consider an amendment I proposed earlier relative to the Appeal Board. I do not want to water the gentleman's amendment at the moment, but should it not prevail I have an amendment.

Mr. ROOSEVELT. I will have to say there are always more ways than one to do a job. It seemed to me this was the best and simplest way. If it is turned down and the gentleman has an amendment, perhaps I shall support his amendment. But the gentleman from Louisiana is not going to accept that either.

Mr. COHELAN. Mr. Chairman, I move to strike the last word.

(Mr. COHELAN asked and was given permission to revise and extend his remarks.)

Mr. COHELAN. Mr. Chairman, I have not much time, and I hope you will listen very closely to what I have to say, and particularly you lawyers in the House who may not have followed the argument last year.

I am going to put this article in the RECORD again, and you may refer to it later. But I want to refer to the pertinent sections here, because it deals with everything we have been talking about.

Professor Newman, dean of the California Law School, states:

Our presumption is that modest reforms may be practicable, that the process of prescribing due process could be bettered.

He goes on to say:

Yet without soaring into semantics or political theory, could we not shun one view of life, liberty, or property that has caused much chaos? I refer to the hundreds, maybe thousands, of cases that protect rights but not privileges, declaring that due process of law is not applicable with respect to Government employment, for instance, unless one is being deprived of something to which he has a right.

He goes on to say:

The due-process clauses say nothing of right versus privilege. The chief vice of the privilege doctrine is that it has insulated us from a body of law, highly reputable, that seems designedly apt for protecting the freedoms that life, liberty, or property seem to imply.

Finally, he goes on to say:

To pronounce that "liberty or property" includes, say, reputational and emotional interests would not mean that governments no longer could deprive people of those interests, or that deprivations could be effected only by judicial trial. The requirement would merely be that due process be accorded.

That is what I have been referring to, and we are not talking strictly about criminal due process.

We are talking about administrative due process, and we can develop procedures which will protect the so-called informer, and the security requirements can be met.

Again, as Professor Newman so clearly points out:

The kind of precise portrayal of harm that may crucially affect a lawsuit is exemplified by petitioner's brief in *Peters* v. *Hobby*. "We, of course, concede," said counsel, "that

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the Constitution does not limit the power of the Executive summarily to terminate employment on secret information or for any other reason. The question before this Court is only whether the Government has the right to accompany a discharge with a finding of disloyalty which ruins the reputation and career of the accused, without a full hearing. In other words, the protested harm was not to job security but to one's repute as a prospective jobholder."

Now, where the present bill before us goes astray, in my judgment, is in jumping from the proven necessity of tightening up security measures in the preemployment stage to the unproven assumption that national security demands giving authority to the Secretary of Defense to terminate summarily without any hearing whatsoever.

As Justice Tom Clark said in the Supreme Court's unanimous opinion in *Wieman* v. *Updegraff* (344 U.S. 183 (1952)):

There can be no dispute about the consequences visited upon a person excluded from public employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed, it has become a badge of infamy.

When we realize the tremendous damage which is visited on any Government employee who is dismissed on loyalty or security grounds, we want to be sure that the dismissal is not done unjustly. This bill would permit possible unjust summary dismissal based on the word of nameless accusers.

It denies to Government employees the most elementary features of due process—namely, the notice of charges and the right to confront and cross-examine the accusers.

(Mr. LINDSAY asked and was given permission to revise and extend his remarks.)

Mr. LINDSAY. Mr. Speaker, I move to strike out the last word.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from California [Mr. ROOSEVELT]. I think it has to be made clear exactly what the amendment does.

First of all, it has to be stated once again that this bill before us abolishes hearings; it abolishes the normal right of an employee to have stated to him the reason he is being fired. The bill abolishes an employee's normal right to submit a statement on his own behalf, whether it be in secret or whether it be in public hearings. The bill before us waives all of the existing provisions of law contained in the United States Code designed to give an employee minimum safeguards in the Government service.

Further, the bill abolishes any right of court review. And there is another deficiency which has not been mentioned in the debate. There is power to the Secretary to delegate this vast power to any subordinate employee of the entire Federal apparatus that happens to be under his jurisdiction. I hope Members are aware of the trouble that this can cause lesser bureaucrats very often take the safe course.

I think Members should be conscious of what we are doing here today. We must view this unusual procedure in the context of the great power that is lodged today in the Central Government. The Central Government is given total arbitrary power to willy-nilly fire a person, with all of the problems of stigma and stain and reputation that go with it. There has been some discussion about past laxity in the National Security Agency. This has nothing to do with questions of laxity. This has to do, as the gentleman from California [Mr. COHELAN] said, with due process. You do not have an absence of firm control, or the presence of laxity, because you have provided a minimum measure of due process.

Mr. Chairman, it has to be understood that procedure is just as important as substance when you are dealing with the central power of the Government. My friend, the gentleman from Texas [Mr. ALGER] has put his finger on it when the gentleman talks about central power and the dangers of central power. When you collect this amount of arbitrary power with no review, no hearing, no check, no appeal, then you have got something to be afraid of. I would urge the gentleman from Texas, however, to support this amendment that is now pending. That amendment seeks only to reinstate the hearing procedures contained in title 5 of the United States Code. These procedures do not require direct confrontation. The Government does not have to give up any secrets. Title V of the Code provides that when an employee receives notice of dismissal, he has a right to a written statement summarizing the charge. He has an opportunity to reply in writing within 30 days and he is given a hearing. He has a right to appeal to the head of the Agency.

Mr. Chairman, the gentleman from Texas [Mr. ALGER] asks that there be a review board. There is already a provision in title V that there be a review by the Agency head. This is all that we ask. Is it too much to ask for minimum due process in this regard? I think in order to save the bill which is now pending before the House and which has been brought forth by the gentleman from Louisiana—because I feel sure it will be struck down by the courts as being unconstitutional under the fifth amendment otherwise—this amendment should be adopted.

Mr. COHELAN. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from California.

Mr. COHELAN. Mr. Chairman, the gentleman from New York has stated the case well. The gentleman is a distinguished lawyer, and I wish the gentleman would explain to the members of the committee—particularly for the benefit of us nonlawyers—just what the difference is between criminal due process and administrative due process. I would ask the gentleman to tell us how it will affect the security of the agency.

Mr. LINDSAY. Within the limited time I have left I will state to the gentleman from California that the gentleman has already alluded to that body of law known as administrative due process. It is something substantially less than the process in a criminal trial. It is a body of law, largely built up by the courts, which states that people who work for or deal with the Federal Government cannot be treated arbitrarily and summarily. They have to be accorded fair and decent treatment.

Mr. JOHANSEN. Mr. Chairman, I move to strike out the last word.

(Mr. JOHANSEN asked and was given permission to revise and extend his remarks.)

Mr. JOHANSEN. Mr. Chairman, I rise in opposition to the amendment. If I understood the gentleman from New York [Mr. LINDSAY] correctly—and I know the gentleman will correct me if I am misstating him—he expressed the belief that this provision might be struck down by the courts.

Mr. WILLIS. Mr. Chairman, will the gentleman yield?

Mr. JOHANSEN. Surely.

Mr. WILLIS. Mr. Chairman, I ask unanimous consent that after the time which has been allotted to the gentleman from Michigan [Mr. JOHANSEN] has expired debate on this amendment and all amendments thereto close in 15 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

Mr. ALGER. Mr. Chairman, reserving the right to object, do I understand that would apply also to other amendments to this section, or just to this amendment?

Mr. WILLIS. All debate on this amendment and amendments to this amendment.

Mr. ALGER. Mr. Chairman, I withdraw my reservation.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

Mr. HOLIFIELD. Mr. Chairman, reserving the right to object—and I shall not object—I should like to ask the distinguished Chairman if he would request sufficient time to give each of us at least 3 minutes. I think there were six Members standing; that would be 18 minutes.

The CHAIRMAN. The Chair observes eight Members standing at this time.

Mr. WILLIS. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto close in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. JOHANSEN. Mr. Chairman, if I understood the gentleman from New York [Mr. LINDSAY] correctly he expressed the view that it would be desirable to delete section 303 in order to save the bill which otherwise the gentleman regards as excellent because, if I understood him correctly, he believed this provision would be struck down by the courts.

Mr. Chairman, let us start facing the facts. Let us not be led down some primrose path by a statement of that

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kind. The truth of the matter is that a provision almost word for word identical to this one in section 303 is included in the National Security Act of 1947 with respect to the CIA. The facts of the matter are that it has been before the courts. The facts of the matter are that when the case, as I mentioned in general debate, of Torpats against McCone was brought before the Court of Appeals in the District of Columbia a year ago last March the court sustained this type of provision. And again I say it was almost word for word—identical. The court held that the National Security Act of 1947 gives summary power of dismissal, similar to that, I will add, provided in section 303 of this bill, which the amendment of the gentleman from California would delete; and that pursuant to this statute the CIA adopted regulations calling—and I invite particular attention to this phrase "for an impartial review by the Director."

Now, about all this talk about review. The review under section 303 would be vested in the Secretary of Defense and the authority that is vested in him is the review of the recommendations or findings of these boards of appraisal.

Not only did the U.S. Circuit Court of Appeals sustain this similar legislation that relates to CIA, but the attempt was made to secure a review of the decision by the U.S. Supreme Court and certiorari was denied.

I just cannot let stand unchallenged the kind of an argument evidently advanced by my very good friend from New York, that in order to save this bill you have to gut it and you have to gut it to save it because of what the courts are going to do to it, when the courts have not done anything of the kind in a totally parallel situation.

Mr. Chairman, I oppose the amendment. I urge my colleagues not to be misled as to its necessity or its import.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. HOLIFIELD].

Mr. HOLIFIELD. Mr. Chairman, I asked for this time to ask a question of the distinguished chairman of the subcommittee. I am concerned about section 304 of the bill. I notice that it states:

> For the purposes of this section, the term "classified information" means information which, for reasons of national security, is specifically designated by a United States Government agency for limited or restricted dissemination or distribution.

There are a number of documents that cross my desk almost every day, as vice chairman of the Joint Committee on Atomic Energy. Some of those are marked "Confidential," some "Secret," some "Top Secret," and some, "For Official Use Only." The question I want to ask is, Would these "For Official Use Only" documents, for limited distribution, be characterized as classified information?

Mr. WILLIS. There may be other usage of the words in the Atomic Energy Commission.

Mr. HOLIFIELD. No. It happens in the defense committees and other committees, too. "For Official Use Only" documents frequently come across our desks. These are restricted in distribution, but they are not necessarily classified information.

Mr. WILLIS. Let me read to the gentleman a letter which contains the information he is seeking.

Mr. HOLIFIELD. I am afraid my time will not allow that.

The CHAIRMAN. The Chair recognizes the gentleman from Missouri [Mr. CURTIS].

Mr. CURTIS. Mr. Chairman, I think the committee has brought out a good bill, except the one section that is under dispute in this particular amendment. I do not believe I would like to see us go as far as the Roosevelt amendment, because I think that in this area there is need for a great deal more power in the Secretary of Defense. Actually, if we get the power of dismissal too far removed from the Secretary, there is doubt that he would use this power as he should.

On the other hand, I am deeply concerned about the committee's failure to put in an intermediate kind of power of review to replace the normal procedures of review. I do not like to have amendments on the floor of this type without committee study. However, the amendment the gentleman from Texas [Mr. ALGER] is going to propose and it seems reasonable. Certainly it could be worked out in detail. In this way this item that concerns me, and I think many people, of giving all power to any one man, I do not care who he is, would be corrected. I am really more concerned about the effect on the individual who has that power. If I were Secretary of Defense, I am sure I would establish some sort of review board in this kind of case.

Therefore, I hope this amendment will be defeated, and that an amendment such as the one proposed by the gentleman from Texas [Mr. ALGER] will be accepted, and that the Committee will think a little more deeply on this subject that concerns us.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. ASHLEY].

Mr. RYAN of New York. Mr. Chairman, will the gentleman yield?

Mr. ASHLEY. I yield to the gentleman.

Mr. RYAN of New York. Mr. Chairman, I ask unanimous consent that the time allotted to me may be granted to the gentleman from Ohio [Mr. ASHLEY].

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. ASHLEY. Mr. Chairman, I rise in support of the Roosevelt amendment. I would like especially to commend the gentleman from New York [Mr. LINDSAY] for making it clear that under existing law a security risk can be dismissed but still have appeal and review rights which in no way jeopardize national security. What section 303 does in the bill under consideration is to strip those rights of appeal and review. The question has been raised, and I think very interestingly, as to whether or not due process in fact applies to a situation of this kind. The chairman has suggested that a Supreme Court decision, Bailey against Richardson, is relevant, particularly the statement:

> Due process of law is not applicable unless one is being deprived of something to which he has a right.

Perhaps so, Mr. Chairman, but I am reminded of a case which although not on all fours or completely analogous, perhaps, has significance.

A former constituent of mine applied some 7 or 8 years ago for prisoner-of-war compensation under a Federal law which granted $3 a day for each day in prison to Korean prisoners of war who did not collaborate with the enemy.

This man's application, Mr. Chairman, was denied. It was denied by the Foreign Claims Settlement Commission without an adequate hearing and without the veteran—who had received the Bronze Star for gallantry and the Purple Heart for wounds—having the opportunity to confront his accusers or the right to cross-examine them. Eight years later—after the authority of the Foreign Claims Settlement Commission had run out, this man's reputation was salvaged. It was salvaged by the Congress and by the President, not by the Foreign Claims Settlement Commission. The reputation of an American citizen was restored because this legislative body exercised its right of review, because the House Committee on the Judiciary held a hearing—two, really—the first of which determined that this man had been denied a hearing within the meaning of the law and the second finding that as a matter of substance he did not collaborate with the enemy. Only at this point—only at this point after 7 long years—was his reputation saved. It was not done by the Foreign Claims Settlement Commission. That Commission's finding made the man a traitor. There was no right of review under the law. The administrative procedures act did not apply. There was no due process because the benefits involved were not a matter of right, they were a matter of grace. But what about his reputation? What about his reputation? If it had not been for a body other than and higher than the Foreign Claims Settlement Commission, that man would be a traitor today to everyone in the United States—except himself.

Mr. Chairman, this is what we are concerned with when we consider a bill such as the one before us. When we put the authority in the hands of one man to determine with finality whether a man is loyal or not, without proper opportunity for defense or review, that is going too far.

(Mr. ALGER asked and was given permission to revise and extend his remarks.)

Mr. ALGER. Mr. Chairman, I want to compliment the committee for what I consider generally to be a good bill. I do not join my colleague from California [Mr. ROOSEVELT] in his amendment to strike out section 303, although I believe the bill as it stands is not a proper protection to the citizens of the United States on the one hand, and on the other hand puts the Secretary of Defense, no matter how well intentioned a many he may be—and we have had good Secre-

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taries of Defense in the past—in the position of being a dictator.

In order to correct the situation, I shall submit to the membership of the House an amendment, which I will present at the right time; and because I oppose the amendment of the gentleman from California, I should like to read the language of the amendment, which is as follows:

On page 5, line 4, after the word "final" insert "except that any employee whose employment is so terminated shall have the right of appeal to an appeal board, such appeal board shall consist of three persons, appointed by the President, and who are cleared by the Director of the National Security Agency for access to classified information.

I must say to the chairman of the committee, who has done a fine job in this area, this would not divulge the sensitive material that we are all aware we must protect in this Nation, if we are to have security. Yet it would give the man the right of appeal so he is not summarily dismissed by another human being who can make a mistake, as can the Secretary of Defense, in summarily dismissing a man who has not such appeal.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. NEDZI].

Mr. NEDZI. Mr. Chairman, I have listened to the debate this afternoon, and have the feeling that the membership is not fully advised of what the law is as it stands now with reference to the area about which we are talking.

I would like to take a moment to read as has been presented to me, chapter 803, Public Law 33. This law incidentally was extended in 1953 to all agencies of the Federal Government.

