26 September 1967

NOTE FOR: Mr [redacted] man

Here's the Congressional Record recounting the blow-by-blow debate on the Ervin Bill.

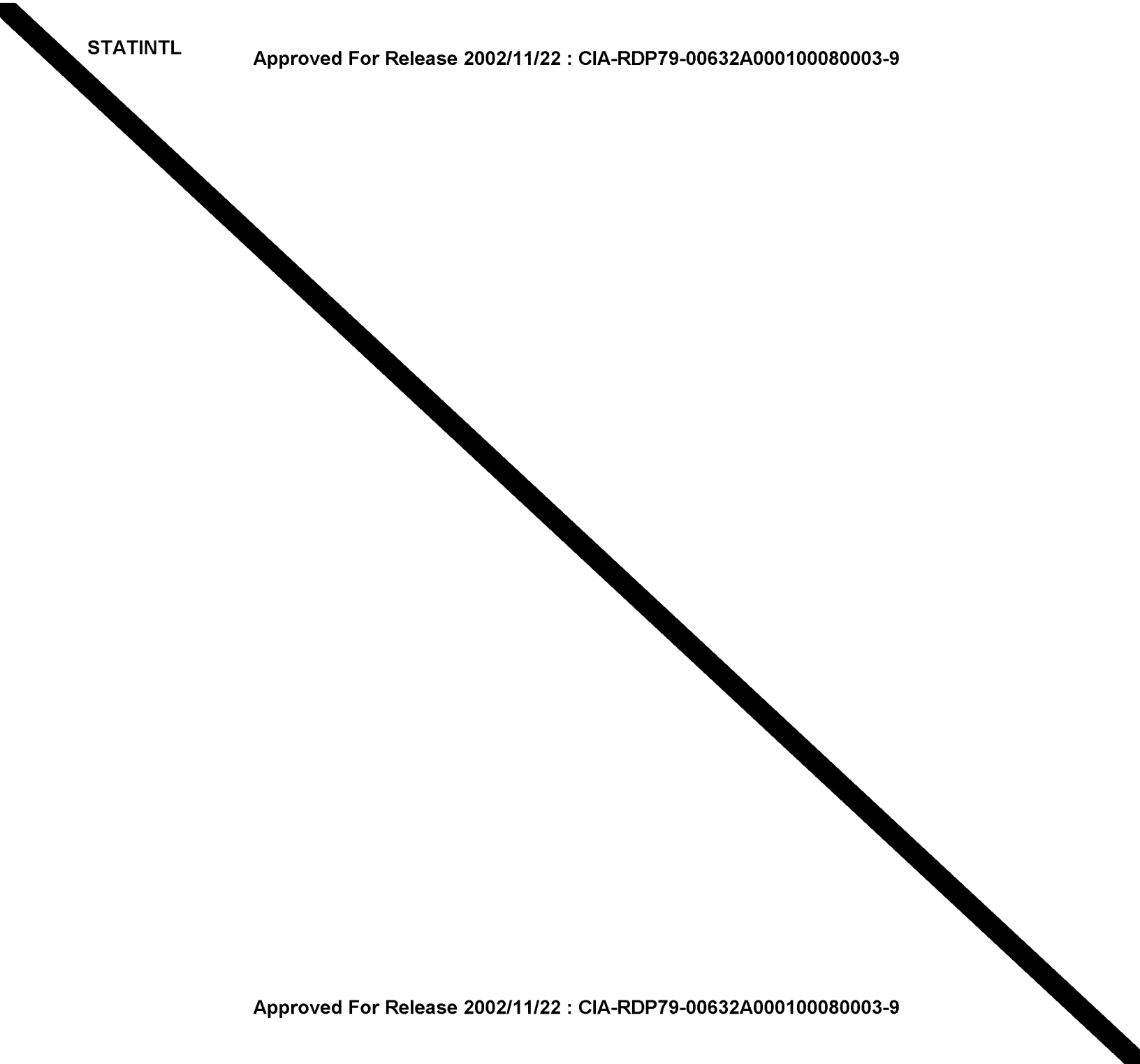
To spare your time, I've marked with clips and red pencil only those parts of the debate that I think are of lasting interest to you. The whole account is fun to read, of course, if you have an evening or a weekend free.

Two rather startling aspects of the debate stand out in my mind:

(1) The lack of any voice in opposition to the Bill except those hoisting the CIA-NSA problem. The administration obviously made an exceedingly feeble effort to put its case across because if there had not been the four votes cast on CIA's behalf there apparently wouldn't have been a single opposing vote!

(2) The naivete of Senator Ervin's repeated assertions that the "only issue under S-1035 that could ever be raised in court concerning the discharge of an employee would be whether he was discharged because he refused to violate the act or refused to accede to an action made illegal by the act." He and his fellow Senators obviously overlooked (or deliberately obscured) the possibility that numerous cases can get into court on the mere allegation that this was why an employee was discharged even though there is not one scintilla of evidence to support such an allegation.

Miriam - Keep available WFV
with the other material.



Approved For Release 2002/11/22 : CIA-RDP79-00632A000100080003-9

that there would be no time to be wasted on such irrelevant and dishonest name-calling and buck-passing.

BLAMING ECONOMIC SYSTEM UNFAIRLY

Or, just as we point an accusing finger at those who succeed within our economic system, so we accuse the system itself of faults which are not of its creation. In short, we tend to blame the economic system for the faults of individuals who operate within it.

It is important to recognize that the quality of any society is directly related to the quality of the individuals who make it up. Therefore, let us stop referring naively to creating a "great" society. It is enough at this stage of our development to aspire to create a "decent" society. And to do so our first task is to help each individual be decent unto himself and in his relationship with other individuals.

A decent society cannot be created out of a vacuum and imposed. It can only evolve out of the lives of constituent members. In this regard, our economic system has become the scapegoat for the failures of our educational, religious and family institutions to develop decent and responsible individuals.

Whenever one blames another group of individuals for one or more of the ills of mankind—beware! He is expressing personal hostility and offering no solution. There is no single scapegoat for the world's ills, unless it be our own personal limitations as finite beings.

Also, the Puritan ethic and religious morality in general have come in for some heavy-handed humor and disdain. I can support that criticism which focuses on arbitrary value judgments. But we seem to be in the process of developing a much more perverse kind of moralism—a moralism which says that since love is the one absolute virtue of man, the one way we will solve the problems of poverty, crime, racial discrimination and the like is by forcing everyone to love everybody else—we must love the white man because he is white, or the black man because he is black, or the poor because he is poor, or the enemy because he is the enemy, or the perverse because he is perverse, or the afflicted because he is afflicted! Rather than because he is a human being, any human being who just happens to be white or black, poor or rich, enemy or friend.

This is a hideous abuse of the notion of love that avoids the hard facts that love is a uniquely personal experience.