The law is as follows:

Notwithstanding the provisions of any other law, Secretaries of State, Commerce; Attorney General, Secretary of Defense; Secretaries of Army, Navy and Air Force; Secretary of Treasury; Atomic Energy Commission; Chairman, National Security Resources Board; or Director of National Advisory Committee for Aeronautics, may, in his absolute discretion and when deemed necessary in the interest of national security, suspend, without pay, any civilian officer or employee in the mentioned Departments: *Provided*, That to the extent that such agency head determines that the interests of the national security permit, the employee concerned shall be notified of the reasons for his suspension and within thirty days after such notification any person shall have an opportunity to submit any statements or affidavits to the official designated by the head of the agency concerned to show why he should be reinstated or restored to duty. The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of the suspended employee whenever he shall determine such termination necessary or advisable in the interest of the national security of the United States, and such determination by the agency head concerned shall be conclusive and final: *Provided further*, That any employee having a permanent or indefinite appointment, and having completed his probationary or trial period, who is a citizen of the United States whose employment is suspended under the authority of this Act, shall be given after his suspension and before his employment is terminated under the authority of this Act (1) a written statement within thirty days after his suspension of the charges against him, which shall be subject to amendment within thirty days thereafter and which shall be stated as specifically as security considerations permit; (2) an opportunity within thirty days thereafter (plus an additional thirty days if the charges are amended) to answer such charges and submit affidavits; (3) a hearing, at the employee's request, by a duly constituted agency authority for this purpose; (4) a review of his case by the agency head, or some official designated by him, before a decision adverse to the employee is made final; and (5) a written statement of the decision of the agency head: *Provided further*, That any person whose employment is so suspended or terminated under the authority of this Act may, in the discretion of the agency head concerned, be reinstated or restored to duty with compensation.

Approved August 26, 1950.

(5 U.S.C.A. 652; 42 U.S.C.A. 1801 et seq.; 42 U.S.C.A. 1812; 5 U.S.C.A. 652 note, U.S.C.C.S. 1949, p. 451, U.S.C.C.S. 1949, p. 1032; E.O. 10450, Apr. 27, 1953; 18 F.R. 3183, extends coverage of Public Law 733 to all agencies of the Federal Government and all departments.)

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. EDWARDS].

[Mr. EDWARDS addressed the Committee. His remarks will appear hereafter in the Appendix.]

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. EDWARDS. I yield to the gentleman from California.

Mr. HOLIFIELD. I am greatly concerned over section 304. I believe it widens the scope of documents which can be classified, such as "For Official Use Only." We know that many hundreds of people are given the authority to classify in the different departments, something like over 593 in the Department of Commerce and several thousand in the Department of Defense. Now, we also know that many times news releases are marked "Confidential" to hold them until a certain time. I fear that we are really broadening the field of classification of documents to the point where it will, under this bill, become a menace to the rights of the individual.

The CHAIRMAN. The Chair recognizes the gentleman from New Hampshire [Mr. WYMAN].

(Mr. WYMAN asked and was given permission to revise and extend his remarks.)

Mr. WYMAN. Mr. Chairman, I rise in opposition to this amendment, and would like to say one or two things that may be helpful in this regard.

The gentleman from California has offered an amendment here in which he raises the point that it is unfair to the people who work in this Agency to have summary dismissal procedures apply to them. It seems to me that we are looking aside from the real issue. The security of the country is involved here, and the Secretary of Defense has deemed it necessary to ask the Congress for relief. Now, the committee report says that the Secretary shall be authorized summarily to terminate the services of employees of the National Security Agency when such action is deemed necessary in the interests of the United States. In the security interest of the Nation the Defense Department does not want this record. They do not want the written record that is implicit in the appellate process that would expose the procedures, activities, and goings on within this highly classified Government Agency. Under the amendment an employee given notice of termination could go to the Circuit Court of Appeals, or to the Supreme Court itself. Surely there can be no quarrel for summary dismissal for those who come into the Agency after the effective date of the legislation, because they will be forewarned of the situation prevailing in this Agency.

But, that is not the argument of the gentleman from California. His amendment would strike out the entire power of termination itself. As to the constitutional requirements of due process either civil or criminal due process, all I can say is that the matter of Government employment as a privilege has been settled at this point by the courts. It is not a right, and to this point in our jurisprudence being a privilege only, it lacks the status or the sanctuary the judiciary has conferred on rights. I will agree, though, with the gentleman that what is going to happen if this question should go to the Supreme Court is problematical. This we have seen from its decisions over the last 6 or 8 years.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana [Mr. WILLIS].

Mr. WILLIS. Mr. Chairman, I have listened to the arguments made in favor of this amendment. They all proceed on the assumption that the Secretary of Defense is a man who is inclined to be arbitrary and capricious and insists on having czarist and dictatorial powers, and further, that nothing has been done about the employee's case prior to the time that the papers reached the desk of the Secretary of Defense. As a matter of fact, if you read every part of this bill you will see that the action of the Secretary of Defense is itself in the nature of a review action. The bill provides for boards of appraisal whose duties will be to look into all aspects of these cases, gather all the facts, evaluate all the evidence, and submit a report in writing along with a recommendation as to what action should be taken in each case.

Then after that evaluation is made, the matter goes to the Secretary of Defense for final action.

The CHAIRMAN. The time of the gentleman from Louisiana has expired. All time on this amendment has expired.

The question is on the amendment offered by the gentleman from California [Mr. ROOSEVELT].

The question was taken; and on a division (demanded by Mr. ROOSEVELT) there were—ayes 39, noes 132.

So the amendment was rejected.

Mr. ALGER. Mr Chairman I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ALGER: On page 5, line 4, strike the period after the word "final", insert a semicolon, add as follows:

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"except that any employee whose employment is so terminated, shall have the right of appeal to an appeal board. Such appeal board shall consist of three persons, appointed by the President, and who are cleared by the Director of the National Security Agency for access to classified information."

Mr. ALGER. Mr. Chairman, I know of no reason to explain this amendment further. I have had the privilege of presenting it to my colleagues earlier during the debate. It has just been read by the Clerk. Unless there are some questions of me, I will let the amendment stand for a vote.

Mr. ROOSEVELT. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman from California.

Mr. ROOSEVELT. I would like to ask the gentleman, if this board should be established would the individual who was concerned have some information so that he could come prepared before the board under the gentleman's amendment?

Mr. ALGER. That would certainly be my understanding. But I have kept the amendment as simple as possible. I think we know what needs to be done to protect the individual on the one hand and to remove this dictatorial power from one man in our Government on the other hand. I think that is the nature of an appeal board. I do not believe that by having such an appeal board there would be released security information or vital information that we do not intend to divulge under the security processes of this country with which I know the gentleman agrees.

Mr. ROOSEVELT. If the gentleman will yield further, as long as it is understood that there is implicit in the gentleman's amendment the right of the individual to prepare a case to defend himself, I certainly agree with the latter part of the gentleman's amendment.

Mr. ALGER. That would be my understanding.

Mr. CURTIS. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman from Missouri.

Mr. CURTIS. I think implicit in the use of the word "appeal" would be something along that line, and I agree with the gentleman from Texas. The whole purpose is not to have the usual formality in this kind of a record which would be in the nature of a reasonable appeal.

Mr. POOL. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to my colleague, the gentleman from Texas [Mr. POOL].

Mr. POOL. In the amendment which has been offered by the gentleman from Texas [Mr. ALGER], does the gentleman have anything in the amendment about what happens to the employee while his case is on appeal? Does the appellee have access to this secret information in this very secret branch of the Government?

Mr. ALGER. No. You see, I do not intend to throw out this bill. I repeat, I believe this is a good bill, but this would provide a little bit of additional protection, however, and remove this decision from one man's dictatorial policy.

Mr. POOL. You have not answered my question.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman from Iowa.

Mr. GROSS. May I say to the gentleman from Texas that the amendment says, "except that any employee whose employment is so terminated, has the right of appeal to this board, or the appeal board is created."

Mr. POOL. What happens to the man during appeal?

Mr. GROSS. What happens to him? He is out.

Mr. LINDSAY. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman.

Mr. LINDSAY. I think the gentleman's amendment is worthy of support. It does exactly what the Roosevelt amendment was trying to do. They are very close together. I do not understand why the opposition came to the other amendment, but I am perfectly delighted to accept this amendment.

Mr. ALGER. I thank the gentleman. I, myself, feel it is a better bill if we do not delete the entire section.

Mr. JOHANSEN. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman.

Mr. JOHANSEN. Mr. Chairman, I wonder if the gentleman can tell me whether he is able to define by this simple, hastily conceived-on-the-floor amendment, precisely what right of appeal means with reference to this board of three.

Mr. ALGER. If the gentleman thinks that I know what it may mean in the minds of some of the people who are administering our law today, he is wrong. I can assure the gentleman I do not know. But I think this does tighten it a little bit.

Mr. JOHANSEN. Does not the gentleman feel that if our friends on the other side whose amendment was defeated see in this the possibility of accomplishing precisely what the committee voted down, that it is a dangerous proposition?

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman.

Mr. HOLIFIELD. Mr. Chairman, I look with favor on the gentleman's amendment and I shall probably vote for it. But there is one thing that does concern me and that is, will the accused individual or the discharged individual have enough information furnished him to allow him to prepare his appeal and to make his case or is this just a reference to a board to review the action already taken?

Mr. ALGER. I would say to the gentleman that any appeal that did not go to the heart of what the gentleman has suggested would be no appeal at all.

Mr. HOLIFIELD. Then I shall support the gentleman's amendment.

Mr. ALGER. I thank the gentleman.

Mr. WYMAN. Mr. Chairman, will the gentleman yield?

Mr. ALGER. I yield to the gentleman.

Mr. WYMAN. Mr. Chairman, I would like to ask this. In the earlier debate the gentleman suggested that his amendment would not involve publicity, that the appellate proceedings would be secret; is that correct?

Mr. ALGER. That is my understanding, because the people designated by the President would have the highest security classification. It is my intention that the security information of this country be not divulged.

Mr. WILLIS. Mr. Chairman, I ask unanimous consent that debate on this amendment and all amendments thereto close in 10 minutes, the last 5 minutes to be reserved to the committee.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

Mr. COHELAN. Mr. Chairman, I object.

Mr. WILLIS. Mr. Chairman, I observed only a few Members standing. I ask unanimous consent that all time on this amendment and all amendments thereto close in 15 minutes, the last 5 minutes to be reserved to the opposition.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

Mr. DINGELL. Mr. Chairman, I object.

Mr. WILLIS. Mr. Chairman, I so move.

The CHAIRMAN. The question is on the motion offered by the gentleman from Louisiana.

The motion was agreed to.

Mr. WILLIS. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. WILLIS. Mr. Chairman, I ask for a clarification of the motion just voted on. The time was limited to 15 minutes, but was the last 5 minutes reserved to the committee?

The CHAIRMAN. The Chair did not understand that the motion included the reservation of the last 5 minutes to the committee. The Chair therefore rules that the motion agreed to by the Committee simply limits the time to 15 minutes without that reservation.

The CHAIRMAN. The Chair recognizes the gentleman from New Hampshire [Mr. WYMAN].

Mr. WYMAN. Mr. Chairman, I address my remarks to the question I asked the gentleman from Texas, who said that the three persons appointed to the board were to be cleared by the Director of the National Security Agency for classified information, and that the report of the appellate proceeding, if there were an appeal, would be secret. I submit in addressing these remarks in opposition to this amendment that, although he says it will be secret, if this amendment is adopted, then we are going to have a situation applied to the National Security Agency of this country which will be the same as applies to any other agency. We do not need that and do not want it. This is contrary to the policy of this bill itself. It is against the best interest of this country to have such a required public record. So I

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suggest, if it is in order to have appellate decisions at all here, that at some point along the road there might be an amendment offered that will make it very clear that the proceedings shall be secret and shall apply only to persons employed after the applicable effective date of this act. Otherwise, the House should vote down this amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman I should like to ask the distinguished gentleman from Texas, the author of the amendment, some questions to ascertain just how much review he contemplates by reason of the amendment. Does the gentleman contemplate that a confidential transcript from the agency head shall be available to the receiving board of three members?

Mr. ALGER. The gentleman does not, but at least there is an element of discretion at the direction of the Secretary of Defense and the Director of the National Security Agency.

Mr. DINGELL. I am speaking to the gentleman, I say, of the review that will be held by the appellate board, the three men who will serve as a review board. Does the gentleman contemplate they will have a transcript for their information from the Secretary in order for him to make their determination?

Mr. ALGER. I cannot imagine an appellate board doing anything unless they knew the facts.

Mr. DINGELL. Does the gentleman expect the appeal board to confer on the employee the right to produce documents and cross-examine witnesses as fully as possible, while protecting the Secretary of Defense and the security of the United States?

Mr. ALGER. I do not feel that the gentleman and I have the same feeling about an appellate board. This would not be an appellate board in the sense that the term is ordinarily used.

Mr. DINGELL. Does the gentleman feel there would be opportunity to have the production of documents and the examination of evidence as fully as possible in connection with the security of the United States?

Mr. ALGER. I feel the gentleman is forgetting what the original bill is. He must realize he will have more in the bill than he has now.

Mr. DINGELL. The gentleman will concede that in the bill an employee of NSA has only the right to be summarily discharged without appeal. This is precisely what the bill does. It authorizes the employee concerned to be discharged by the Secretary without information as to why.

The CHAIRMAN. The Chair recognizes the gentleman from North Carolina [Mr. BROYHILL].

Mr. BROYHILL of North Carolina. Mr. Chairman, I, along with the gentleman from Texas [Mr. ALGER], am concerned that the committee did not provide some type of review board. This is the reason for this amendment. We must recognize that mistakes can be made, there might be an error. It would be my feeling that this board would hold these reviews in complete secrecy in order to uphold the national security of our country.

Mr. ALGER. Mr. Chairman, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Texas.

Mr. ALGER. I should like to compliment the gentleman, if I may, for his help and the language that he provided for this amendment, because I really believe it does go to the heart of the problem. We are talking about two things, on the one hand, the dictatorial power that is placed in the hands of one man, no matter how fine a man he may be.

Secondly, denial of review for a person whose character may indeed be defamed where he cannot have any review whatsoever, this may not be as far as we ought to go, but certainly it is better than what we would have under the bill. Yet, I think the bill goes to the heart of the problem with which we are concerned and that is the security of essential and vital information. At the same time, we must not defame character without recourse for the accused. That is the reason I am for the amendment and I thank the gentleman for his help.

Mr. BROYHILL of North Carolina. Mr. Chairman, I compliment the committee on bringing out this bill and I say the bill has my complete support, but do urge the adoption of this amendment so that employees who are discharged will have some protection and still preserve our national security.

Mr. WYMAN. Mr. Chairman, will the gentleman yield for a question?

Mr. BROYHILL of North Carolina. I yield to the gentleman.

Mr. WYMAN. I would just like to ask the gentleman if he has made reference here to the fact that these proceedings would be secret and there would be no transcript and no publicity. I am sure the gentleman knows what happens when defense counsel get into these things even though the matter may not involve actual criminal charges, when defense counsel asks to have this held in public, and there is nothing in the legislation that requires it to be secret, that may be reversible error and it is going to throw a monkey wrench into the whole proceedings. This amendment does not require secrecy and this amendment is fatally defective in this respect alone.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. ASHBROOK].

Mr. ASHBROOK. Mr. Chairman, the gentleman from New Hampshire [Mr. WYMAN] put his finger exactly on the point I want to raise. We have one of the leading attorneys in this body, the chairman of the jurisprudence committee of the American Bar Association and his observations are very timely. In addition, in my 2 years in this body, I do not believe I have ever heard of a case of a legislative record being more muddled on a point than it has been on this particular issue. I say that with no reflection either on the gentleman from Texas or anyone else. I think if we look at the legislative record as we have established it here, it would be very interesting for anyone to try to interpret just what we mean. The gentleman's amendment in the first instance is a laudable effort at limiting this absolute delegation of power. It is recognized on one hand the necessity of having rigid laws and regulation because of the supersecret nature of the agency. He is, in effect, saying that there should be a board of three looking over the shoulders, so to speak, of the Secretary of Defense to review what was accomplished. I think the legislative record, as it is being developed, shows that much more than this has been read into the RECORD and for that reason I would suggest that it be turned down. Chaos might well result from the passage of this amendment although the gentleman from Texas clearly had a very admirable idea in mind.

Mr. ALGER. Mr. Chairman, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman.