If it is idle to attempt to legislate individual morality, it is even more idle, and even arrogant, to attempt to force individual love. There can be no love unless it is genuine and authentic. To love, or go through the pretense of loving, without truly feeling that way is one of the lowest forms of hypocrisy. It is dishonesty at its worst. And the fruit of such dishonesty, as with all forms of dishonesty, is distrust, degradation, chaos. We should respect all people so much that we would not dare demean one by pretending to love him when we don't. . . .

We need to start being honest with ourselves in more ways than one. It is too bad that we have failed to heed the charge that Polonius made to his son: "This above all, to thine own self be true." For were we to do so we would have to admit honestly and joyously that love in its very essence is selfish. Were it not so, there would be none—not real love—only a martyred imitation. . . .

We have serious problems and issues facing our society at the present time. Let there be no doubt about it. But they can be solved over time if we will attack them directly and honestly—that is, if we will be willing to pay the price in time and persistent personal effort.

They will never be subject to instant solutions—to wishing it so. Nor will they be solved by blaming others for their existence, or by making certain segments of society the scapegoat for the general ills of society. Nor will they be solved by [illegible] them by concerning ourselves with remote situations rather than those at hand. Nor will they be solved by application of the perverse notion that to love means only to sacrifice one's self.

The one most certain point is that they will be solved by doers—not people with good intentions, but individuals with good deeds. Not those who talk a good game, but those who play a good game—the achiever.

ENCOURAGE INDIVIDUAL EXCELLENCE

We will never create a good society, much less a great one, until individual excellence and achievement is not only respected but encouraged. That is why I'm for the upper-dog—the achiever—the succeeder. I'm for building an ever better society, and this will only be done by those who take seriously their responsibility for achievement, for making the most of their native ability, for getting done the job at hand.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, if there is no further morning business, I ask that morning business be concluded.

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PROTECTING PRIVACY AND RIGHTS OF FEDERAL EMPLOYEES

Mr. BYRD of West Virginia. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 519, Senate bill 1035.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1035) to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to; and the Senate resumed the consideration of the bill.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. ERVIN. Mr. President, I ask unanimous consent at this time that George Autry and Marcia J. MacNaughton, members of the staff of the Subcommittee on Constitutional Rights, be allowed on the floor of the Senate to assist me in the presentation of this bill. They are members of the staff of the subcommittee which handled this bill, and their intelligent and industrious work on the bill has made the bill possible. Another member of the staff who has made an important contribution is Lewis Evans, who is also present in the Chamber.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

A BILL TO PROTECT THE CONSTITUTIONAL RIGHTS OF GOVERNMENT EMPLOYEES AND TO PREVENT UNWARRANTED INVASIONS OF THEIR PRIVACY—S. 1035

Mr. ERVIN. Mr. President, S. 1035 is a bill unanimously approved by the Judiciary Committee to protect the constitutional rights of civilian employees of the executive branch and to prevent unwarranted governmental invasions of their privacy.

The purpose of the bill is to prohibit indiscriminate requirements that employees and applicants for Government employment:

Disclose their race, religion or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religious beliefs and practices, personal relationships or sexual attitudes and conduct through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings; buy bonds or make charitable contributions under coercion from supervisors; or disclose their own personal assets, liabilities, or expenditures, or those of any member of their families unless, in the case of specified employees, certain items would tend to show a conflict of interest.

It provides a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings.

It accords the right to a civil action in a Federal court for violation or threatened violation of the act.

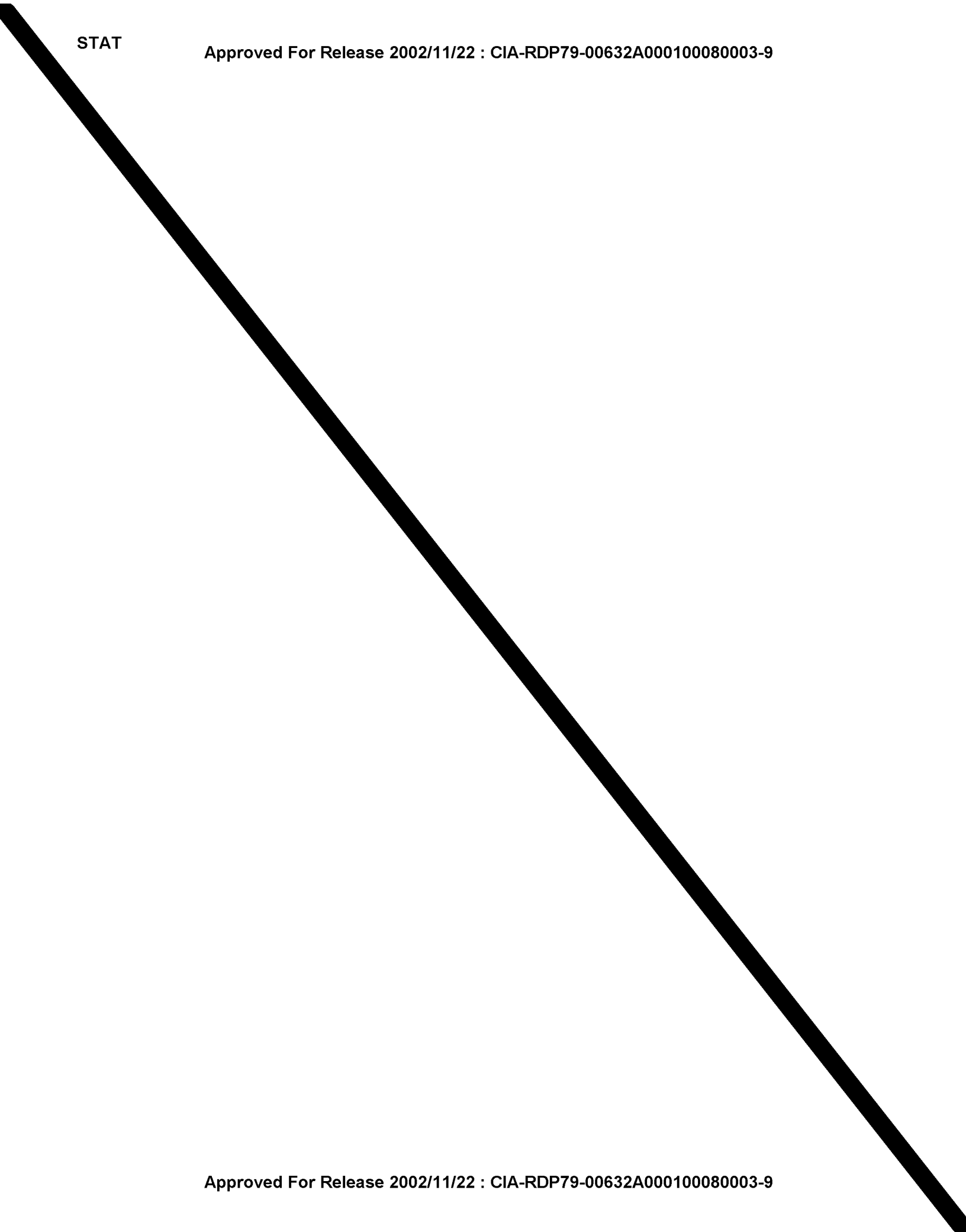
It establishes a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties.

Mr. President, with this bill, Congress has a chance to reaffirm the belief of the American people in a value system as old as Western civilization: That is, in the dignity of the individual; in the unfettered enjoyment of his personal thoughts and beliefs free of the control of government; and in the worth of the expression of his personality in the democratic society.

This bill affords Congress the opportunity to take a stand on one of the most crucial philosophical and practical problems facing our society—the preservation of individual freedom in an age of scientific technology.

Many learned people have analyzed the legal and scientific issues raised by the needs to meet certain goals of government in a country as vast and diverse as ours. But they have balanced the interests back and forth until they have lost track of the basic issues of liberty involved.

The Founding Fathers drafted a constitution that was meant to protect the liberty of Americans of every era, for its principles are enduring ones. One of the fundamental aspects of our liberty as freemen is the privacy of our innermost thoughts, attitudes, and beliefs: this includes not only our freedom to express them as we please, but the freedom from any form of governmental coercion to reveal them. Another aspect is the con- against self-in-



Approved For Release 2002/11/22 : CIA-RDP79-00632A000100080003-9

crimination for civil servants as well as for criminals and others.

In its report on S. 1035, the committee stated:

Each section of the bill is based on evidence from many hundreds of cases and complaints showing that generally in the Federal service, as in any similar organizational situation, a request from a superior is equivalent to a command. This evidence refutes the argument that an employee's response to a superior's request for information or action is a voluntary response, and that an employee "consents" to an invasion of his privacy or the curtailment of his liberty. Where his employment opportunities are at stake, where there is present the economic coercion to submit to questionable practices which are contrary to our constitutional values, then the presence of consent or voluntarism may be open to serious doubt. For this reason the bill makes it illegal for officials to "request" as well as to "require" an employee to submit to certain inquiries or practices or to take certain actions.

Much has been said and written of the problems we deal with in S. 1035. The hearings and committee report, as well as the subcommittee's last three annual reports, amply document the need for such legislation. But let no one be deluded that this bill is a panacea for all the ills besetting the Federal service, all of the invasions of privacy, all of the violations of basic due process principles.

There are many areas left untouched, as the subcommitte daily mail will show. Passage of the bill will correct some violations, and provide some recourses against violations. But more importantly, it will establish a precedent in this area of the law and create a climate for decisionmaking in the executive branch.

The zealous men, the unthinking, careless, hurried, impatient, pressured, or misinformed men will still make unreasonable or illegal decisions. We cannot legislate against all manner of fools or their follies. Where their decisions affect the liberties of the citizen, we can only provide the basic standards by which they can be controlled. For the conscientious administrator anxious to do his job well, achieving the maximum benefit for Government and observing individual rights at the same time, the bill provides a uniform guide. He will not need to sit and ponder whether to follow his conscience or an illegal order or whether or not to utilize a questionable scientific method.

The law will state clearly what his own rights and duties are in certain areas.

I confess that were I legislating alone, I would rather see fewer compromises and exceptions than are now contained in the bill. I see no necessity for any of the practices prohibited in S. 1035.

Unfortunately, some people, both in Government and out, have not yet been alerted to the dangers posed by these policies and practices. For them, the symbolic act or the technique—the means—still triumph over purpose, however unrelated the two.

A threefold need for this bill is outlined in the committee report.

The first is the immediate need to establish a statutory basis for the preservation of certain rights and liberties of those citizens who now work for Government and those who will work for it in the future. The bill not only remedies problems of today but looks to the future in recognition of the almost certain enlargement of the scope of Federal activity and the continuing rise in the number of Americans employed by their Federal Government or serving it in some capacity.

Second, the bill meets the Federal Government's need to attract the best qualified employees, and to retain them with the assurance that they will be treated fairly and as people of honesty and integrity.

Third, is the growing need for the beneficial influence which such a statute would provide in view of the present impact of Federal policies, regulations, and practices on those of State and local government and of private business and industry. Considerable interest in the bill has been demonstrated in this respect. An example is the following comment by Allen J. Graham, secretary of the Civil Service Commission of the city of New York:

It is my opinion, based on over 25 years of former Government service, including some years in a fairly high managerial capacity, that your bill, if enacted into law, will be a major step to stem the tide of "Big Brotherism," which constitutes a very real threat to our American way of life.

In my present position as secretary of the Civil Service Commission of the City of New York, I have taken steps to propose the inclusion of several of the concepts of your bill into the rules and regulations of the city civil service commission.

AMENDMENTS

With one exception, all of the amendments added in subcommittee and committee are meritorious. They clarify possible ambiguities and insure that the purpose of the bill is achieved.

The one exception is the new section 6 pertaining to the Director of the Central Intelligence Agency or the Director of the National Security Agency. Upon a personal finding that any psychological testing, polygraph testing, or financial disclosure is required to protect national security, they could allow these measures in individual cases.

Prior to adoption of this amendment, I met several times with representatives of the CIA and NSA; and all legitimate objections on grounds of security were met.

Personally, I would not favor even the limited exemption in section 6. As I have stated before, the subcommittee's study of psychological testing clearly demonstrated that such tests are both useless and offensive as tools of personnel administration; and my own research has convinced me that polygraph machines are totally unreliable for any purpose. If the security of the United States rests on these devices, we are indeed pitifully insecure. Fortunately, it does not, for th FBI does not use these examinations.

But even if it could be shown that psychological tests and polygraphs have mystical powers and can be used to predict behavior or divine the truth, I would still oppose their being used to probe the religious beliefs, family relationships, or sexual attitudes of American citizens. A fundamental ingredient of liberty is the right to keep such matters to oneself. And without liberty, "national security" is a hollow phrase. The truth is, there is no place for this sort of 20th century witchcraft in a free society.

Nevertheless, I am requesting the committee amendment granting a partial exemption to the CIA and NSA be accepted with the other amendments. I do this for two reasons. First, the amendment will require that use of the examinations by the two agencies be severely curtailed; and for the first time Congress will be withholding its permission for the agencies to kick American citizens around with impunity. Second, it is clear to me that a number of the bill's 55 cosponsors prefer that the CIA and NSA be allowed this partial exemption. I trust the Directors of the Agencies will use it with restraint.

I want to make clear my own convictions that for all of the policies and techniques restricted by this bill, there are valid alternatives.