Mr. ALGER. I would suggest to the gentleman, without really disagreeing with what he has just said, that he makes my point. It may be that this does not go far enough, but it does give the discretion both to the Secretary of Defense and the President, if you please. If they do not take action or do not feel an appeal should be put in, then what the gentleman is suggesting is right. It would be helpful. But, on the other hand, it does give the individual protection that he does not have now under the bill. I think it is a good bill going to the heart of the problem of protecting classified material in the National Security Agency.

Mr. ASHBROOK. I think the gentleman for his contribution.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. COHELAN].

(Mr. COHELAN asked and was given permission to revise and extend his remarks.)

Mr. COHELAN. Mr. Chairman, I want to say I am delighted with the amendment of the gentleman from Texas, but not because I believe it is sufficient. On the contrary, I think it is insufficient in many particulars, but it does strike at the problem we are trying to solve. I know there will be another amendment forthcoming. However, I am going to vote for the gentleman's amendment because I think at least it is a modifying amendment. But, as I say, I think it is insufficient.

Like every other Member of this House, I have a deep concern that effective security standards are provided and maintained at NSA, as well as at all other sensitive agencies. At the same time we must be certain that in this process we do not forget that there are other important values to be considered—that a proper adjustment has to be made between the rights of American citizens and the National Security. As the distinguished attorney, Eleanor Bontecou, stated in her book "The Federal Loyalty-Security Program."

> They (speaking of U.S. courts) may then decide that the maintenance of our traditional freedoms and our traditional respect for fairness is as necessary to our safety as

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a free nation as are the forging of secret weapons and the raising of armies.

My concern is not only that innocent people may be unjustly accused and dismissed, but that the Agency itself may not be able to make an intelligent decision without some form of hearing.

Due process does not have meaning and value alone to the unjustly accused. It is also essential to the institution or the individual that makes the determination.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. JOHANSEN].

(Mr. JOHANSEN asked and was given permission to revise and extend his remarks.)

Mr. JOHANSEN. Mr. Chairman, I strongly urge the defeat of this very dangerous amendment. I regret finding myself in opposition to my very esteemed friend, the gentleman from Texas [Mr. ALGER].

There is nothing in this amendment—this effort to write an appellate provision into the bill—that defines the basis of an appeal, that defines the scope of the appeal, or that defines the appellate procedures.

The legislative intent of this amendment is, as one of my colleagues on the committee, the gentleman from Ohio [Mr. ASHBROOK], observed, completely muddied and completely obscured.

I would suggest, in all frankness, to my good friend from Texas that he ought to take caution from the eagerness of those who offered the amendment to gut the bill, deleting section 303—by the eagerness they displayed to adopt his child, and he should in consequence disown the child, because if this is adopted you are going to throw into jeopardy the basic purpose and intent of this section 303. You are going to not only do that but you are going to jeopardize this procedure as it relates to the CIA, a procedure which has been established for 18 years.

If the gentleman from Texas feels this is so fundamental, and I respect his sincerity completely, there is a course to be followed, and that is to introduce corrective legislation with respect not only to this bill, this agency, but with respect to the CIA, and permit hearings to be held on the matter, and act on it in proper fashion.

I plead with the Members not to accept this type of amendatory process.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana [Mr. WILLIS].

Mr. WILLIS. Mr. Chairman, I completely agree with the gentleman who just spoke and the gentleman from New Hampshire [Mr. WYMAN], who made a very brilliant explanation of the situation we are in.

This amendment starts out by recognizing the power given to the Secretary of Defense in the bill. The amendment says "except that any employee whose employment is so terminated." So the amendment recognizes the power of the Secretary of Defense to terminate employment. We do not know what kind of procedure the appeal board will follow, whether there is to be confrontation or cross-examination; we do not know what kind of record will be made. The right of appeal is given, but it does not say whether after the appeal the man is to be reinstated and under what conditions. That is what comes out of presenting an amendment of this type in this sensitive area on the floor without hearings.

I respectfully urge its defeat.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Texas [Mr. ALGER].

The question was taken, and on a division (demanded by Mr. ALGER) there were—ayes 46, noes 111.

So the amendment was rejected.

Mr. MOSS. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I take this time to direct a question to the distinguished chairman of the committee regarding the intent of the committee on section 304 of the bill.

As I read it, it defines "classified information" as information which, for reasons of national security, is specifically designated by a U.S. Government agency for limited or restricted dissemination or distribution.

Now, for 8 years I have studied the field of classified information. Much information is classified strictly in accordance with law. Much is classified really on a claim, I guess one of privilege within an agency, having no sanction in law, statutory, or through any Executive order of the President.

Is it, therefore, Mr. Chairman, the intention that these different three categories of information, top secret, secret, and confidential, authorized under Executive Order 10501, which became effective on December 15, 1953, with the additional category, "Used only in this agency" of "sensitive cryptologic information," will apply? Is that the intention and that alone?

Mr. WILLIS. I would say to the gentleman that is the intention, as is evidenced by a letter from the Assistant Secretary of Defense addressed to the chairman of our committee on August 8, 1962. In it he gives a very short definition of "cryptologic information." He says:

> Sensitive cryptologic information is a special type of classified information which requires special clearances,

And so on.

> It consists of any classified information—
>
> A. Concerning the nature, preparation, or use of any code, cipher, or cryptographic system; or
>
> B. Concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use for cryptographic or communication intelligence purposes; or
>
> C. Concerning communications intelligence activities.

Mr. MOSS. I thank the gentleman again for clarification. In addition to the one classification of cryptologic information, the other three are only those authorized under Executive Order 10501 and the guidelines and definitions of that Executive order are applicable in this instance.

Mr. WILLIS. Although the Executive order is not mentioned in the letter, a sentence agreeing with what the gentleman says reads as follows:

> It includes three categories of information depending upon the degree of protection required—confidential, secret, and top secret.

Mr. MOSS. And that is the intention of the committee?

Mr. WILLIS. That is the intention of the committee.

Mr. MOSS. I thank the gentleman.

Mr. MOORHEAD. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. MOORHEAD:
>
> On page 4, line 24, immediately after "Agency" insert the following: "in accordance with the provisions of this subsection".
>
> Page 5, strike out all of line 4 after "security." and insert in lieu thereof the following:
>
> "Any officer or employee of the Agency shall, before his employment is terminated under the authority of this subsection, be given a 30-day suspension without pay and during that time he shall be given—
>
> "(1) a written statement of the charges against him, which shall be stated as specifically as security considerations permit;
>
> "(2) an opportunity within 10 days after receipt of the statement of charges against him to answer such charges and to submit affidavits; and
>
> "(3) a written statement of the final decision of the Secretary.
>
> "Any action taken by the Secretary under authority of this subsection shall be final, however, the Secretary shall submit to the chairmen of the Committees on the Judiciary of the Senate and the House of Representatives a written report with respect to any such action."

Mr. WILLIS. Mr. Chairman, will the gentleman from Pennsylvania [Mr. MOORHEAD] yield?

Mr. MOORHEAD. I would be glad to yield to the distinguished chairman of the subcommittee.

Mr. WILLIS. Mr. Chairman, I ask unanimous consent that following the remarks of the gentleman from Pennsylvania [Mr. MOORHEAD], on his amendment, that debate on this amendment and all amendments to this bill close in 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

Mr. DINGELL, Mr. COHELAN, and Mr. O'HARA of Michigan objected.

The CHAIRMAN. Objection is heard.

Mr. WILLIS. Mr. Chairman, I move that following the presentation under the usual 5-minute rule all debate on the amendment which has been offered by the gentleman from Pennsylvania [Mr. MOORHEAD], and all debate on all amendments to the bill close in 15 minutes.

The motion was agreed to.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. MOORHEAD] is recognized for 5 minutes.

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

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Mr. MOORHEAD. Mr. Chairman, in the various amendments that we have been considering this afternoon we are trying to hit a middle ground between protecting absolutely the security of the United States and at the same time giving the maximum degree of protection to the individual.

This amendment which I propose is an adaptation of the basic law regarding the discharge of employees from the Department of State, Department of Commerce, and so forth.

Mr. Chairman, I believe that the amendment does the fundamental job of protecting the national security of the United States. It does so, because what does it require? It requires a written statement of the charge against the employee discharged. But it carefully points out only as specifically as security considerations permit. Therefore, if there is a question of security involved in the written charge the security takes precedence over the individual.

Secondly, Mr. Chairman, it gives the employee a chance to state his own case so that we can be as sure as we can that the final deciding officer has both sides of the question.

Finally, Mr. Chairman, the amendment requires a written decision on the part of the Secretary. It provides specifically that the action of the Secretary under this subsection shall be final. Thus it cannot be tied up in litigation in the courts. However, it does this: It says that the Secretary must submit reports of what he has done under this section to the chairmen of the Judiciary Committees of the House and the Senate. What is the purpose of this provision? If the Secretary finds himself reporting five or more cases in a year, he is going to be concerned that the chairmen of these committees will check on whether he has been arbitrarily using this section in cases when he should properly use the general law. This will be a brake on the Secretary. I submit that it is consistent entirely with our primary concern, which is the national security.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. JOHANSEN].

Mr. JOHANSEN. Mr. Chairman, I oppose this amendment as I opposed the previous amendment. First of all it is an effort to write a fundamental change into this legislation on the floor in the closing minutes of debate and under a sharp limitation of time.

I oppose it also because the very purpose of section 303 is to provide, and it does provide, that where security prevents the disclosure of the reasons, prevents even acquainting the employee with the reasons for termination, then it shall rest with the Secretary to act summarily.

In other words, this amendment is either on the one hand meaningful, and if it is meaningful then it is dangerous, because it reverses the very purpose of section 303, or else it is meaningless, because it is essentially self-defeating by reason of this security provision.

There are circumstances, Mr. Chairman, under which the Justice Department will not prosecute a known spy or agent or Communist because the national interest and security are better served by preserving the security of the espionage system by which that information was secured. Here we are trying to deal with a situation in which, as I pointed out in general debate, the choice is between exposing those sources of information and that espionage operation or on the other hand tolerating the continued employment of the individual in a sensitive area.

This again is a dangerous amendment and I strongly urge its defeat.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, like all of my colleagues in the House I am intensely interested in seeing the strongest possible security measures erected for the protection of the National Security Agency. I am keenly aware of the importance of this agency to the United States and to our struggle against the Communist conspiracy.

I feel, however, that we can have security consistent with a real measure of protection of the individual liberties of our people and that unnecessary sacrifice of individual liberties of American citizens at the altar of national defense is not only unwise but will lead to tyranny and dictatorship. I support the first two sections to H.R. 950 which are as follows:

SEC. 301. Subject to the provisions of this title, the Secretary of Defense (hereafter in this title referred to as the "Secretary") shall prescribe such regulations relating to continuing security procedures as he considers necessary to assure—

(1) that no person shall be employed in, or detailed or assigned to, the National Security Agency (hereafter in this title referred to as the "Agency"), or continue to be so employed, detailed, or assigned; and

(2) that no person so employed, detailed, or assigned shall have access to any classified information; unless such employment, detail, assignment, or access to classified information is clearly consistent with the national security.

SEC. 302. (a) No person shall be employed in, or detailed or assigned to, the Agency unless he has been the subject of a full field investigation in connection with such employment, detail, or assignment, and is cleared for access to classified information in accordance with the provisions of this title; excepting that conditional employment without access to sensitive cryptologic information or material may be tendered any applicant, under such regulations as the Secretary may prescribe, pending the completion of such full field investigation: *And provided further*, That such full field investigation at the discretion of the Secretary need not be required in the case of persons assigned or detailed to the Agency who have a current security clearance for access to sensitive cryptologic information under equivalent standards of investigation and clearance. During any period of war declared by the Congress, or during any period when the Secretary determines that a national disaster exists, or in exceptional cases in which the Secretary (or his designee for such purpose) makes a determination in writing that his action is necessary or advisable in the national interest, he may authorize the employment of any person in, or the detail or assignment of any person to, the Agency, and may grant to any such person access to classified information, on a temporary basis, pending the completion of the full field investigation and the clearance for access to classified information required by this subsection, if the Secretary determines that such action is clearly consistent with the national security.

(b) To assist the Secretary and the Director of the Agency in carrying out their personal security responsibilities, one or more boards of appraisal of three members each, to be appointed by the Director of the Agency, shall be established in the Agency. Such a board shall appraise the loyalty and suitability of persons for access to classified information, in those cases in which the Director of the Agency determines that there is a doubt whether their access to that information would be clearly consistent with the national security, and shall submit a report and recommendation on each such a case. However, appraisal by such a board is not required before action may be taken under section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22-1), or any other similar provision of law. Each member of such a board shall be specially qualified and trained for his duties as such a member, shall have been the subject of a full field investigation in connection with his appointment as such a member, and shall have been cleared by the Director for access to classified information at the time of his appointment as such a member. No person shall be cleared for access to classified inuformation, contrary to the recommendations of any such board, unless the Secretary (or his designee for such purpose) shall make a determination in writing that such employment, detail assignment, or access to classified information is in the national interest.

I oppose, however, the unwise provisions of section 303(a) dealing with termination of employment. The House has witnessed a curious spectacle today. We have a strong statute on the books dealing with termination of employment of individuals for security reasons within the Department of Defense and a number of other Government agencies which is as follows:

SEC. 303. (a) Notwithstanding section 14 of the Act of June 27, 1944, chapter 287, as amended (5 U.S.C. 863), section 1 of the Act of August 26, 1950, chapter 803, as amended (5 U.S.C. 22-1), or any other provision of law, the Secretary may terminate the employment of any officer or employee of the Agency whenever he considers that action to be in the interest of the United States, and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of that officer or employee cannot be invoked consistently with the national security. Such a determination is final.

Note that the statute specifically provides:

That to the extent that such agency head determines that the interests of the national security permit, the employee concerned shall be notified of the reasons for his suspension and within 30 days after such notification any person shall have an opportunity to submit any statements or affidavits to the official designated by the head of the agency concerned to show why he should be reinstated or restored to duty. The agency head concerned may, following such investigation and review as he deems necessary, terminate the employment of the suspended employee whenever he shall determine such termination necessary or advisable in the interest of the national se-

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curity of the United States, and such determination by the agency head concerned shall be conclusive and final.

This morning I had my office call the Un-American Activities Committee for a copy of the transcript of the hearings on this legislation. At first I was advised it was available and would be forthcoming. Subsequently my office was advised that copies of the transcript were not available. We are faced today with the problem of considering a piece of legislation on which hearings held, if any, were conducted behind closed doors. Information which would normally and which should normally flow to Members of Congress is denied to all of us in our vote except for a list of witnesses who testified indicating generally that all concurred in the necessity for this legislation. It is indeed strange that in the light of existing statutes and so slight a record before the Congress, that we should feel such a pressing, desperate, and crying need for this legislation. There is, moreover, and abundantly clear Executive order on the subject of discharge of Federal employees where there is question as to either the security of the United States in continuing the employment, or in the loyalty of the employee in question. I refer to Executive Order 10450 dated April 27, 1953—18 Federal Register 2489.

How are we to determine that the committee has legislated well in this matter since the grist of the legislative mill, the printed report of the hearings, is unavailable to us?

The alleged ground for stampeding this legislation through the Congress is supposedly the case involving the defection of the National Security Agency employees, Vernon F. Mitchell and William H. Martin. It is highly questionable whether legislation of this kind would have prevented defection of these individuals. It appears abundantly plain that the evil of their defection and their ability to betray their trust to the United States lay in failure to apply adequate and sufficient clearance procedures to their hiring and not in any absence of authority to discharge these defectors.

Indeed under the existing statute cited above it is plain that the Agency head could have discharged them without revealing any information which he felt involved the national security or the public interest by reason of discretion already vested in him.

There is no language in this bill requiring the Secretary of Defense to afford any information to an employee whatsoever before his discharge as to the nature of the charges against him. The language of section 303 authorizes absolute discretion to terminate the employment of any officer, or employee of the National Security Agency, whenever he considers that action to be in the interest of the United States and where the Secretary in his absolute and untrammeled discretion determines the waiver of other provisions of law to be in the interest of national security. The bill says "such termination is final."

I, for one, do not propose to be stampeded into enactment of legislation so destructive of individual rights and so inconsistent with our traditional constitutional practices without a more real showing than the flimsy record upon which we act today and upon the abundant misinterpretation of the existing strong security measures to protect the interest of the United States.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. COHELAN].