In this connection, the subcommittee has found especially helpful the testimony of Prof. Alan Westin, of Columbia University, who directed the study by the special committee on science and law of the Bar Association of the City of New York. This bar committee has been concerned with an analysis of the ways in which science and technology are creating new pressures on traditional patterns of privacy in American society. Professor Westin analyzed the alternatives to show how we have allowed polygraphing and personality testing to expand the scope of questioning in a way that our law and our governmental practice have rejected for direct interrogation.

He makes the point which has been evident throughout congressional study of these problems that—

One of the key problems of science and privacy is that things are being done in the name of science which we would not allow to be done directly.

Unfortunately, however the Constitutional Rights Subcommittee study shows that, in practice, the questions which our standards of fairness should not allow to be asked even in personal interviews are being asked directly, and that they are obviously beyond the control of the leadership in the executive branch.

Mr. President, I ask unanimous consent that excerpts from the testimony of Prof. Alan Westin before the Constitutional Rights Subcommittee hearings on S. 3779 be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ERVIN. Mr. President, in addition to the provisos for the Central Intelligence Agency and the National Security Agency, and technical amendments, the following major changes were adopted in the bill and are explained in the committee report.

An exemption was made for questions concerning national origin where the information is needed for security purposes and overseas assignments.

The section relating to prohibitions on patronizing business establishments has been deleted.

The criminal penalties have been deleted.

Provisos were added to assure that sections 1(f) and 2(b) will not be construed to prohibit an officer of the department, agency, or Civil Service Commission from advising the employee or applicant of a specific charge of sexual misconduct made against him and affording him an opportunity to refute the charge.

Another amendment spells out the power of the Attorney General, in certain circumstances, to defend an official against whom a charge is brought.

Section 9 was added to provide that nothing shall prohibit establishment of agency and department grievance procedures for enforcing the act, but the existence of such procedures shall not preclude a person from pursuing other remedies. It also provides that if an individual shall elect to seek a remedy through the Board on Employee Rights, he waives his right to proceed by an independent action through the U.S. district court. Similarly, if under the act he elects to proceed through the court, he waives his right to seek a remedy through the Board on Employee Rights.

I ask unanimous consent that the complete list of amendments from pages 1 to 3 of the committee report be included at this point in the RECORD.

There being no objection, the list of amendments was ordered to be printed in the RECORD, as follows:

AMENDMENTS

1. Amendment to section 1(a) page 2, line 13:

"*Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin of any such employee when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States."

2. Amendment to section 1(b), page 2, line 25: Strike "to" (Technical amendment.)

3. Delete section 1(e), page 4, lines 1–4 (prohibitions or patronizing business establishments,) and renumber following sections as sections 1 (e), (f), (g), (h), (i), (k), and (l), respectively.

4. Delete section 4, page 10, lines 12–23 (Criminal Penalties) and renumber following sections as section 4 and 5, respectively.

5. Amendment to section 1(f), page 4, line 25:

"*Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge."

6. Amendments to section 1(f), page 4, at lines 17 and 19: Change "psychiatrist" to "physician."

7. Amendment to section 1(k), page 7, at line 10: Change (j) to (i).

8. Amendment to section 2(b), page 9, at line 6 and line 9: Change "psychiatrist" to "physician."

9. Amendment to section 2(b), page 9, at line 15:

"*Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge."

10. Amendment to section 5, page 11, line 21: Insert after the word "violation." the following:

"The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act."

11. Amendment to section 6(l), page 16, at line 24: Strike "sign charges and specifications under section 830 (article 30)" and insert in lieu thereof: "convene general courts martial under Section 822 (Article 22)" (Technical amendment.)

12. Amendment to section 6(m), page 17, line 14: Change subsection (j) to (k). (Technical amendment.)

13. Amendment, page 18, add new section 6:

"SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or the Director of the National Security Agency makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security."

14. Amendment, page 18, add new section 8, and renumber following section as section 9.

"SEC. 8. Nothing contained in Sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States District Court or in proceedings before the Board on Employee Rights: *Provided further, however,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section."

Mr. ERVIN. Mr. President, during the last few months, the Civil Service Commission has made a good faith effort to eliminate some of the privacy-invading practices of the Federal Government. Also, as a result of complaints which the subcommittee has sent to the Civil Service Commission, some individual grievances have been remedied.

But while isolated cases of injustice may be corrected by congressional intervention, they do not, as with judicial decisions on the rights of criminals, establish a precedent for protecting rights of all employees. There are vast numbers of Federal agencies with decentralized personnel systems, responsive in different ways to policy directives. In some cases, they lack any control at all by Congress, the President, the Civil Service Commission, or, in some instances, even by the head of the department or agency. They are, in effect, beyond the reach of the law.

The reply of some in the executive branch has been that Government employment is a privilege, and if the individual does not like his treatment, he can quit.

The Association of the Bar of the City of New York has a reply to this. Their report on the bill states:

The Ervin bill recognizes the existence of some serious shortcomings in the behavior of the Executive Branch of the Federal Government as an employer. There are today almost three million persons employed by the Federal Government and the number can be expected to grow. It is not possible, therefore, to deal with the problem within the narrow framework of an employee's option to quit his employment if the conditions are not to his taste.

Employment by the Federal Government should not be regarded as a privilege to be withheld or conditioned as the Government sees fit. Indeed, there is an obligation on the part of the Federal Government to have more than the usual respect for rights of privacy.

It is already a late date for the Federal Government to begin showing respect for the rights of privacy. But the Senate can and must take the first step today by passing S. 1035.

I ask unanimous consent to insert at this point in the RECORD an excerpt from the Judiciary Committee report on the bill—Senate Report No. 534, pages 7 through 44. This contains the legislative history of the bill and a section-by-section analysis of S. 1035.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SENATE REPORT NO. 534, 90TH CONGRESS, FIRST SESSION; PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

LEGISLATIVE HISTORY

Violations of rights covered by S. 1035 as well as other areas of employee rights have been the subject of intensive hearings and investigation by the subcommittee for the last five Congresses.

In addition to investigation of individual cases, the Subcommittee on Constitutional Rights has conducted annual surveys of agency policies on numerous aspects of Government personnel practices. In 1965, pursuant to Senate Resolution 43, hearings were conducted on due process and improper use of information acquired through psychological testing, psychiatric examinations, and security and personnel interviews.

In a letter to the Chief Executive on August 3, the subcommittee chairman stated:

"For some time, the Constitutional Rights Subcommittee has received disturbing reports from responsible sources concerning violations of the rights of Federal employees. I have attempted to direct the attention of appropriate officials to these matters, and although replies have been uniformly courteous, the subcommittee has received no satisfaction whatsoever, or even any indication of awareness that any problem exists. The invasions of privacy have reached such alarming proportions and are assuming such varied forms that the matter demands your immediate and personal attention.

"The misuse of privacy invading personality tests for personnel purposes has already been the subject of hearings by the subcommittee. Other matters, such as improper and insulting questioning during background investigations and due process guarantees in denial of security clearances have also been the subject of study. Other employee complaints, fast becoming too numerous to catalog, concern such diverse matters as psychiatric interviews; lie detectors; race questionnaires; restrictions on communicating with Congress; pressure to support political

parties yet restrictions on political activities; coercion to buy savings bonds; extensive limitations on outside activities yet administrative influence to participate in agency-approved functions; rules for writing, speaking and even thinking; and requirements to disclose personal information concerning finances, property and creditors of employees and members of their families."

After describing in detail the operation of two current programs to illustrate the problems, Senator Ervin commented:

"Many of the practices now in extensive use have little or nothing to do with an individual's ability or his qualification to perform a job. The Civil Service Commission has established rules and examinations to determine the qualifications of applicants. Apparently, the Civil Service Commission and the agencies are failing in their assignment to operate a merit system for our Federal civil service.

"It would seem in the interest of the administration to make an immediate review of these practices and questionnaires to determine whether the scope of the programs is not exceeding your original intent and whether the violations of employee rights are not more harmful to your long-range goals than the personnel shortcuts involved."

Following this letter and others addressed to the Chairman of the Civil Service Commission and the Secretaries of other departments, legislation to protect employee rights was introduced in the Senate.

S. 1035 was preceded by S. 3703 and S. 3779 in the second session of the 89th Congress. S. 3703 was introduced by the chairman on August 9, 1966, and referred to the Judiciary Committee. On August 25, 1966, the chairman received unanimous consent to a request to add the names of 33 cosponsors to the bill. On August 26, 1966, he introduced a bill similar to S. 3703, containing an amendment reducing the criminal penalties provided in section 2. This bill, S. 3779, was also referred to the Judiciary Committee, and both S. 3703 and S. 3779 were then referred to the Subcommittee on Constitutional Rights.

Comments on the bill and on problems related to it were made by the chairman in the Senate on July 18, August 9, August 25, August 26, September 29, October 17 and 18, 1966, and on February 21, 1967.

Hearings on S. 3779 were conducted before the subcommittee on September 23, 29, 30, and October 3, 4, and 5, 1966. Reporting to the Senate on these hearings, the subcommittee chairman made the following statement:

"The recent hearings on S. 3779 showed that every major employee organization and union, thousands of individual employees who have written Congress, law professors, the American Civil Liberties Union, and a number of bar associations agree on the need for statutory protections such as those in this measure.

"We often find that as the saying goes 'things are never as bad as we think they are,' but in this case, the hearings show that privacy invasions are worse than we thought they were. Case after case of intimidation, of threats of loss of job or security clearance were brought to our attention in connection with bond sales, and Government charity drives.

"Case after case was cited of privacy invasion and denial of due process in connection with the new financial disclosure requirements. A typical case is the attorney threatened with disciplinary action or loss of his job because he is both unable and unwilling to list all gifts, including Christmas presents from his family, which he had received in the past year. He felt this had nothing to do with his job. There was the supervisory engineer who was told by the personnel officer that he would have to take disciplinary action against the 25 professional employees in his group who refused to [illegible] violation of

sented being forced to disclose the creditors and financial interests of themselves and members of their families. Yet there are no procedures for appealing the decisions of supervisors and personnel officers who are acting under the Commission's directive. These are not isolated instances; rather, they represent a pattern of privacy invasion reported from almost every State.

"The subcommittee was told that supervisors are ordered to supply names of employees who attend PTA meetings and engage in Great Books discussions. Under one department's regulations, employees are requested to participate in specific community activities promoting local and Federal anti-poverty, beautification, and equal employment programs; they are told to lobby in local city councils for fair housing ordinances, to go out and make speeches on any number of subjects, to supply flower and grass seed for beautification projects, and to paint other people's houses. When these regulations were brought to the subcommittee's attention several weeks ago, we were told that they were in draft form. Yet, we then discovered they had already been implemented and employees whose official duties had nothing to do with such programs were being informed that failure to participate would indicate an uncooperative attitude and would be reflected in their efficiency records.

"The subcommittee hearings have produced ample evidence of the outright intimidation, arm twisting and more subtle forms of coercion which result when a superior is requested to obtain employee participation in a program. We have seen this in the operation of the bond sale campaign, the drives for charitable contributions, and the use of self-identification minority status questionnaires. We have seen it in the sanctioning of polygraphs, personality tests, and improper questioning of applicants for employment.

"In view of some of the current practices reported by employee organizations and unions, it seems those who endorse these techniques for mind probing and thought control of employees have sworn hostility against the idea that every man has a right to be free of every form of tyranny over his mind; they forget that to be free a man must have the right to think foolish thoughts as well as wise ones. They forget that the first amendment implies the right to remain silent as well as the right to speak freely—the right to do nothing as well as the right to help implement lofty ideals.

"It is not under this administration alone that there has been a failure to respect employee rights in a zeal to obtain certain goals. While some of the problems are new, others have been prevalent for many years with little or no administrative action taken to attempt to ameliorate them. Despite congressional concern, administrative officials have failed to discern patterns of practice in denial of rights. They seem to think that if they can belatedly remedy one case which is brought to the attention of the Congress, the public and the press, that this is enough—that the heat will subside. With glittering generalities, qualified until they mean nothing in substance, they have sought to throw Congress off the track in its pursuit of permanent corrective action. We have seen this in the case of personality testing, in the use of polygraphs, and all the practices which S. 3779 would prohibit.

"The Chairman of the Civil Service Commission informed the subcommittee that there is no need for a law to protect employee rights. He believes the answer is 'to permit executive branch management and executive branch employees as individuals and through their unions, to work together to resolve these issues as part of their normal discourse.'

"It is quite clear from the fearful tenor of the letters and telephone calls received by the subcommittee and Members of Congress that [illegible]

any discourse on these matters between the Commission and employees. Furthermore, there are many who do not even fall within the Commission's jurisdiction. For them, there is no appeal but to Congress.

"As for the argument that the discourse between the unions and the Commission will remedy the wrongs, the testimony of the union representatives adequately demolishes that dream.

"The typical attitude of those responsible for personnel management is reflected in Mr. Macy's answer that there may be instances where policy is not adhered to, but "There is always someone who doesn't get the word." Corrective administration action, he says, is fully adequate to protect employee rights.

"Administrative action is not sufficient. Furthermore, in the majority of complaints, the wrong actually stems from the stated policy of the agency or the Commission. How can these people be expected to judge objectively the reasonableness and constitutionality of their own policies? This is the role of Congress, and in my opinion, Congress has waited too long as it is to provide the guidance that is desperately needed in these matters.

"As I have stated on many occasions, S. 3779 is merely a blueprint for discussion: the other 35 cosponsors and I have no pride of authorship in the language. However, we are determined that Congress shall take affirmative action to protect the constitutional rights of employees enunciated in the bill. Many illuminating and valuable suggestions have been made in the course of the subcommittee hearings and investigation, and they will be given careful and thoughtful study. It is my intention to reintroduce the bill next January in the hope of obtaining prompts action on it early in the next session."