(Mr. COHELAN asked and was given permission to revise and extend his remarks.)

Mr. COHELAN. Mr. Chairman, I rise in support of the amendment. I think it is pretty clear that all of the objectives that we have been seeking in terms of maximizing protection, both for the individual and for the Government, are inherent in the amendment advanced by the gentleman from Pennsylvania [Mr. MOORHEAD]. I urge its adoption. However, if it is not adopted I would think that the bill by itself is insufficient because I do not think that there is adequate protection in it.

Mr. Chairman, I want to complete the statement I was making when I left the floor previously, because I think it is terribly important, as we close.

You will all remember, and particularly those of you familiar with the law, that Mr. Justice Jackson had quite a reputation for being tough on these questions. But in a paper he wrote before he died, entitled "The Task of Maintaining Our Liberties—The Role of the Judiciary," which was published in the American Bar Journal of November 1953, this great American protested:

> We cannot approve any use of official powers or position to prejudice or condemn a person in liberty, property or good name which does not inform him of the source and substance of the charge and give it timely and open-minded hearing as to its truth—safeguards without which no judgment can have a sound foundation.

Mr. Chairman, I believe this statement of Mr. Justice Jackson speaks eloquently to this point, to the danger inherent in section 303 without amendment. I trust that we will all bear this firmly in mind as we vote on this provision, and if it is not amended appropriately, that it will be defeated as a dangerous and unwarranted infringement on the basic constitutional rights of American citizens.

Mr. Chairman, I have referred extensively in my remarks to the thoughtful and pertinent article by Dean Frank Newman. I believe this full article deserves the careful consideration of the entire House for it goes to the heart of this very difficult and important issue we have been discussing.

THE PROCESS OF PRESCRIBING DUE PROCESS

(By Frank C. Newman, professor of law, University of California School of Law, Berkeley)

Recently we were told that the dueness of government procedure is not tested by "doctrinaire conception" or "loose generalities or sentiments abstractly appealing." Instead, "Whether the scheme satisfies those strivings for justice which due process guarantees, must be judged in the light of reason drawn from the considerations of fairness that reflect our traditions of legal and political thought, duly related to the public interest Congress sought to meet * * * as against the hazards of hardship to the individual that the * * * [attacked] procedure would entail."[1]

That is quite a mouthful. And no sooner were the words pronounced than a dissenting Justice retorted, "When we turn to the cases, personal preference, not reason, seems, however, to be controlling." Further, "Due process under the prevailing doctrine is what the judges say it is; and it differs from judge to judge, from court to court * * *. [It is] a tool of activitists who respond to their own visceral reactions in deciding what is fair, decent, or reasonable."[2]

Sanford Kadish has dissected the viewpoints those excerpts reflect,[3] and we will not refurbish his findings here. The intent of this article is to examine method rather than theory or result. We do not survey the rules of due process or query their correctness.[4] We do look at the process of prescribing those rules. We assess the prescribers' procedure, testing it for capacity to help insure correct rules. Our presumption is that modest reforms may be practicable, that the process of prescribing due process could be bettered.

Many of the ideas discussed here relate to *Hannah* v. *Larche*, decided by the Supreme Court in June 1960.[5] It deals with the due process rights of subpenaed witnesses. The U.S. Commission on Civil Rights, having received accusations that certain Louisiana registrars had deprived citizens of the right to vote, subpenaed those registrars to appear at a hearing and testify regarding the accusations. The registrars learned that the Commission would deny rights of apprisal, confrontation, and cross-examination; so their lawyers obtained a court order enjoining the Commission "from conducting the proposed hearing in Shreveport, La., whereby plaintiff registrars, accused of depriving others of the right to vote, would be denied the rights of appraisal, confrontation, and cross-examination."[6] The Supreme Court then vacated the injunction, ruling that in this kind of proceeding due process does not require that subpenaed witnesses be given those rights.

The opinions in *Hannah* v. *Larche* are a mine of information on the theory and practice of due process. They concern not merely an injunction in Louisiana and the subpenaed registrars whom it protected. Subpenaed witnesses generally are discussed—not only civil rights witnesses, but those called by all other executive and administrative officials, by grand juries, by legislative investigating committees, Federal and State. Specifically, the opinions have helped inspire these questions as to the process of prescribing due process.[7]

I. Should not the words of the due process clauses be reexamined for plain meaning?

II. Should not due process rights more consistently be classified and distinguished from other constitutional rights?

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[1] Frankfurter J., concurring in *Hannah* v. *Larche*, 363 U.S. 420, 487 (1960).

[2] Douglas, J., id. 505–506.

[3] Kadish, "Methodology and Criteria in Due Process Adjudication—A Survey and Criticism," 66 Yale L. J. 319 (1957).

[4] "While Justice Cardozo in 1937 felt able to find the 'rationalizing principle' which gave 'proper order and coherence' to the determination made up to that time, the array of apparently disordered determinations since that date would no doubt give pause to one contemplating a similar effort today." Kadish, "A Case Study in the Signification of Procedural Due Process—Institutionalizing the Mentally Ill," 9 W. Pol. Q. 93 (1956).

[5] 363 U.S. 420 (1960); 74 Harv. L. Rev. 120 (1960).

[6] 363 U.S. at 429 n. 11.

[7] The opinions are criticized in Newman, "Due Process, Investigations, and Civil Rights."

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III. Would not an analytical checklist aid the deciding of cases?

IV. Who could spearhead reform, how?

I. THE WORDS OF THE DUE PROCESS CLAUSES SHOULD BE REEXAMINED FOR PLAIN MEANING

The fifth amendment declares, "No person shall * * * be deprived of life, liberty, or property, without due process of law." The 14th amendment (for our purposes here) is the same: "No State shall * * * deprive any person of life, liberty, or property, without due process of law." Those words are spongy and by themselves solve no problems. Quite a few problems might be eased, though, if the words were given full content. We pose two illustrations: (1) the privilege doctrine; (2) the too-pervasive criminal trial analogy.

A. The privilege doctrine

How should we read "life, liberty, or property"? "Liberty" has attracted probably the most attention, and no doubt needs more.[8] We are not even near the brave new world that might inhere in "life." (Does it mean only freedom from death? How about "the good life," or what for some people "begins at 40"?) Yet without soaring into semantics or political theory could we not shun one view of "life, liberty or property" that has caused much chaos? I refer to the hundreds, maybe thousands, of cases that protect "rights" but not "privileges," declaring that "due process of law is not applicable [with respect to government employment, for instance] unless one is being deprived of something to which he has a right."[9] I refer also to *Hannah* v. *Larche*, where the Court stated that the Civil Rights Commission "does not make determinations depriving anyone of his life, liberty, or property * * * and cannot take any affirmative action which will affect an individual's legal rights."[10] When the facts that were before the Court are examined, when we see that the Commission—pursuant to congressional command—can and does sponsor publicity that may defame, degrade, and incriminate people, what the Court seems to have said is that governments, by derogatory publicity, do not affect "liberty, or property."

The due process clauses say nothing of right versus privilege. The chief vice of the privilege doctrine is that it has insulated us from a body of law, highly reputable, that seems designedly apt for protecting the freedoms that "life, liberty, or property" appears to imply. I refer now to the law of torts, and the successful handling there of all legal interests. The torts cases teach us that "property" means more than land and chattels and choses-in-action; "liberty," more than freedom from physical harm and imprisonment. Why should those cases have outpaced due process cases? Why in private suits for damages or an injunction should legal interests be protected that due process leaves helpless? Examples are the interest in freedom from interference with reasonable economic expectancies, the interest in personal reputation and in freedom from disparagement, and the interest in freedom from emotional upset.[11]

The privilege doctrine should be junked, and "life, liberty, or property" should be treated as a description of all legal interests. To the question, "Won't you still have to define that last phrase?" the answer is, "Of course." But definitions can be guided by a bulk of precedents that makes far more sense than have judge's travails as to the rights of saloon keepers, dancehall operators, Government employees, and aliens.

To pronounce that "liberty, or property" includes, say, reputational and emotional interests would not mean that governments no longer could deprive people of those interests, or that deprivations could be effected only by judicial trial. The requirement would merely be that due process be accorded. With no trial and without a chance sometimes even to argue, people are often deprived of their property and liberty and even their lives; but in emergency cases, for example, due process is not necessarily violated.

Recognition of a due process freedom from disparagement or emotional upset would not require procedrues the same as those which now protect a man's employment security, say, or his land. The nature of the interest must be taken into account. That is why we demand special strictness for criminal proceedings, forfeiture proceedings, proceedings involving citizenship. That "life" and "liberty" and "property" are constitutionally conjoined does not mean that all interests therein merit identical protection.

In *Hannah* v. *Larche* the Court may wisely have decided that a certain civil rights hearing should not be proscribed, even though appraisal, confrontation, and cross-examination were to be denied. The Court's analysis would have been sounder, though, had it discussed differences between (1) a hearing that injures a witness by publicity which defames, degrades, or incriminates him and (2) a hearing that avoids those effects. In private law most courts have proved their fitness boldly to protect liberty and property interests. The Supreme Court is not honored by an implication that "Whatever procedure is authorized by Congress, it is due process as far as a witness who is merely defamed, degraded, or incriminated at a hearing is concerned."[12]

B. The too pervasive criminal trial analogy

The majority Justices in Hannah are to be commended for the breadth of their inquiry. Though the Louisiana registrars had been accused of crime, the Court in seeking analogies did not limit itself to criminal proceedings. It considered also the investigatory traditions of administrative agencies and of legislative committees.

Generally, judges (and scholars) assume too often that the criminal process is a model for other processes. We say, "Due process of course must be observed in civil as in criminal trials, but since civil defendants are not alleged criminals some guarantees (e.g., proof beyond a reasonable doubt) do not apply." Similarly, licensees merit still lesser protection; and even less than that need be granted to prospective licensees, conscientious objectors, people who are mentally ill, Government contractors, and parolees—all because they are not the accused in a criminal trial.

Consider the dictum that we test for due process by seeing whether procedures "offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses."[13] Consider the recent cataloging of the values involved in procedural due process as (1) "insuring the reliability of the guilt-determining process," and (2) "insuring respect for the dignity of the individual."[14] The isolation of that second value is a major contribution to our understanding of due process, and may bring us great profit (see below). The first value, however, never should have been characterized as one circumscribed by "guilt-determining." What due process aims for is reliable truth-determining or, broadly, the reliability of the determining-making process. (We cannot use "decisionmaking" because it may imply adjudication, broader than "criminal" but still too narrow.)

The due process clauses do not restrict all determination-making by Government. They do apply whenever determination-making deprives a person of life, liberty, or property. The word "deprive" needs emphasis. It has no kinship to guilt. It does not imply, "No person shall be deprived [in the way alleged criminals in medieval England often were deprived] of life, liberty, or property without due process." It rather must be read, "No person shall be deprived [in any manner whatsoever] of life, liberty, or property without due process."

One gain might be that we no longer would measure public utilities, TV networks, social security beneficiaries, schoolteachers, and juvenile delinquents on the scale of procedural rights that gives 100 points to alleged murderers and zero points to an unwanted

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[8] E.g., see Nutting, "The Fifth Amendment and Privacy," 18 U. Pitt L. Rev. 533 (1957); Shattuck, "The True Meaning of the Term 'Liberty' in Those Clauses in the Federal and State Constitutions Which Protect 'Life, Liberty, and Property,'' 4 Harv L. Rev. 365 (1891); Hand "The Bill of Rights" 51 (1958) ("Liberty not only includes freedom from personal restraint, but enough economic security to allow its possessor the enjoyment of a satisfactory life."); *Palko* v. *Connecticut*, 302 U.S. 319, 327 (1937) ("liberty of the mind as well as liberty of action").

[9] *Bailey* v. *Richardson*, 182 F. 2d 46, 58 (D.C. Cir. 1950), affirmed, 341 U.S. 918 (1961).

[10] 363 U.S. at 441; and note the Commission's use of the quotation in press release No. 133 (1961).

[11] The technical terms are from Harper & James, "Torts," xxi-xv (1956); cf. Prosser, "Insult and Outrage," 44 Calif. L. Rev. 40 (1956); Prosser, Privacy, 48 Calif. L. Rev. 383 (1960). See also *Greene* v. *McElroy*, 360 U.S. 474, 493 n. 22 (1959); *Anti-Facist Comm.* v. *McGrath*, 341 U.S. 123, 139 (1951); Rothbard, "Human Rights Are Property Rights," The Freeman, April 1960, p. 23; note, 65 Harv. L. Rev. 156 (1951); cf. Parker, "Administrative Law," 36 n. 36 (1952) ("The meagerness with which our problem—viz. what rights are protected by due process?—has been dealt is astounding"). The best and most complete discussion of the privilege doctrine is 1 Davis, "Administrative Law Treatise," secs. 7.11–7.20 (1958). Professor Davis concludes, "Instead of 2 categories [right and privilege] we could have 6 or 20, for the weakest privilege or absence of privilege to the strongest constitutional right." Id. at 508. I prefer three categories: life, liberty, and property. Many interests are not legal interests and thus are not life, liberty, or property interests. Those that are, however (and I suggest the torts cases as guides), merit due process protection. That does not mean that the processes fit for allegedly subversive employees or allegedly knowledgeable witnesses must be the same as those for allegedly immora aliens or the defendant in a criminal case. Cf. id. at 462.

[12] I have thus paraphrased a dictum in *United States ex. rel. Knauff* v. *Shaughnessy*, 338 U.S. 537, 544 (1950). For criticism of the analysis in the Hannah case see Newman, supra, note 7.

[13] *Malinski* v. *New York*, 324 U.S. 401, 417 (1945).

[14] See Kadish, supra, note 3, at 346–347; supra, note 4, at 99. My criticism of Professor Kadish's ideas are meant to be tributes, not complaints. The process of prescribing due process might be aided immensely if scholars were more conscientious in building on the foundations occasionally laid by outstanding writings such as the articles of his I have cited.

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Cabinet official.[15] A related gain might be an awareness that due process sometimes should give people more rights than criminal proceedings insure. The fact that pretrial discovery may be narrow in criminal cases, for example, hardly means that it should be no broader in hearings on license applications. Subpenaed civil rights witnesses should not be estopped from making a case for limited cross-examination merely because suspects before a grand jury may be denied that right.[16]

II. DUE PROCESS RIGHTS SHOULD BE CLASSIFIED AND DISTINGUISHED FROM OTHER CONSTITUTIONAL RIGHTS

It is difficult to justify a brief filed in the Supreme Court that begins, "The question presented is * * * the right of Congress or the [Civil Rights] Commission to violate under the 14th amendment the rules of fairplay and the traditional forms of fair procedure without explicit action by the Nation's lawmakers even if it is possible that the Constitution presents no inhibition."[17] Literate lawyers at least ought not suggest that Federal officials are ruled by the 14th amendment rather than the 5th.

It is also difficult, though, to censure illiteracies that could well be the result of the courts' 5th and 14th amendment confusions. Due process of the 14th amendment includes some Bill of Rights, non-5th amendment procedure rules and some 1st amendment substantive rules, but not all of them. Fifth amendment due process includes some but perhaps not all of "equal protection of the law." Both cover void-for-vagueness; but that doctrine has a unique role regarding the "preferred" freedoms, and we never have decided whether it is really procedural or substantive.[18]

Overlaps are inevitable. But would it not help if rights claimed as constitutional were always, to the extent practicable, wrapped in the words that are most apt? Thus, if we seek a right not to be exposed by Congress or a right to be silent or to be let alone, we need very sophisticated analyses of article I and the first amendment and the privilege against self-incrimination, as well as of residual due process. Relations between due process and the sixth and seventh amendments ("criminal prosecutions" and "suits at common law") need clarification too, as does the impact of the fourth amendment as well as due process on "compulsory extortion of a man's own testimony."[19] Even within the fifth, what is due for grand jury proceedings may differ from the implications of "No person shall be held * * * unless on a presentment or indictment." And have we not learned enough about the privilege against self-incrimination to enable us to concede that we need not force a man to forfeit other protections (e.g., procedural protections) merely because he is about to be incriminated and thus may claim the privilege?[20]

To suggest that doctrine and arguments should be solidly based is far from startling, and I hope readers will not infer that next on the agenda is to be a criticism of the West Digest outlines. Are we not startlingly ignorant, though, as to the panoply of rules of due process? Have reasonably adequate summaries ever been constructed? Has any judge, scholar, or practitioner ever mastered those rules in the way that other law has been mastered (evidence, contracts, torts, and tax, for example)? Mere wishing for a summary or a Wigmore or Williston gains us little, but more imaginative building of large and small blocks of due process law could indeed be useful.