S. 1035, 90th Congress

On the basis of the subcommittee hearings, agency reports, and the suggestions of many experts, the bill was amended to meet legitimate objections to the scope and language raised by administrative witnesses and to clarify the intent of its cosponsors that it does not apply to the proper exercise of management authority and supervisory discretion, or to matters now governed by statute.

This amended version of S. 3779 was introduced in the Senate by the chairman on February 21, 1967. As S. 1035, it was referred to the Judiciary Committee. The 54 cosponsors are Senators Fong, Burdick, Smathers, Long of Missouri, Tydings, Bayh, Eastland, Hruska, Scott, Dirksen, Thurmond, Brewster, Montoya, Prouty, Fannin, Bible, Byrd of Virginia, McIntyre, Young of North Dakota, Talmadge, Bartlett, Williams of New Jersey, Lausche, Jordan of North Carolina, Nelson, Jordan of Idaho, Yarborough, Randolph, Inouye, Miller, Metcalf, Mundt, Muskie, Cooper, McCarthy, Brooke, Sparkman, Moss, Hatfield, Hollings, Carlson, Hansen, Clark, Dominick, Church, McGovern, Tower, Hill, Percy, Pearson, Spong, Dodd, Magnuson, and Gruening.

Comparison of S. 1035 and S. 3779

As introduced, the revised bill, S. 1035, differs from S. 3779 of the 89th Congress in the following respects:

1. The section banning requirements to disclose race, religion, or national origin was amended to permit inquiry on citizenship where it is a statutory condition of employment.

2. The provision against coercion of employees to buy bonds or make charitable donations was amended to make it clear that it does not prohibit calling meetings are taking any action appropriate to afford the employee the opportunity voluntarily to invest or donate.

3. A new section providing for administrative remedies and penalties establishes a Board on Employee Rights to receive and consider complaints of violation of

the act, and to determine and administer remedies and penalties. There is judicial review of the decision under the Administrative Procedure Act.

4. A specific exemption for the Federal Bureau of Investigation is included.

5. Exceptions to the prohibitions on privacy-invading questions by examination, interrogations, and psychological tests are provided upon psychiatric determination that the information is necessary in the diagnosis and treatment of mental illness in individual cases, and provided that it is not elicited pursuant to general practice or regulation governing the examination of employees or applicants on the basis of grade, job, or agency.

6. The section prohibiting requirements to disclose personal financial information contains technical amendments to assure that only persons with final authority in certain areas may be subject to disclosure requirements.

7. For those employees excluded from the ban on disclosure requirements, a new section (j), provides that they may only be required to disclose items tending to show a conflict of interest.

8. Military supervisors of civilian employees are included within the prohibitions of the bill, and violation of the act is made a punishable offense under the Uniform Code of Military Justice.

9. A new section 2 has been added to assure that the same prohibitions in section 1 on actions of department and agency officials with respect to employees in their departments and agencies apply alike to officers of the Civil Service Commission with respect to the employees and applicants with whom they deal.

10. Section (b) of S. 3779, relating to the calling or holding of meetings or lectures to indoctrinate employees, was deleted.

11. Sections (c), (d), and (e) of S. 3779—sections (b), (c), and (d) of S. 1035—containing prohibitions on requiring attendance at outside meetings, reports on personal activities and participation in outside activities, were amended to make it clear that they do not apply to the performance of official duties or to the development of skill, knowledge, and abilities which qualify the person for his duties or to participation in professional groups or associations.

12. The criminal penalties were reduced from a maximum of $500 and 6 months' imprisonment to $300 and 30 days.

13. Section (h) of S. 3779 prohibiting requirements to support candidates, programs, or policies of any political party was revised to prohibit requirements to support the nomination or election of persons or to attend meetings to promote or support activities or undertakings of any political party.

14. Other amendments of a technical nature.

QUESTIONS ON RACE, RELIGION, NATIONAL ORIGIN

Many complaints received by the subcommittee concerned official requests or requirements that employees disclose their race, religion, or ethnic or national origin. This information has been obtained from employees through the systematic use of questionnaires or oral inquiries by supervisors.

Chief concern has focused on a policy inaugurated by the Civil Service Commission in 1966, under which present employees and future employees would be asked to indicate on a questionnaire whether they were "American Indian," "oriental," "Negro," "Spanish-American" or "none of these." Approximately 1.7 million employees were told to complete the forms, while some agencies including the Department of Defense continued their former practice of acquiring such information through the "head count" method. Although the Civil Service Commission directive stated that disclosure of such information was voluntary, complaints show that employees and supervisors generally felt it to be mandatory. Administrative efforts to obtain compliance included in some instances, harassment, threats, and intimidation. Complaints in different agencies showed that employees who did not comply received airmail letters at their homes with new forms; or their names were placed on administrative lists for "followup" procedures, and supervisors were advised to obtain the information from delinquent employees by a certain date.

In the view of John McCart, representing the Government Employes' Council, AFL-CIO:

"When the Civil Service Commission and the regulations note that participation by the employee will be voluntary, this removes some of the onus of the encroachment on an individual's privacy. But in an organizational operation of the size and complexity of the Federal Government, it is just impossible to guarantee that each individual's right to privacy and confidentiality will be observed.

"In addition to that, there have been a large number of complaints from all kinds of Federal employees. In the interest of maintaining the rights of individual workers against the possibility of invading those rights, it would seem to us it would be better to abandon the present approach, because there are other alternatives available for determining whether that program is being carried out."

The hearing record contains numerous examples of disruption of employee-management relations, and of employee dissatisfaction with such official inquiries. Many told the subcommittee that they refused to complete the questionnaires because the matter was none of the Government's business; others, because of their mixed parentage, felt unable to state the information.

Since 1963, the policy of the American Civil Liberties Union on the method of collecting information about race has favored the head count wherever possible. Although the policy is presently under review, the subcommittee finds merit in the statement that:

"The collection and dissemination of information about race creates a conflict among several equally important civil liberties: the right of free speech and free inquiry, on the one hand and the rights of privacy and of equality of treatment and of opportunity, on the other. The ACLU approves them all. But at this time in human history, when the principle of equality and nondiscrimination must be vigorously defended, it is necessary that the Union oppose collection and dissemination of information regarding race, except only where rigorous justification is shown for such action. Where such collection and dissemination is shown to be justified, the gathering of information should be kept to the most limited form, wherever possible by use of the head count method, and the confidential nature of original records should be protected as far as possible."

Former Civil Service Commission Chairman Robert Ramspeck told the subcommittee:

"To consider race, color, religion, and national origin in making appointments, in promotions and retention of Federal employees is, in my opinion, contrary to the merit system. There should be no discrimination for or against minority persons in Federal Government employment."

As the hearings and complaints have demonstrated, the most telling argument against the use of such a questionnaire, other than the constitutional issue, is the fact that it does not work. This is shown by the admission by many employees that they either did not complete the forms or that they gave inaccurate data.

Mr. Macy informed the subcommittee:

"In the State of Hawaii the entire program was cut out because it had not been done there before, and it was inadvertently included in this one, and the feeling was that because of the racial composition there it would be exceedingly difficult to come up with any kind of identification along the lines of the card that we were distributing

The Civil Service Commission on May 9 informed the subcommittee that it had "recently approved regulations which will end the use of voluntary self-identification of race as a means of obtaining minority group statistics for the Federal work force." The Commission indicated its decision was based on the failure of the program to produce meaningful statistics. In its place the Commission will rely on supervisory reports based solely on observation, which would not be prohibited by the bill.

As Senator Fong stated:

"It should be noted that the bill would not bar head counts of employee racial extraction for statistical purposes by supervisors. However, the Congress has authorized the merit system for the Federal service and the race, national origin or religion of the individual or his forebears should have nothing to do with his ability or qualifications to do a job."

Section 1(a) of the bill was included to assure that employees will not again be subjected to such unwarranted invasion of their privacy. It is designed to protect the merit system which Congress has authorized for the Federal service. Its passage will reaffirm the intent of Congress that a person's religion, race, and national or ethnic origin or that of his forebears have nothing to do with his ability or qualification to perform the requisite duties of a Federal position, or to qualify for a promotion.

By eliminating official authority to place the employee in a position in which he feels compelled to disclose this personal data, the bill will help to eliminate the basis for such complaints of invasion of privacy and discrimination as Congress has received for a number of years. It will protect Americans from the dilemma of the grandson of an American Indian who told the subcommittee that he had exercised his option and did not complete the minority status questionnaire. He did not know how to fill it out. Shortly thereafter he received a personal memorandum from his supervisor "requesting" him to complete a new questionnaire and "return it immediately." He wrote: "I personally feel that if I do not comply with this request (order), my job or any promotion which comes up could be in jeopardy."

The prohibitions in section 1(a) against official inquiries about religion, and in section 1(e) concerning religious beliefs and practices together constitute a bulwark to protect the individual's right to silence concerning his religious convictions and to refrain from an indication of his religious beliefs.

Referring to these two sections, Lawrence Speiser, director of the Washington office of the American Civil Liberties Union testified:

"These provisions would help, we hope, eliminate a constantly recurring problem involving those new Government employees who prefer to affirm their allegiance rather than swearing to it. All Government employees must sign an appointment affidavit and take an oath or affirmation of office.

"A problem arises not just when new employees enter Government employment but in all situations where the Government requires an oath, and there is an attempt made on the part of those who prefer to affirm. It is amazing the intransigence that arises on the part of clerks or those who require the filling out of these forms, or the giving of the statement in permitting individuals to affirm.

"The excuses that are made vary tremendously, either that the form can only be signed and they cannot accept a form in which 'so help me God' is struck out, because that is an amendment, and they are bound by their instructions which do not permit any changes to be made on the forms at all.

"Also, in connection with the giving of oaths, I have had one case in which an in- [illegible] this question:

'For the purposes of administering the oath, do you believe in God?'

"It is to be hoped that the provisions of this bill would bar practices of that kind. The law should be clear at this time. Title I, United States Code, section 1 has a number of rules of construction, one of which says that wherever the word 'oath' appears, that includes 'affirmation,' and wherever the word 'swear' appears, that includes 'affirm.'

"This issue comes up sometimes when clerks will ask, 'Why do you want to affirm? Do you belong to a religious group that requires an affirmation rather than taking an oath?' And unless the individual gives the right answer, the clerks won't let him affirm. It is clear under the *Torcaso* case that religious beliefs and lack of religious beliefs are equally entitled to the protection of the first amendment."

The objection has been raised that the prohibition against inquiries into race, religion, or national origin would hinder investigation of discrimination complaints. In effect, however, it is expected to aid rather than hinder in this area of the law, by decreasing the opportunities for discrimination initially. It does not hinder acquisition of the information elsewhere; nor does it prevent a person from volunteering the information if he wishes to supply it in filing a complaint or in the course of an investigation.

CONTROL OF EMPLOYEE OPINIONS, OUTSIDE ACTIVITIES

Reports have come to the subcommittee of infringements and threatened infringements on first amendment freedoms of employees: freedom to think for themselves free of Government indoctrination; freedom to choose their outside civic, social, and political activities as citizens free of official guidance; or even freedom to refuse to participate at all without reporting to supervisors.

Illustrative of the climate of surveillance the subcommittee has found was a 13-year-old Navy Department directive, reportedly similar to those in other agencies, warning employees to guard against "indiscreet remarks" and to seek "wise and mature" counsel within their agencies before joining civic or political associations.

In the view of the United Federation of Postal Clerks:

"Perhaps no other right is so essential to employee morale as the right to personal freedom and the absence of interference by the Government in the private lives and activities of its employees. Attempts to place prohibitions on the private associations of employees; mandatory reporting of social contacts with Members of Congress and the press; attempts to "orient" or "indoctrinate" Federal employees on subjects outside their immediate areas of professional interest; attempts to "encourage" participation in outside activities or discourage patronage of selected business establishments and coercive campaigns for charitable donations are among the most noteworthy abuses of Federal employees' right to personal freedom."

An example of improper on-the-job indoctrination of employees about sociological and political matters was cited in his testimony by John Griner, president of the AFL-CIO affiliated American Federation of Government Employees:

"One instance of disregard of individual rights of employees as well as responsibility to the taxpayers, which has come to my attention, seems to illustrate the objectives of subsections (b), (c), and (d), of section 1 of the Ervin bill. It happened at a large field installation under the Department of Defense.

"The office chief called meetings of different groups of employees throughout the day * * *. A recording was played while employees listened about 30 minutes. It was supposedly a speech made at a university, which went deeply into the importance of integration of the races in this country. There was discussion of the United Nations—what a great thing it was—and how there never could be another world war. The person who reported this incident made this comment:

" 'Think of the taxpayers' money used that day to hear that record.' I think that speaks for itself."

Other witnesses were in agreement with Mr. Griner's view on the need for protecting employees now and in the future from any form of indoctrination on issues unrelated to their work. The issue was defined at hearings on S. 3779 in the following colloquy between the subcommittee chairman and Mr. Griner.

"If they are permitted to hold sessions such as this on Government time and at Government expense, they might then also hold sessions as to whether or not we should be involved in the Vietnam war or whether we should not be, whether we should pull out or whether we should stay, and I think it could go to any extreme under those conditions.

"Of course, we are concerned with it, yes. But that is not a matter for the daily routine of work.

"Senator ERVIN. Can you think of anything which has more direful implications for a free America than a practice by which a government would attempt to indoctrinate any man with respect to a particular view on any subject other than the proper performance of his work?