A distinction noted above illustrates the point. Some due process rules aim to insure the reliability of the determination-making process (e.g., rules requiring cross-examination and an unprejudiced tribunal). Others aim at respect for the dignity of the individual (e.g., rules against stomach pumping and cruel punishment). That classification could vitally affect due process semantics. "Fairness," for instance, must have an ingredient of efficiency when we test the first kind of rule (reliability) that normally could be absent in rules aimed at personal dignity. And judicial standards such as "hardship so acute and shocking that our policy will not endure it"[21] and "protection of ultimate decency in a civilized society"[22] seem to fit the second value better than the first.

The recent Davis "Administrative Law Treatise" supplies a more than ample base for classification. If its teachings as to the administrative process could now be integrated with comparable studies of court processes (including analyses of contempt procedure, for example, as well as police, mental health, and family court procedures, etc.) the prescribers of due process would gain immensely.

III. AN ANALYTICAL CHECKLIST MIGHT AID THE DECIDING OF CASES

Appellate courts are not an audience of law students. Yet their handling of due process cases might benefit from the kind of issue-finding checklist that has helped many law students analyze difficult examinations. For when the procedure of government officials is measured for compliance with due process, are not these questions relevant?

A. Apart from alleged procedural error, exactly how did officials harm (or threaten to harm) complainant in this case?

We have seen that much may hinge on "deprive" and "life, liberty, or property." However interpreted, though, those words must be tailored to proved facts. Assume that courts do construe "liberty, or property" to include freedom from reputational harm. The precise interests jeopardized still must be identified in each case, as must the official conduct that caused the jeopardy.

In *Hannah* v. *Larche* the phrase "defame, degrade, or incriminate" was critical. Yet whether the registrars truly did risk defamation or degradation was pretty much left to inference, and the attorneys never did dramatize the ways in which the Commission threatened to deprive the registrars of the interests that inhere in freedom from defamation and degradation. Similarly, though the registrars had been subpenaed and thus risked injury required to be self-inflicted,[23] language of the Court implies that subpenaed witnesses are no different from other people whom the Commission's activities might harm.[24]

The kind of precise portrayal of harm that may crucially affect a lawsuit is exemplified by petitioner's brief in *Peters* v. *Hobby*.[25] "We of course concede," said counsel, "that the Constitution does not limit the power of the executive summarily to terminate employment on secret information or for any other reason. The question before this Court is only whether the Government has the right to accompany a discharge with a finding of disloyalty which ruins the reputation and career of the accused, without a full hearing."[26] In other words, the protested harm was not to job security but to one's repute as a prospective jobholder.[27]

B. Exactly what procedural rights were granted, available, denied?

Phrases like "notice," "summary procedure," and right to be heard" are of decreasing value in due process litigation. Sometimes because of their fuzziness they are provably misleading. Procedural rights are bands on a spectrum, and courts are led astray if they have to hazard a guess or examine the record microscopically to ascertain which bands merit attention. Too many briefs and opinions never tell us exactly what rights were granted the complainant, to offset those denied, or what rights might have been available had he made a timely request.

Hannah v. *Larche* is disturbingly illustrative. Appraisal, confrontation, and cross-examination are rights the Court held may be denied to witnesses. But with respect to cross-examination was it relevant that complainants could have submitted to the Commission questions to be put to their accusers? With respect to confrontation was it relevant that all accusers who were sched-

[15] "The discharged Cabinet officer may have a property interest in his job and in his reputation, but we want the President to have an unrestricted power to discharge him." 1 Davis, "Administrative Law Treatise," 454 n.7 (1958). Do Premier Ben-Gurion's recent struggles re Israeli Defense Minister Lavon suggest that Professor Davis may go too far? Should a Cabinet officer be defenseless against findings of bribery or sexual immorality? If he could show there was no evidence against him, or no evidence other than the charges of a confessed liar, relief by way of declaratory judgment might well be appropriate. Cf. Gardner, "The Great Charter and the Case of *Angilly* v. *United States*," 67 Harv. L. Rev. 1 (1953).

[16] There are many reasons why grand jury hearings are more protective than civil rights hearings. Cf. note, 74 Harv. L. Rev. 590 (1961). On the pretrial point, the Government argued in Hannah that "prehearing notice of the contents and sources of allegations made against them—which plaintiffs claim is their constitutional right—is not even provided on the issue of guilt or innocence in Federal criminal prosecutions." Brief for appellants, p. 40. Civil rights witnesses, however, do not benefit from pleading and trial traditions that protect alleged criminals. Also, they have not been indicted; and would it be wrong to assume that there would be less risk of their fabricating false evidence than of an indictee's?

[17] Appellee's brief in *Hannah* v. *Larche*, pp. 1–22; and see p. 85 of the transcript of oral argument ("the 14th amendment because they are denying them due process of law").

[18] See Hand, "The Bill of Rights" (1958); cf. McWhinney, "The Power Value and Its Public Law Graduations: A Preliminary Excursus," 9 J. Pub. L. 43 (1960).

[19] *Boyd* v. *United States*, 116 U.S. 616, 630 (1886).

[20] See the discussion on pp. 112–113 of the transcript of oral argument in the Hannah case ("There might not be the necessity for pleading the fifth amendment if we were given the opportunity of presenting witnesses."). But cf. *In re Groban*, 352 U.S. 330 (1957).

[21] *Palko* v. *Connecticut*, 302 U.S. 319, 328 (1937).

[22] *Adamson* v. *California*, 332 U.S. 46, 61 (1947).

[23] For an example of Commission-sponsored harm to reputation that had its origins in compulsorily self-inflicted injury see p. 5 of the Commission's NPR-44 (Dec. 12, 1958): "The election officials recited their excuse for not testifying in a halting manner, requiring coaching and prompting from their attorneys every four or five words."

[24] 363 U.S. at 443. I think this explains why the Court misconstrued the words of the injunction. Id. at 429 n. 11 and 444 n. 20.

[25] 349 U.S. 331 (1955).

[26] Brief for petitioner, p. 10, *Peters* v. *Hobby*, 349 U.S. 331 (1955). Approval of counsel's concession should not be inferred from its quotation here.

[27] Cf. Gardner, "The Great Charter and the Case of *Angilly* v. *United States*," 67 Harv. L. Rev. 1, 21 (1953) ("the circulation of adverse opinions about Angilly's character was no part of the duty of the collector's job").

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uled to testify could have been confronted? And with respect to appraisal what really do we learn from the Court's language: Were the subpenas sufficient? Was their vagueness illuminated by "315 written interrogatories"? Is a chairman's "opening statement [of] the subject of the hearing" enough? Could complainants have been denied the right to hear or read what their accusers who testified had to say? [28]

All conceivable rights need not be separately arrayed in each case, for red penciling or blue penciling as to grant, availability, and denial. A general arraying is useful, however, and for border zones helps compel the tougher analyses that too often are shunned. With an array, judges might even be able to unravel some three-dimensional complications. In Hannah, for instance, what should the Court have pronounced as to secret hearings (which in fact were prescribed by Congress)? If freedom from defamation and degradation is "liberty, or property," should due process for secret hearings require less severe rules than those for public hearings (as to appraisal, confrontation, cross-examination, and right to counsel, for example)? We are miles from solving that problem,[29] and by overlooking the complainants' right to a secret hearing the Court in Hannah probably has made the solution more difficult.

Finally, an accurate charting of rights granted, available, and denied would assure cognizance of some worthy ideas that relate to the timing of judicial redress. In Hannah all the judges chose to avoid a holding as to ripeness and exhaustion of administrative remedies. But the fact that some issues may have been ripe [30] does not mean that all procedural rulings were fixed. Secrecy versus publicity; the Commission's use of nontestifying accusers; the value of submitting questions for the Commission to put to testifying accusers; those are sample issues the Court never faced. Yet its opinion will encourage too many readers to infer that due process requires none of the rights that proper analysis of those issues might ensure.

C. To decide the case is it necessary to apply the Constitution?

A settled doctrine requires that judges look critically at all statutes and regulations which allegedly permit a process that allegedly violates due process. "Traditional forms of fair procedure [must] not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition." [31] There are some traps for the unwary, but we shall not discuss them here because the matter involves statutory interpretation rather than due process.

Other doctrines that seem to be less used in due process cases could have a like impact. Do they merit more use? The doctrine of prejudicial error, for example, has a respectable history that Congress honored in the Administrative Procedure Act.[32] It can be twisted by compelling a complainant to prove too much, and a concern for decent governing may require that it not affect certain cases (death penalty cases, say). But would not due process law generally profit from the kind of precise identification and measurement of procedural harm that we recommended above for substantive harm? Little damage can result from "Whatever the bounds of due process, complaint here has not been prejudiced." [33]

Another set of nonconstitutional inquiries pertains to cases where courts are not the aggressors against government (as when they enjoin hearings), but are rather the dispensers of power (as when their aid is sought to enforce subpenas or other agency commands). In Hannah it was held that due process did not authorize the enjoining of a civil rights hearing. Might the court have been more solicitous of witnesses' rights had the appeal resulted from a lower court's refusal to enforce a civil rights subpena, rather than an order which made the lower court an aggressor? [34]

D. If it is necessary to test for due process [and again note the need for checking, too, other clauses of the Constitution], what authorities have approved, disapproved, or proscribed the questioned procedure?

We need not fret here about stare decisis. Locating all the precedents may be troublesome (because of the stunted progress on classification we mentioned above), but the course of due process precedent does not vary from what seems set for most constitutional litigation.

What may distinguish due process cases is the density of nonjudicial precedent. At times, the quest for what courts have done seems almost incidental. That quest is now complemented by the inquiry, "What procedures have governments actually used in matters like this?" The Brandeis brief has a noble history, and its utility for subjects other than economic regulation is established.[35] When it is launched full blown into the fray of due process, however, it sometimes seems more akin to Stephen Potter and his gamesmanship than to a distinguished jurist and his drive for social reform.

The main trouble with noncourt precedents in procedure cases is that they approach infinity. An important argument can begin, "In the FTC, CAB, NLRB, and Department of Interior, for example." Or, "In 23 States public utilities commissions." Or, "In the juvenile delinquency proceedings surveyed by the editors of the Indiana Law Review." Or, "In Queensland, Northern Ireland, and Pakistan." Or, "Compare [or contrast] the long-established practices as to allegedly insane criminals in France, Norway, Nazi Germany, and/or Soviet Russia." And historical inquiry adds a vast dimension of time to that of geography.

The Court in *Hannah* v. *Larche* thought it "highly significant that the Commission's procedures are not historically foreign to other forms of investigation under our system." [36] We are then invited to consider:

1. "The first full-fledged congressional investigating committee. * * * The development and use of legislative investigation by the colonial governments. * * * The English origin of legislative investigations in this country. * * * The English practice [now]."

2. A "vast majority of instances * * * [where] congressional committees have not given witnesses detailed notice or an opportunity to confront, cross-examine and call other witnesses."

3. "The history of investigations conducted by the executive branch of the Government."

4. Processes of the FTC, SEC, AEC, FCC, NLRB, OPS, OPA, FDA, Department of Agriculture, Tariff Commission, and "many of the most famous presidential commission.

5. "The oldest and perhaps, the best known of all investigative bodies, the grand jury."

That is an impressive list—though more agencies could have been added, of course, as well as State and Commonwealth precedents.

What causes pause is that the research required to document that kind of survey can be quite taxing. And there is evidence that the lawyers and clerks who aided the Court in Hannah did not tax themselves sufficiently.[37] Public administration research and historical and comparative research demand a scientific method; and findings that are accurate, complete, valid, and reliable are not easily assured.

The decade of the 1960's is hardly a time for arguing that tough due process cases should be decided without reference to the practice of other tribunals, other governments, other eras. We must recognize, nevertheless, that the data collected will tend to be anecdotal even if they are trustworthy. "[T]he considerations of fairness that reflect our traditions of legal and political thought," [38] are often elusive, and the amassing of citations which purport to illumine those traditions sometimes adds little light indeed.[39]

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[28] For discussion, see Newman supra, note 7.

[29] Cf. the dissenting opinion in *Hannah* v. *Larche*, 363 U.S. 420, 496 (1960).

[30] There are not many cases where, for threatened procedural irregularities, an agency hearing has been enjoined. 3 Davis "Administrative Law Treatise," chs. 20 and 21 (1958). The attack in the Hannah case was directed at procedural rules. They were "final agency action" within sec. 10(c) of the APA, 60 Stat. 243 (1946), 5 U.S.C. sec. 1009 (1958); but query whether there was "no adequate remedy in any court." Cf. sec. 105(g) of the Civil Rights Act of 1957, 71 Stat. 636 (1957), 42 U.S.C., sec. 1975d(g) (1958). The Solicitor General did not discuss this issue even though the Department of Justice had pressed it at the trial level.

[31] *Greene* v. *McElroy*, 360 U.S. 474, 508 (1959); *Clancy* v. *United States*, 81 S. Ct. 645 (1961).

[32] Supra, note 30, § 10(e).

[33] Cf. *Market St. Ry.* v. *Railroad Comm'n*, 324 U.S. 548, 562 (1945). A prejudicial error doctrine would not be contrary to the Karl Llewellyn rule that "once there is a clearish light, a court should make effort to state an ever broader line for guidance." Llewellyn, "The Common Law Tradition: Deciding Appeals," 398 (1960). Does his rule, prescribed for appellate work generally, apply to all due process cases? I submit that the potential harm to government of cases that say "This and like procedures are bad" is much less than the potential harm to citizens of "This and like procedures are permissible." (Cf. the *Hannah* case.) The reason is that officials tend to push the borderlines to the citizen's disadvantages in both situations.

[34] Cf. *United States* v. *Kleinman*, 107 F. Supp. 407, 408 (D.D.C. 1952).

[35] See 2 Davis, "Administrative Law Treatise," 354 (1958); cf. Doro, "The Brandeis Brief," 11 Vand L. Rev. 783 (1958).

[36] 363 U.S. at 444.

[37] See Newman, supra, note 7.

[38] Frankfurter, J., concurring in *Hannah* v. *Larche*, 363 U.S. 420, 487 (1960).

[39] Professor Kadish perceptively describes and evaluates the "criteria for interpreting a flexible due process." Kadish "Methodology and Criteria in Due Process Adjudication—A Survey and criticism," 66 Yale L.J. 319, 327, 344 (1957). He concludes, "the Court has [regarded] * * * its function as one of passively applying moral judgments already made, rather than as one of actively making new moral decision." Id. at 344. He does not fully explore "whether the Supreme Court is institutionally equipped to ascertain and evaluate the complex factual data necessary for rational decisionmaking." Id. at 359. But his inquiries into "the data of comparative legal systems" (p. 354) and "the use of knowledge outside the record" (p. 359) lead me to wonder, Are mountains of data ever likely to be truly as enlightening as an insistent focus on good sense? He searches for "the effect of an added risk of misdeterminations if certain procedures are sanctioned, and * * * the effect of not permitting an attenuation of those procedures." (p. 353). That is a scholarly definition of what I have loosely labeled "efficiency." In the Hannah case, I believe, the Court was

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E. Exactly how would efficiency be affected, in this and similar proceedings, if complainant's request were allowed? (herein of deference)

Even if "traditions of legal and political thought" have been revealed, they need be "duly related to the public interest Congress sought to meet * * * as against the hazards or hardship to the individual that the * * * [attacked] procedure would entail."[40] Gospel truths are that due process shields us from other public interests and that the other interests give way whenever "the hazards or hardship to the individual" loom too large.

This article will not explore the issues of deference and balancing that perplex judges when they apply first amendment due process, or aim to ensure "respect for the dignity of the individual."[41] Instead, we ask if those issues demand the same articulation when judges seek to preserve what we labeled above "the reliability of the determination-making process." If the public interest, for example, is to keep movies clean and to imprison dope addicts, prior censorship and stomach pumping may or may not be constitutional, given a court's view of fundamental rights and individual dignity. But prior censorship and stomach pumping, per se, are not unreliable. They can be efficient truth-determining techniques, whether or not lawful.

When we permit censorship and testing of the human body, however, the procedures often must be checked for reliability. Thus, each exhibitor ought to be allowed to argue that his movie should not be censored, and the questioning of physiologists' techniques (e.g., on blood tests) should be permitted, because we know that arguing and questioning may well expose error arising out of those procedures.[42]

What truly is the public interest in procedure itself (or more precisely, in the procedures that may lead to depriving people of their life, liberty, or property)? Is it not to insure that correct determinations will be made (and thus only the deserving deprivations be effected), except where some margin of error seems essential to avoid ills that inhere in procedure (e.g., cost and delay)?

To illustrate: The public interest in censoring dirty movies might be jeopardized if the only available procedure were trial by jury; and too few drunk drivers might be punished if every government breath-tester could be subpenaed and cross-examined as to the conditions surrounding his breath-test. Yet censors and testers err, as do all government officials; and centuries of revolution and war warn us that too much error is intolerable. The problem is to set the margin of tolerable error, given the ills of too much procedure. (That margin is usually minimized, of course, by the inventiveness of lawmen who demonstrate that devices such as preliminary injunctions can avoid the harm of dirty movies, pending a truth-seeking trial, and that allowing a man's own doctor to repeat a health official's test is a check on accuracy that raises hardly any of the questions which trouble us as to cross-examination of health officials.)

In due process cases there are these critical questions: (1) Exactly how would "efficiency" be affected, in this and similar proceedings, were complainant's request for procedural rights allowed? (2) Should courts make that determination or should other officials?

The Civil Rights Commission's assignment is to submit reports to the President and the Congress. Those reports are to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws," and the Commission is directed to "study and collect information concerning legal developments constituting a denial of equal protection of the laws." The public interest is manifest; and efficiency would suffer if the Commission, after it had studied sociological and statistical reports and law review articles, say, were required to notify interested citizens of a grand hearing to be convened at which the authors of those reports and articles could be cross-examined. The band of Commission error that thus might be exposed is far less significant than the obvious ills of that procedure; and the right to petition the Government (as well as advising one's legislators, participating in congressional hearings, etc.) seems sufficient for keeping the margin of error low.

The Commission is further directed, however, to "investigate allegations in writing * * * that certain citizens of the United States are being deprived of their right to vote and to have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts." The public interest implied in that directive relates to evildoing—the kind of evildoing that may first, persuade Congress to enact law; and second, persuade the President that he should either (A) encourage Congress to enact law, or (B) advise his Attorney General or other subordinates of a possible need for appropriate action. Quite clearly, Congress no longer was satisfied with the type of informal accusations that normally are adequate for legislating. Apparently too, Congress was not satisfied that the Attorney General and other policemen knew enough about existing violations of law. So sworn accusations were called for, setting forth "the facts"; and the Commission was directed to investigate them. As LYNDON JOHNSON said on the floor of the Senate, "It can gather facts instead of charges; it can sift out the truth from the fancies."[43]

What of efficiency? During the year ending in August 1959, the Commission received approximately 240 accusations involving 29 counties in 8 states.[44] By February 1960, at least 86 more had been filed, involving 4 additional counties.[45] The Commission favors "full investigations,"[46] which apparently means careful study, field interviews, and—on rare occasions—hearings. This seems clear: To advise every accused evildoer that he has been accused, to tell him who accused him, and/or to permit him to cross-examine his accusers might be too complicating, too delaying, too costly.

What if the accused is subpenaed, however, to testify regarding an accuser's testimony at a public hearing? Would it be inefficient to let him know generally what the Commission was after, what kind of examination he would be expected to face, what evidence he should be ready to produce? Would it be inefficient before he testifies to let him sit with the public as a spectator? Would it be inefficient to allow him a limited right of cross-examination, or to submit questions for the Commission to put to his accusers?

Those are questions *Hannah* v. *Larche* did not answer, and they illustrate a variety of questions that ought to have been answered. They relate to the reliability of the determination-making process. One can ask whether the margin of error that might have been minimized by the rights postulated, for that kind of civil rights hearing, would truly have been offset by the ills that sometimes might accompany such rights.

That weighing of procedures' efficiency leads to the question, Who decides? When should courts defer to the judgment of the legislature? Of the Chief Executive? Of Cabinet officials? Of policemen, prosecutors, prison wardens, psychiatrists? If we sought only "the considerations of fairness that reflect our traditions of legal and political thought, duly related to * * * the hazards or hardship to the individual that the * * * [attacked] procedure would entail," judges ought to be paramount.[47] When we also seek "the public interest," however, so that it too can be balanced with the traditions and the individual's interest, efficiency is the new ingredient. The play between procedure and the goals of government becomes crucial, and the epic of administrative law—in New Deal years especially—resounds with reminders that courts' views of efficiency are often believed to be heedlessly frustrating. Even so, the case for deference by judges is weakest when procedural due process is at stake; and these observations seem noteworthy:

First, the legislature is often the antagonist in litigation that involves economic controls, equal protection, censorship, and other substantive questions. In procedural due process cases, contrastingly, courts hardly ever have to declare a statute unconstitutional. For legislatures rarely say, "This is the procedure we want used." Instead they broadly delegate procedure-making authority, and the result is that courts then war with lesser bodies than the legislature itself. Even when a statute is voided that says to an agency, "You may if you wish deny the right to cross-examine," the effect is different from the voiding of a statute providing, "Cross-examination must not be allowed, for the public interest then would suffer." That latter statute is atypical.

so bogged in data that its members never did exploit their own good sense on how complainants' requested rights might have affected the efficiency of the Civil Rights Commission. Another example is *Anonymous* v. *Baker*, 360 U.S. 287 (1959). Since the investigator there "expressed his readiness to suspend the course of questioning whenever appellants wished to consult with counsel" (id. at 28), exactly how would efficiency have been hurt if counsel had been allowed to observe the proceedings?

[40] Frankfurter, J., concurring in *Hannah* v. *Larche*, 363 U.S. 420, 487 (1960).

[41] See Hand, "The Bill of Rights" (1958).

[42] On blood tests, compare the court of appeals opinion in *United States ex rel, Lee Kum Hoy* v. *Shaugnessy*, 237 F.2d 307, 308 (2d cir. 1956) ("the data * * * established conclusively that Lee Ha could not be the father"), with the Supreme Court's per curiam notation that remand was necessary because "the blood grouping tests made herein were in some respects inaccurate and the reports thereof partly erroneous and conflicting," 355 U.S. 169, 170 (1957). Cf. In re Newbern, 175 Cal. App. 2d 862, 1 Cal. Rptr. 80 (1959); and see Littel and Sturgeon, "Defects in Discovery and Testing Procedures: Two Problems in the Medicolegal Application of Blood Grouping Tests," 5 U.C.L.A.L. Rev. 629 (1958).

[43] 103 CONGRESSIONAL RECORD 126637 (daily ed., Aug. 7, 1957).

[44] 1959 Report of the Commission on Civil Rights, 55.

[45] 106 CONGRESSIONAL RECORD 3405 (daily ed., Feb. 27, 1960).

[46] 1959 Report of the Commission on Civil Rights, 55.

[47] But cf. *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U.S. 294, 321 (1933): "Since a hearing is required, there is a command by implication to do whatever may be necessary to make the hearing fair. A duty so interdeterminate must vary in form and shape with all the changing circumstances whereby fairness is conditioned. The appeal is to the sense of justice of administrative officers, clothed by the statute with discretionary powers. Their resolve is not subject to impeachment for unwisdom without more. It must be shown to be arbitrary."

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Second, administrators (and investigating committees, grand juries, and in fact all lesser officials with jobs to do) have demonstrated, I think, that they are less trustworthy with respect to procedure than are judges. I refer not merely to the abuses of loyalty-security, the pillorying of peoples' reputations, illegal police practices, or other histories of arbitrary action. Nor would I add only the reminder of Justice Douglas in Hannah that "Men of good will, not evil ones only, invent, under feelings of urgency, new and different procedures that have an awful effect on the citizen."[48] I am more influenced by the fact that administrators too often have cried, "Wolf, wolf." Too often, for example, have government attorneys pleaded that to grant rights requested by the complainants would wreck their agency's program—when, following defeat in court, it becomes obvious that the threats were posh. Even in the Supreme Court, where governments have such great resources for winnowing out their borderline cases, is it not astonishing that the Solicitors General (and their State counterparts) so frighteningly often have been wrong on what fundamental fairness requires? And how inadequate, empirically, have been their hundreds of awful-consequence predictions regarding the efficiency and effectiveness of government business.

Judges are sometimes wrong, too. And it may be that a few decisions are making a few criminals' lot a happy one, or that appellate judges as a group still are too eager to impose court rules on agencies whose tasks call for a modified process and a freedom to experiment. In bulk, though, the sins of judges who aimed to insure due process surely have been overbalanced by the sins of bureaucrats who—conscientiously, vigorously, in good faith we assume—seek means that at first glance appear the least disruptive to their immediate ends. Too few administrators have acknowledged that "due process of law is not for the sole benefit of an accused * * * [and] is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice.[49]

IV. WHO COULD SPEARHEAD REFORM, HOW?

The people who prescribe due process are nearly always adjudicators—administrative or judicial. In their adjudications they examine procedure to see if it is constitutional. On occasion, agencies and trial judges set the law of due process (e.g., when a body like the NLRB declares, "No less than this does due process require."). But appellate courts are paramount, of course; the Supreme Court, preeminent. Inevitably this article treats of that Court's problems. Its process for prescribing due process is emulated by other prescribers, and the target of reform is there if the process be deficient.

Whether legal writings point the way to reform is not always a test of their utility. Some of the best do not aid reformers but rather contribute to knowledge, understanding, or their readers' enjoyment. Yet aid to reform is a valued goal, and provides an interesting test for what Erwin Griswold has called "the current chapter in the long history of criticism of the Court."[50]

The message in most of the newer criticism is that the nine Justices who comprise the Court themselves bear responsibility for its ills. If we imagine, for instance, a conscientious, newly appointed Justice who is eager to fashion the image toward which he should strive, he would learn from careful study of the recent critiques that he and his colleagues should be wiser, more lawyerlike, more statesmanlike, more perceptive, more efficient, less dilettante, less opinionated, more or less worldly, more or less consistent, more or less unanimous, etc. (He would also learn that the mere reading of all those books and articles probably fouled up his time chart.)

Here we deal only with procedural due process, and that topic is not how the Court should manage its business or how the Court should handle constitutional law. But we have considered reforms, and an identifying of possible reformers seems fitting. What is clear is that we will delude ourselves if we assume the Court alone has the burden of improvement.

Questions this article has posed relate, for example, to "good lawyering." Is not that attribute one which in the Court is far more institutional than personal? Are not craftsmanship and understanding far less dependent on the conscience and will of nine Justices than on the presented product of counsel, trial courts, law clerks, other participants? In Hannah, for instance, though the case was terrifically complex, the opinions and the Justices' comments in oral argument show an awareness of issues and of law that was nowhere near matched by counsels' briefs or arguments. Who, then, is to blame for missing some of the subtle points discussed above (particularly when we see that Hannah was announced the same day as *Aquilino, Durham, Locomotive Engineers, Annheuser-Busch, Metlakatla,* three *Steelworkers* cases, *Flemming* v. *Nestor, Miner* v. *Atlas, Schilling, American-Foreign Steamship, Hudson,* and *Cory Corp.* v. *Sauber*[51])?

Thruman Arnold's comment that the Supreme Court opinions "rank higher than the articles which appear in the Harvard Law Review" is worth pondering.[52] Do not current attacks on the Court, even when "based on understanding and respect and designed to assist the Court with its great and difficult task in our constitutional system,"[53] tend to reach for a perfection that no nine Justices, law professors, Wall Street lawyers, or men or angels could ever attain? Improved lawyering and sounder analyses and new lines of inquiry and efficient procedures must be institutional goals. Our worst sin as critics has been an unscholarly premise that some outstanding men named Warren, Frankfurter, Black, et al., somehow should take on an assignment that in fact must largely be ours and many others'.

The problem of court reform is reminiscent of problems of influence peddling. There the initial cry was for improved ethics in the regulatory agencies. Then it became clear that the issues were really quite complex and that some of the boldest critics—Congressmen and lawyers—were themselves deeply involved. Influence peddling problems still are mostly unsolved; but we have learned that agencies' codes of ethics are only piecemeal solutions, and that self-reform within Congress and the bar may be much more critical.

Consider similarly the aches of investigating committees. We first pitted the good guys against the bad and hoped that sensible middlemen (Senators George and McClellan say) would restore law and order. Then we discovered that voters and newspapermen and thus politics were involved, and that fair committee procedure called for sophistications which only members of the bar could supply. The response of lawyer-planners and lawyer-draftsmen was excellent; and if more lawyer-statesmen had responded comparably (with the kind of lobbying campaign that is now being waged for professional men's tax benefits, say), we might have achieved for investigating committees a more impressive code than the House of Representatives' fair play rules.[54] (And who knows what impact that victory might have had on *Hannah* v. *Larche*?[55])

The influence peddling and investigating committee analogies show what can be done when less attention is given to "Here is what you the commissioners (or you the Congressmen) should do" than to "Here is what we the lawyers must do." The procedures of Congress provide a model too where critics finally realized that "Here is what we the professors must do." The Legislative Reorganization Act of 1946 is in large part a product of political scientists, after years of learned but unheeded scholarship as to legislatures' organizational deficiencies.[56]

Institutionally what might be done to improve the process of due process? As noted above we need a superior literature, which presses for precise definitions and what Karl Llewellyn calls "the structuring of whole fields and * * * the sweating of clarity out of tangled lumps of 5 or 15 or 50 or a hundred and fifty cases. * * * [For] it is the scholar who must carry the load first of stumppulling and then of dreaming of sweating up intelligible tentative drafts of sound design."[57] The need for that literature (and for efficient guides to its use, instead of our self-deceiving "Index to Legal Periodicals") should help keep us humble. No one can pretend, however, that the need is likely to inspire any foundation-sponsored or other project that in the foreseeable future could bring us closer to a better due-process process.

For measurable gain we must seek less remote proposals, such as Dean Griswold's suggestion that "the bar should take the lead in developing legislation which will reduce the burden on the Supreme Court."[58] The proposal I discuss now relates to the bar, particularly to traditions of advocacy that seem fixed for due process litigation (and, I suppose, most Court litigation).

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[48] 363 U.S. at 507.

[49] *Shaughnessy* v. *Mezei,* 345 U.S. 206, 224–225 (1953) (dissenting opinion); cf. Gellhorn, 'Changing Attitudes Toward the Administrative Process," in "Individual Freedom and Governmental Restraints," ch. 1 (1956). For further comment on deference and due process see Kadish, "Methodology and Criteria in Due Process Adjudication—A Survey and Criticism," 66 Yale L.J. 319, 358–359 (1957; cf. id. at 337 n. 114 ("In the area of procedural due process * * * [Justice Frankfurter] seems to be asserting a doctrine that increases, rather than decreases, the latitude of discretion open to the Court in adjudicating constitutional issues."). Learned Hand, who recently admonished that the court's duty of deference must not be denigrated, seems to categorize procedural due process separately. Hand, "The Bill of Rights," 44–45 (1958). It is significant that the widely distributed prefact to Davis, "Administrative Law Treatise" (1958), which documents Supreme Court misfeasances by citing chapter and verse, complains of no procedure cases? Cf. 2 id., sec. 16.10; 1 id. 471 (discusses efficiency without mention of deference).

[50] Griswold, foreword, "Of Time and Attitudes—Professor Hart and Judge Arnold," 74 Harv. L. Rev. 81, 82 (1960).

[51] See 363 U.S. 509–721 (1960).

[52] Arnold, "Professor Hart's Theology," 73 Harv. L. Rev. 1298 (1960).

[53] Griswold, "Foreword: Of Tome and Attitudes—Professor Hart and Judge Arnold," 74 Harv. L. Rev., 81 (1960).

[54] See, Newman, "Some Facts on Fact-Finding by an Investigatory Commission," 13 Admin. L. Rev.—(1961).

[55] Cf. Newman, supra, note 7.

[56] See Galloway, "The Operation of the Legislative Reorganization Act of 1946," 45 Am. Pol. Sci. Rev. 41 (1951).

[57] Llewellyn, "The Common Law: Deciding Appeals," 346 (1960).

[58] Griswold, "Foreward: Of Time and Attitudes—Professor Hart and Judge Arnold," 74 Harv. L. Rev. 81, 85 (1960); cf. Arnold, "Professor Hart's Theology," 73 Harv. L. Rev. 1298, 1300 (1960) ("How Professor Hart proposes to reform the bar he does not say.").

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If we must identify the mortal sinners in the due-process prescribing process, I nominate the lawyers for plaintiff and defendant. Their time chart is less compulsive than the Justices'; and they surely are most at fault when items on the checklist are unchecked, when exact harms, exact procedures, exact precedents are unidentified. A choice excerpt from one of the Hannahs briefs (confusing 5th and 14th amendment due process) was quoted above. A score or more other excerpt from one of the Hannah briefs (con-argument why was the Court misled, for instance, as to the practices of congressional committees, the understanding of the Commission as to its duties re executive sessions, the Commission's interpretation of "defame, degrade, or incriminate"? [59]

The plain truth is that the Court does not benefit from what excellent advocacy could insure, just as it does not benefit from what excellent scholarship could insure. The temptation, therefore, is to conclude that lawyers must study the facts and law more carefully, write better briefs, prepare more painstakingly for oral argument. Unhappily, that has the same unreality as does telling scholars that the quality of texts and articles ought to be improved. Of course we need superior advocacy, but recognizing the need does not make the prospects of improvement less remote.

So, again, are we reduced to pontification that the true call is for a better bench, a better bar, better law schools—just as some critics argue that to control influence peddling and investigating committees we must elect better legislators and hire better men in Government? One hopes that less radical cures might be developed; and it is with respect to advocacy that one cure might be practicable, I believe.

When due process is prescribed, law is made—procedure law. Facts and arguments which influence that lawmaking are in part the same facts and arguments which would have influenced noncourt lawmakers—legislatures, agencies, judicial conferences, other groups that reform procedure law. The techniques for presenting facts and arguments, however, are phenomenally dissimilar. For in the process of prescribing due process we rely almost entirely on the talents and resources of two parties' lawyers.

To the comment, "Isn't that true for all judicial lawmaking?" I must reply, "Yes." And perhaps the process of all judicial lawmaking needs reforming, so we could bring to judges the wisdom and insights that are the product of procedures in statute making and rule making. I stress, though, three facts that may call for accelerated action on due-process process.

First. In due-process cases most private lawyers do not enjoy the competence that may mark their presentation of other cases. As a result, courts do not benefit from the high-quality lawyering that can aid tax law, labor law, criminal law, the law of the press, other subjects. Even civil liberties lawyers tend to be better informed on first amendment rights than on most due-process rights.

Second. Government lawyers, on the other hand, are able to acquire due-process experience; and the fee and expense limits that in many cases confine private lawyering are not paralleled in Government. The two teams of lawyers, therefore, are not evenly matched; and the courts suffer. If Government advocates were statesmen, fit to guide judges wisely through labyrinths of righteousness, their competence would be a blessing. The facts, sadly, show that solicitors general and their counterparts are not permitted such a role. For their counsel is sought not when other officials wish to design a procedure, so that the lessons of "the very essence of a scheme of ordered liberty" may be put to good use. Rather they answer calls of alarm. They are shock troops to be rushed in when a lawsuit impends. Their job, with awful consistence, is to demonstrate that a procedure already set is really legitimate, though they and other lawyers (and people who designed the procedure, even) might now concede that de novo a more fair procedure should have been designed.[60] One shudders at the thought of the arbitrary governing that now might be our heritage if judges, year after year, decade after decade, had been overly impressed by the due-process expertness of Governments' advocates.

Third. Procedure (the kind of procedure that is used to deprive people of life, liberty, and property) is peculiarly a lawyer's topic. In other fields there are businessmen and churchmen and doctors and engineers for whom lawyers speak. Those people can be concerned with procedure, but even when substance is deeply affected (as in the commitment of juvenile delinquents or the mentally ill, say) the legal profession does not forfeit its eminence.

In typical cases, however, lawyers for the man deprived of life, liberty, or property may share too little of their whole profession's lore; lawyers for the Government, too much. Should not courts insure a better balance by seeking from the profession aids to wisdom that the bar as a whole (lawyers and professors) could provide?

The best discussion of extra manpower that I know is Karl Llewellyn's; and his comments on the lower courts and counsel, the judge's law clerk, and outside experts merit attention.[61] I wish he himself had given more attention to the amicus brief. "[R]equesting or inviting, on occasion, an amicus brief * * * has been little institutionalized," he says, "and if institutionalized unwisely it could turn into an abuse; but the idea has much merit, for occasional use, especially when light is needed on situations technical and relatively unfamiliar to the court." [62]

He wrote mostly of private law. With regard to due-process law, for which the bar has a unique bent, should we be so cautious? A flood of amicus briefs might rub rawly too many sensitive issues in commercial law, perhaps, or all constitutional law. But one of these days we will have to face up to the arbitrariness and need for a right to petition and right to be heard in judicial lawmaking,[63] and is not due process a fertile first field for experiment and expansion?

Why should not lawyers and law professors—individually, for clients, for ABA, AALS, ACLU, and other groups, for governments—articulate via amicus briefs a concern with due process procedure law that matches their variously demonstrated concerns with all other forms of procedure law? We have taught ourselves that committee reports and scholarly writings, alone, do not sufficiently influence lawmakers and that reform activity, to be fruitful, has to be packaged efficiently. For courts is not the best package—comparable to appearance at a legislative or rulemaking hearing or an office conference with legislators or administrators—the amicus brief?

What would such briefs add? The writers could be lawyers whose interest was not confined to (1) this particular case, or (2) ensuring victory for the Government in this and similar cases. Their contribution could reflect some of that maturing of collective thought which perhaps cannot be assured by the Bench itself.[64] They could test counsels' arguments for compliance with the checklist (which thereby would become sharper, more complete, more useful). They could supply the breadth of view we need to expose privilege doctrines, too pervasive criminal trial analogies, and other doctrinal dead ends. Their ideas would not be molded to victory or defeat,[65] and their grand strategy less likely would involve aims extraneous to due process.[66] They could also focus for courts' attention some rather good ideas in legal writings that now, too often, are entombed. (In Hannah the opinions cite none of the leading texts or articles on cross-examination, and only one of the scores of recent articles that discuss investigating committee procedures.)

Those are potential gains, speculative but not insignificant. They might call for some management planning, though by no means do I recommend any souped-up, centrally controled, amicus brief filing body.[67] Free enterprise and sometimes even brashness are to be encouraged (which, incidentally, may require for academic life a vigilance to be sure that young teachers do not write articles instead of briefs merely to get their publish-or-perish credits).

CONCLUSION

In short, the due-process process calls for altertness as to the deficiences of both doctrine and mechanics. It calls for awareness that the job of whittling away at those deficiencies is too vast for nine Justices. Reforms that a thousand others of us must effect are needed, and an expanded amicus tradition might be one useful reform.

The Justices bear some responsibility. When parties' briefs are insufficient postponements can be ordered; and there are many precedents where the attorneys have been directed to discuss Court-framed questions, where agencies have been asked to interpret documents or describe their practices, where comments of independent counsel have been sought. The Court might even impose some minimum standards for due

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[59] See pp. 43–45, 50–58, and 93 of the transcript.

[60] I have been advised that the Government lawyers responsible for arguing the Hannah case were so set on victory that they sought out potential amici (who were contemplating the filing of a brief possibly like the Douglas-Black dissent) and persuaded them not to file.

[61] Llewellyn, "The Common Law: Deciding Appeals," 317–332 (1960). Some of the most objectionable language in the Court's Hannah opinion was inspired by pp. 18 and 35 of the Government's brief. See text preceding note 10, supra.

[62] Llewellyn, "The Common Law: Deciding Appeals," 323 (1960).

[63] See Weintraub, "Judicial Legislation," N.Y.L.J., Mar. 19, 1959; cf. *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539, 571–572 (1960) (dissenting opinion); *Wyatt* v. *United States*, 362 U.S. 525, 535 (1960) (dissenting opinion); *NLRB* v. *E. & B. Brewing Co.*, 276 F. 2d 594 (6th Cir. 1960); George R. Currie, "Appellate Courts Use of Facts Outside of the Record by Resort to Judicial Notice and Independent Investigation," 1960 Wis. L. Rev. 39.

[64] Cf. Hart, foreword, "The Time Chart of the Justices," 73 Harv. L. Rev. 84 (1959).

[65] While preparing a mock petition for rehearing in the Hannah case I discovered that my avowed "concern for rationality in the law of due process" was consistent with neither appellants' nor respondents' aims. Both sides would have opposed my suggested conclusion. See Newman, supra, note 7.

[66] In the cold war now being waged on desegregation and other racial issues, what really are the stakes in a dispute regarding technicalities of the procedure of one not very powerful Federal investigatory agency?

[67] Cf. Freedman, "Promoting the Public Welfare: A Proposal for Establishing a People's Advocate," 43 A.B.A.J. 211 (1957); Kadish, "Methodology and Criteria in Due Process Adjudication—A Survey and Criticism," 66 Yale L. J. 319, 363 n. 198 (1957) (references to "a research body which would make determination of constitutional facts").

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process advocacy, to insure that lawyers do not ignore items on a checklist or that they detail their quarrels regarding fact (adjudicative and legislative) as well as the law theories they espouse. Especially, the Court should not jeopardize its own due process by restrictive application of its amicus rules.[68] It is not a committee of Congress, and it owes no duty of graciousness to all advocates who may wish to file or read statements. It is part of "the Government," nonetheless, and "to petition the Government" for better due process (whether or not a first amendment right) is a right the Court surely should encourage when its own work might profit.

A final word relates to social significance. With respect to procedure law in general, it can be argued that appellate courts are not the best forum for reform and that reformers' limited energies, therefore, should be aimed at revised statutes, revised regulations, revised court rules. That is certainly true as to civil procedure and a great deal of criminal and administrative procedure. The big regulatory agencies, for example, rarely have any due process troubles; and a whole new Administrative Procedure Act can be drafted with only minor reference to the rules of due process.

There are immense areas of government, however, where much law is due process law—where crucial statutes, regulations, and rules are either nonexistent or unconstitutional. Many criminal proceedings, loyalty-security proceedings, mental health proceedings, traffic court, juvenile court, and family court proceedings illustrate the point. The officials engaged in those activities are not constantly perturbed by due process opinions, but there is ample evidence that those opinions do have an enormous impact.[69]

Yet even more critical than an impact on administration is the impact on reform itself. We tend to regard due process opinions mostly as warnings to policemen or trial judges or agency officials—telling them what appellate courts won't let them do. Those warnings themselves effect many reforms. (E.g., "We'd better change the rules, because Olympus says we're not supposed to do that anymore.") The greater effect, though, pertains to statutes, regulations, and rules that are new and more comprehensive.[69] Reformers of those less explored proceedings I just mentioned (loyalty-security, traffic court, juvenile court, etc.) do not only inquire "What must we avoid to keep the new procedures constitutional?" They also ask, "For ideas as to procedure why don't we consider the due process precedents?" And often they add, "Why as a matter of policy should we require more than due process requires? For the cases tell us what is 'fair,' and who are we to seek more than fairness?"[70]

Hannah v. *Larche*, for example, reminds us that "due process embodies the differing rules of fairplay, which through the years, have become associated with differing types of proceedings." The proposals there rejected, we are told, "would make a shambles of the investigation and stifle the * * * gathering of facts." "[T]he investigative process could be completely disrupted. * * * Factfinding agencies * * * would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable."[71] Should reformers disregard those prestigious predictions? Or is it possible that the Court's inquiry in this single case may have greater effect on the whole course of investigatory reform than will a vigorous decade of scholarly research and writing?

The process of prescribing due process thus may even dominate reform. Efforts to improve its effectiveness could be widely rewarding indeed.

[68] Cf. *Knetsch* v. *United States*, 81 S. Ct. 132, 137 (1960) ("Some point is made in an amicus curiae brief of the fact that * * * [petitioner] in entering into these annuity agreements relied on individual ruling letters issued by the Commissioner to other taxpayers. This argument has never been advanced by petitioners in this case. Accordingly, we have no reason to pass upon it."). Would more flexibility on rehearings be desiderable? Cf. Louisell and Degnan, "Rehearing in American Appellate Courts," 44 Calif., L. Rev. 627 (1956). Generally, see Swisher, "The Supreme Court and the 'Moment of truth,'" 54 Am. Pol. Sci. Rev. 879, 884 (1960).

[69] Two years ago, reviewing the Davis "Administrative Law Treatise," I stated that "Agency rule makers and adjudicators do pay considerable attention to statutes, but if Professor Davis believes they are regularly influenced by Supreme Court opinions I believe he is mistaken." Newman, "The Literature of Administrative Law and the New Davis Treatise," 43 Minn. L. Rev. 637, 642 (1959). I now believe that I was mistaken, assuming that (1) we do not overly stress the word "regularly," and (2) administrative law includes the whole sweep of government and not merely those proceedings that are the focus of most law practice before agencies.

[70] For a suggestion that officials sometimes are afraid to recognize more rights than due process demands see Rourke, "Law Enforcement Through Publicity," 24 U. Ch. L. Rev. 225, 253 n. 108 (1957).

[71] 363 U.S. at 442–444.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. ROOSEVELT].

Mr. ROOSEVELT. Mr. Chairman, if the amendment of the gentleman from Pennsylvania is not adopted it will become very obvious that we have been unable to improve this bill on the floor this afternoon. In that case, I think it becomes imperative that all those who feel deeply about this American principle vote against the bill, because if the bill has a strong negative vote in the House today and still passes, we have a hope that it may be improved in the other body. I hope we may have a substantial vote to show how important we believe the improvement of this bill is as far as section 303 is concerned.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. O'HARA].

Mr. O'HARA of Michigan. Mr. Chairman, the parliamentary situation is such that I cannot offer my amendment at this time. However, after the Moorhead amendment is disposed of, I will offer an amendment which will have to be voted upon without explanation or debate. I have therefore taken this time to explain my amendment.

The amendment offered by the gentleman from California [Mr. ROOSEVELT], the amendment offered by the gentleman from Texas [Mr. ALGER], and the amendment offered by the gentleman from Pennsylvania [Mr. MOORHEAD], have all been directed to the right to a hearing and to the right of appeal. Whatever might be said in favor of such provisions, I doubt that the Committee will prove to be willing to consider the right of appeal and hearing in these cases.

My amendment is directed, not to the right of hearing and appeal, but to another aspect of section 303, the absolute authority of the Secretary to terminate the employment of any employee under certain prescribed circumstances. Under the bill he could delegate that authority to any employee of the Department of Defense. He probably will delegate that authority if he follows precedent. I am very much afraid we will end up with some obscure employee of the Department of Defense actually making these decisions. Since it is always a lot easier, simpler, neater, and cleaner to avoid the time-consuming and cumbersome procedures of a formal hearing the tendency will be to use the summary procedure whenever it can possibly be justified.

My amendment attempts to limit the use of such procedure to cases involving the gravest consequences to the national security. It requires that the Secretary of Defense personally make the decision to terminate an employee's employment on security grounds without hearing, and that in this personal decision he obtain the personal concurrence of the highest legal officer of the United States, the Attorney General of the United States. The adoption of my amendment will give us at least some assurance that this authority granted in section 303 will not be used arbitrarily or capriciously. I think that is the least we can do.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana [Mr. WILLIS].

Mr. WILLIS. Mr. Chairman, I regard this amendment as the most devastating of all those offered heretofore, because it would require giving to the employee—

(1) a written statement of the charges against him, which shall be stated as specifically as security considerations permit—

Whatever that may mean—

(2) an opportunity within 10 days after receipt of the statement of charges against him to answer such charges and to submit affidavits; and

(3) a written statement of the final decision of the Secretary.

In other words, everything would be in writing. The charge against him would have to be in writing, and it would violate all security measures. I know the gentleman is highly motivated about this amendment. I told him I could not go along for the reason I have stated. This actually goes far beyond anything that has been proposed. It would require giving everything in writing, written charges and countercharges, and a copy of the written decision, so that everything would be in the open. It wolud violate all our security measures.

Mr. Chairman, I urge the defeat of the amendment.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from Pennsylvania, and may I say I have great respect for my friend.

Mr. MOORHEAD. The gentleman refers to the phrase, "as specifically as security considerations permit." That means so long as you are not endangering the security of the United States. That would be sufficient. If anything, more would be a danger to the national security.

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Mr. WILLIS. Of course, I do not know what the result would be, but let me repeat, what I said earlier under this bill, you have three steps. First, the Board of Appraisal passes on the evidence. That is step No. 1. Step No. 2, the conclusion of the Board goes to the Director of the National Security Agency. Step No. 3, the final papers go to the Secretary of Defense, who has the power to discharge an employee.

So you do have a 3-step review procedure here, but you must have finality to the procedure. The final authority is the Secretary of Defense.

The CHAIRMAN. The time of the gentleman has expired.

All time for debate has expired.

The question is on the amendment offered by the gentleman from Pennsylvania [Mr. MOORHEAD].

The amendment was rejected.

Mr. O'HARA of Michigan. Mr. Chairman, I offer an amendment, and ask that it be voted on.

The Clerk read as follows:

Amendment offered by Mr. O'HARA of Michigan: On page 5, after line 4, insert the following:

"(b) The authority to terminate employment under this section may be exercised by the Secretary only after he obtains the concurrence of the Attorney General. Neither the authority of the Secretary to terminate employment, nor the functions of the Attorney General with respect to concurrence, under this section may be delegated."

On page 5, line 5, strike out "(b)" and insert in lieu thereof "(c)".

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. O'HARA].

The amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. DAVIS of Georgia, Chairman of the Committee of the Whole House on the State of the Union reported that that Committee, having had under consideration the bill (H.R. 950) to amend the Internal Security Act of 1950, pursuant to House Resolution 334, he reported the bill back to the House.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

The SPEAKER. For what purpose does the gentleman from Texas [Mr. ALGER] rise?

Mr. ALGER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ALGER. I am, Mr. Speaker.

The SPEAKER. The gentleman qualifies.

The Clerk will report the motion.

The Clerk read as follows:

Mr. ALGER moves to recommit the bill, H.R. 950, to the House Committee on Un-American Activities.

The SPEAKER. The question is on the motion to recommit.

Mr. ALGER. Mr. Speaker, on that I ask for the yeas and nays.

The yeas and nays were refused.

The SPEAKER. The question is on the motion to recommit.

The motion was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. WILLIS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken and there were—yeas 340, nays 40, answered "present" 1, not voting 54, as follows:

[Roll No. 43]

YEAS—340

Abbitt
Abele
Abernethy
Adair
Addabbo
Albert
Andrews
Arends
Ashbrook
Ashmore
Aspinall
Auchincloss
Avery
Baker
Baldwin
Barry
Bass
Bates
Battin
Becker
Beckworth
Belcher
Bell
Bennett, Fla.
Berry
Betts
Boland
Bolton, Frances P.
Bolton, Oliver P.
Bonner
Bow
Brademas
Bray
Brock
Bromwell
Brooks
Broomfield
Brotzman
Brown, Ohio
Broyhill, N.C.
Broyhill, Va.
Burke
Burkhalter
Burleson
Burton
Byrne, Pa.
Byrnes, Wis.
Cahill
Cannon
Carey
Cederberg
Chamberlain
Chelf
Chenoweth
Clancy
Clark
Clausen
Cleveland
Collier
Colmer
Corbett
Cramer
Cunningham
Curtin
Daddario
Dague
Daniels
Davis, Ga.
Davis, Tenn.
Dawson
Delaney
Denton
Derounian
Derwinski
Devine
Diggs
Dole
Donohue
Dowdy
Downing
Dwyer
Elliott
Ellsworth
Everett
Evins
Fallon
Fascell
Feighan
Findley
Flood
Flynt
Ford
Foreman
Fountain
Frelinghuysen
Friedel
Fulton, Pa.
Fulton, Tenn.
Fuqua
Gallagher
Garmatz
Gathings
Gavin
Giaimo
Gibbons
Glenn
Goodell
Goodling
Gray
Green, Pa.
Griffin
Griffiths
Gross
Grover
Gubser
Gurney
Hagen, Calif.
Haley
Halleck
Halpern
Hanna
Hansen
Harding
Hardy
Harris
Harrison
Harsha
Harvey, Ind.
Harvey, Mich.
Hays
Healey
Hébert
Hechler
Hemphill
Henderson
Herlong
Hoeven
Hoffman
Holland
Horan
Horton
Hosmer
Huddleston
Hull
Hutchinson
Ichord
Jarman
Jennings
Jensen
Johansen
Johnson, Calif.
Johnson, Wis.
Jonas
Jones, Ala.
Jones, Mo.
Karth
Keith
Kelly
Kilburn
Kilgore
King, N.Y.
Kirwan
Kluczynski
Knox
Kornegay
Kunkel
Kyl
Laird
Landrum
Langen
Latta
Lennon
Lesinski
Libonati
Lipscomb
Lloyd
Long, La.
McClory
McCulloch
McDade
McDowell
McFall
McIntire
McLoskey
McMillan
Macdonald
Madden
Mahon
Mailliard
Marsh
Martin, Calif.
Martin, Mass.
Martin, Nebr.
Matthews
May
Meader
Michel
Miller, Calif.
Milliken
Mills
Minish
Minshall
Montoya
Moore
Morgan
Morris
Morrison
Morse
Morton
Murphy, Ill.
Murphy, N.Y.
Murray
Natcher
Nelsen
Nix
Norblad
Nygaard
O'Brien, Ill.
O'Brien, N.Y.
O'Hara, Mich.
O'Konski
Olsen, Mont.
O'Neill
Osmers
Ostertag
Passman
Patman
Patten
Pelly
Pepper
Perkins
Philbin
Pike
Pillion
Pirnie
Poage
Poff
Pool
Price
Pucinski
Purcell
Quie
Quillen
Randall
Reid, Ill.
Reifel
Rhodes, Ariz.
Rhodes, Pa.
Rich
Riehlman
Rivers, Alaska
Rivers, S.C.
Roberts, Ala.
Roberts, Tex.
Rodino
Rogers, Colo.
Rogers, Fla.
Rogers, Tex.
Rooney
Rostenkowski
Roudebush
Roush
Rumsfeld
Ryan, Mich.
St. George
St Germain
St. Onge
Saylor
Schadeberg
Schneebeli
Schweiker
Schwengel
Secrest
Selden
Senner
Shipley
Short
Shriver
Sibal
Sikes
Smith, Calif.
Smith, Iowa
Smith, Va.
Snyder
Springer
Stafford
Staggers
Stephens
Stinson
Stratton
Stubblefield
Sullivan
Talcott
Taylor
Teague, Calif.
Teague, Tex.
Thomas
Thompson, La.
Thompson, Tex.
Thomson, Wis.
Thornberry
Toll
Tollefson
Trimble
Tuck
Tupper
Tuten
Udall
Ullman
Utt
Van Deerlin
Vanik
Van Pelt
Vinson
Waggonner
Wallhauser
Watson
Watts
Weaver
Weltner
Westland
Whalley
Wharton
White
Whitener
Whitten
Wickersham
Widnall
Williams
Willis
Wilson, Bob
Wilson, Charles H.
Wilson, Ind.
Winstead
Wright
Wydler
Wyman
Young
Younger
Zablocki

NAYS—40

Alger
Ashley
Brown, Calif.
Cameron
Celler
Cohelan
Corman
Curtis
Dingell
Dulski
Duncan
Edwards
Farbstein
Fraser
Gilbert
Gill
Gonzalez
Green, Oreg.
Hawkins
Holifield
Karsten
Kastenmeier
King, Calif.
Lindsay
Long, Md.
Matsunaga
Moorhead
Moss
Nedzi
O'Hara, Ill.
Olson, Minn.
Reuss
Robison
Roosevelt
Rosenthal
Roybal
Ryan, N.Y.
Sickles
Sisk
Staebler

PRESENT—1

Mathias

NOT VOTING—54

Anderson
Ayres
Baring
Barrett
Beermann
Bennett, Mich.
Blatnik
Boggs
Bolling
Bruce
Buckley
Casey
Conte
Cooley
Dent
Dorn
Edmondson
Finnegan
Fino
Fisher
Fogarty
Forrester
Gary
Grabowski
Grant
Hagan, Ga.
Hall
Joelson
Kee
Keogh
Lankford
Leggett
MacGregor
Miller, N.Y.
Monagan
Mosher
Multer
Pilcher
Powell
Rains
Reid, N.Y.
Schenck
Scott
Shelley
Sheppard
Siler
Skubitz
Slack
Steed
Taft
Thompson, N.J.
Walter

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Walter for, with Mr. Multer against.
Mr. Hall for, with Mr. Mosher against.
Mr. Bruce for, with Mr. Mathias against.
Mr. Siler for, with Mr. MacGregor against.

Until further notice:

Mr. Keogh with Mr. Anderson.
Mr. Boggs with Mr. Miller of New York.
Mr. Casey with Mr. Conte.
Mr. Dorn with Mr. Schenck.
Mr. Edmondson with Mr. Bennett of Michigan.
Mr. Fisher with Mr. Skubitz.
Mr. Monagan with Mr. Fino.
Mr. Grabowski with Mr. Beerman.
Mr. Hogan of Georgia with Mr. Reid of New York.
Mr. Thompson of New Jersey with Mr. Ayres.
Mr. Steed with Mr. Taft.
Mr. Blatnik with Mrs. Kee.
Mr. Shelley with Mr. Baring.
Mr. Sheppard with Mr. Powell.
Mr. Joelson with Mr. Buckley.
Mr. Fogarty with Mr. Dent.
Mr. Rains with Mr. Finnegan.
Mr. Gary with Mr. Lankford.
Mr. Scott with Mr. Cooley.

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Mr. Slack with Mr. Pilcher.
Mr. Barrett with Mr. Forrester.
Mr. Leggett with Mr. Grant.

Mr. MATHIAS. Mr. Speaker, I have a live pair with the gentleman from Indiana [Mr. BRUCE]. If he were present, he would have voted "yea." I voted "nay." I withdraw my vote and vote "present."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM FOR WEEK OF MAY 13

(Mr. HALLECK asked and was given permission to address the House for 1 minute.)

Mr. HALLECK. Mr. Speaker, I take this time to inquire of the majority leader as to the program, if any, for the balance of the week, and the program for next week.

Mr. ALBERT. If the gentleman will yield, the legislative program for this week has been completed. It will be my intention following the announcement of the program to ask unanimous consent that when the House adjourns today it adjourns to meet on Monday next.

The program for next week is as follows:

Monday is District Day. There are four bills to be considered:

H.R. 3191, to exempt life insurance companies from the act of February 4, 1913, regulating loaning of money on securities in the District of Columbia.

H.R. 4273, authorizing suspension or dismissal of students in District of Columbia public schools.

H.R. 4274, authorizing the reasonable use of force by principals and teachers to maintain order in District of Columbia public schools.

H.R. 4276, Horizontal Property Act of the District of Columbia.

Tuesday, House Resolution 314, to grant additional travel authority to the Committee on Education and Labor.

Wednesday and the balance of the week, H.R. 6009, to provide, for the periods ending June 30, 1963, and August 31, 1963, temporary increases in the public debt limit set forth in section 21 of the Second Liberty Bond Act. This bill will be considered under a closed rule, with 4 hours of general debate.

This announcement, of course, is subject to the usual reservation that conference reports may be brought up at any time and that any further program or any change in the program may be announced later.

Mr. HALLECK. I thank the gentleman.

ADJOURNMENT UNTIL MONDAY, MAY 13

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

CALENDAR WEDNESDAY BUSINESS

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule on Wednesday next be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

RUMANIAN INDEPENDENCE DAY

(Mr. BRAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRAY. Mr. Speaker, the 10th of May is the traditional national holiday of the Rumanian people. Unfortunately it cannot be openly celebrated in their land, which is currently under Soviet domination.

This date is celebrated because it is the anniversary of three great events in the history of Rumania.

First was the proclamation in 1866 that Charles would be Prince of Rumania. Fifteen years later Charles I was crowned King of Rumania. On this date in 1877 Rumania proclaimed her independence and freedom from the outmoded Ottoman Empire.

Now, however, the Rumanian people are living again under the repression of a foreign ruler. The Soviets have changed the traditional celebration from the 10th of May to the 9th of May, which is the anniversary of the Soviet victory. But although the official celebration takes place on the 9th of May, it is the traditional allegiance to independence celebrated on the 10th of May which warms the hearts of many Rumanians and keeps alive the hopes for restored freedom in the future.

All real Americans are looking to the day when Rumania and the Rumanian people will again be free.

Mr. McCORMACK. Mr. Speaker, Rumanians are the largest ethnic group in the Balkan Peninsula, and these 17 million productive and courageous peasants occupy one of the largest and most fertile lands in the whole region. They have lived in their historic homeland since time immemorial, and they have had to defend their homes for centuries against invaders and conquerors. They had also to struggle hard and constantly for their freedom and independence. Since the end of the Middle Ages they had faced some formidable and fearless adversaries, and, considering the forbidding, unfavorable conditions under which they faced these adversaries, they did very well. Then early in modern times the invincible steamroller of the Ottoman Turks overran their country. Thus conquered, they were subjected to the oppressive Turkish rule which they endured for 400 years. But they never lost sight of their national goal, their freedom and independence. In the first part of the 1800's they staged several uprisings and revolts, but each time they fell short of their goal, and were ruthlessly punished for their attempts to free themselves. But in the middle of the century the Crimean War provided them with a welcome opportunity.

At the conclusion of that war in 1856 European powers pressed the Sultan of Turkey to allow the Rumanians autonomy by setting up two autonomous principalities there. Later these two principalities were united under the rule of a prince. But mere autonomy was not the goal of the Rumanian people; they wanted independence. So even under autonomy they continued their struggle, and on May 10, 1877, they again raised the banner of revolt against the Turks by proclaiming their independence. In the Russo-Turkish War of 1877–78 of course they fought on the side of Russia, and the successful conclusion of that war assured their independence.

Since those days Rumanians have had their ups and downs. Their country became prosperous at times, and at other times it was poverty-stricken. In the course of the two World Wars it was invaded by enemy forces and ravaged beyond recognition. All these the Rumanians endured, hoping that in the end of World War II they would have their rewards in freedom. Even before the end of the last war, however, they experienced the terrible misfortune of losing not only part of their country, but also their freedom and independence. The Soviet Union robbed them of these inalienable rights. Today Rumanians have become the Soviet Union's captive subjects, a helpless satellite nation behind the Iron Curtain. On the 86th anniversary of their Independence Day I am glad to echo their genuine patriotic sentiments and speak for their undying love for freedom and for an early emancipation from Soviet and Communist domination.

Mrs. FRANCES P. BOLTON. Mr. Speaker, each year it is a distinct pleasure for me to extend my best wishes and hopes to the many Americans of Rumanian descent who are this day celebrating the Rumanian traditional Independence Day. Our continued devotion to the cause of freedom for Rumania also serves to strengthen the cause of freedom at home and everywhere in the world.

In the Royal Proclamation of August 23, 1944, King Michael I, stated, "the new government marks the beginning of an era in which the rights and liberties of all citizens will be respected." Such promising beginnings were soon halted by the Soviet Communist government when, on March 6, 1945, in violation of its solemn undertakings, it intervened in Rumanian affairs and installed the first of a series of puppet governments which have existed in that nation until today.

The travesty which the Communist regime seeks to perpetuate cannot deceive the people of Rumania nor blind the free world to the true meaning of this day or prevent our paying tribute to the fortitude and deep love of liberty of the Rumanian people. I join with all freedom-loving Americans in keeping alive the aspirations and dreams of a free Rumania under God.

Mr. DINGELL. Mr. Speaker, May 10 is a day of great importance to the Rumanian people and her friends through-

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