"Mr. GRINER. I think if we attempted to do that we would be violating the individual's constitutional rights.

"Senator ERVIN. Is there any reason whatever why a Federal civil service employee should not have the same right to have his freedom of thought on all things under the sun outside of the restricted sphere of the proper performance of his work that any other American enjoys?

"Mr. GRINER. No, sir."

With one complaint of attempted indoctrination of employees at a Federal installation, a civil servant enclosed a memorandum taken from a bulletin board stating the time, place, and date of a lecture by a sociology professor on the subject of the importance of racial integration. Attendance was to be voluntary but the notice stated that a record would be made of those attending or not attending.

Concerning such a practice, one witness commented: "If I had been a Federal employee and I cared anything about my job, I would have been at that lecture."

Employees of an installation in Pennsylvania complained of requirements to attend film lectures on issues of the cold war.

Witnesses agreed that taking notice of attendance at such meetings constituted a form of coercion to attend. Section 1(b) will eliminate such intimidation. It leaves unaffected existing authority to use any appropriate means, including publicity, to provide employees information about meetings concerning matters such as charity drives and bond-selling campaigns.

Section (c) protects a basic constitutional right of the individual employee to be free of official pressure on him to engage in any civic or political activity or undertaking which might involve him as a private citizen, but which has no relation to his Federal employment. It preserves his freedom of thought and expression, including his right to keep silent, or to remain inactive.

This section will place a statutory bar against the recurrence of employee complaints such as the following received by a Member of the Senate:

"DEAR SENATOR ———: On ———, 1966, a group of Treasury Department administrators were called to Miami for a conference led by ———, Treasury Personnel Officer, with regard to new revisions in Chapter 713 of the Treasury Personnel Manual.

"Over the years the Treasury Department has placed special emphasis on the hiring of Negroes under the equal employment opportunity program, and considerable progress in that regard has been made. However, the emphasis of the present conference was that our efforts in the field of equal employment opportunity have not been sufficient. Under the leadership of President Johnson and based on his strong statement with regard to the need for direct action to cure the basic causes leading to discrimination, the Treasury Department has now issued specific instructions requiring all supervisors and line managers to become actively and aggressively involved in the total civil rights problem.

"The requirements laid down by chapter 713 and its appendix include participation in such groups as the Urban League, NAACP, etc. (these are named specifically) and involvement in the total community action program, including open housing, integration of schools, etc.

"The policies laid down in this regulation, as verbally explained by the Treasury representatives at the conference, go far beyond any concept of employee personnel responsibility previously expressed. In essence, this regulation requires every Treasury manager or supervisor to become a social worker, both during his official hours and on his own time. This was only tangentially referred to in the regulation and its appendages, but was brought out forcefully in verbal statements by Mr. ——— and ———. Frankly, this is tremendously disturbing to me and to many of the other persons with whom I have discussed the matter. We do not deny the need for strong action in the field of civil rights, but we do sincerely question the authority of our Government to lay out requirements to be met on our own time which are repugnant to our personal beliefs and desires.

"The question was asked as to what disciplinary measures would be taken against individuals declining to participate in these community action programs. The reply was given by the equal employment officer, that such refusal would constitute an undesirable wo k attitude bordering on insubordination and should at the very least be reflected on the annual efficiency rating of the employee.

"The principles expressed in these regulations and in this conference strike me as being of highly dangerous potential. If we, who have no connection with welfare or social programs, can be required to take time from our full-time responsibilities in our particular agencies and from the hours normally reserved for our own refreshment and recreation to work toward integration of white neighborhoods, integration of schools by artificial means, and to train Negroes who have not availed themselves of the public schooling available, then it would seem quite possible that under other leadership, we could be required to perform other actions which would actually be detrimental to the interests of our Nation."

Testifying on the issue of reporting outside activities, the American Civil Liberties Union representative commented:

"To the extent that individuals are apprehensive they are going to have to, at some future time, tell the Government about what organizations they have belonged to or been associated with, that is going to inhibit them in their willingness to explore all kinds of ideas, their willingness to hear speakers, their willingness to do all kinds of things. That has almost as deadening an effect on free speech in a democracy as if the opportunities were actually cut off.

"The feeling of inhibition which these kinds of questions cause is as dangerous, it seems to me, as if the Government were making actual edicts."

Witnesses gave other examples of invasion of employees' private lives which would be halted by passage of the bill.

In the southwest a division chief dispatched a buck slip to his group supervisors

demanding: "the names * * * of employees * * * who are participating in any activities including such things as: PTA in integrated schools, sports activities which are inter-social, and such things as Great Books discussion groups which have integrated memberships."

In a Washington office of the Department of Defense, a branch chief by telephone asked supervisors to obtain from employees the names of any organizations they belonged to. The purpose apparently was to obtain invitations for Federal Government officials to speak before such organizations.

Reports have come to the subcommittee that the Federal Maritime Commission, pursuant to civil service regulations, requested employees to participate in community activities to improve the employability of minority groups, and to report to the chairman any outside activities.

In addition to such directives, many other instances involving this type of restriction have come to the attention of the subcommittee over a period of years. For example, some agencies have either prohibited flatly, or required employees to report, all contacts, social or otherwise, with Members of Congress or congressional staff members. In many cases reported to the subcommittee, officials have taken reprisals against employees who communicated with their Congressmen and have issued directives threatening such action.

The Civil Service Commission on its Form 85 for non-sensitive positions requires an individual to list: "Organizations with which affiliated (past and present) other than religious or political organizations or those with religious or political affiliations (if none, so state)."

PRIVACY INVASIONS IN INTERVIEWS, INTERROGATIONS, AND PERSONALITY TESTS

Although it does not outlaw all of the unwarranted personal prying to which employees and applicants are now subjected, section 1(e) of the reported bill will prohibit the more serious invasions of personal privacy reported. The subcommittee believes it will also result in limitations beyond its specific prohibitions by encouraging administrative adherence to the principles it reflects.

It will halt mass programs in which, as a general rule, agency officials conduct interviews during which they require or request applicants or employees to reveal intimate details about their habits, thoughts, and attitudes on matters unrelated to their qualifications and ability to perform a job.

It will also halt individual interrogations such as that involving an 18-year-old college sophomore applying for a summer job as a secretary at a Federal department.

In the course of an interview with a department investigator, she was asked wide-ranging personal questions. For instance, regarding a boy whom she was dating, she was asked questions which denoted assumptions made by the investigator, such as:

"Did he abuse you?

"Did he do anything unnatural with you? You didn't get pregnant, did you?

"There's kissing, petting, and intercourse, and after that, did he force you to do anything to him, or did he do anything to you?"

The parent of this student wrote:

"This interview greatly transcended the bounds of normal areas and many probing personal questions were propounded. Most questions were leading and either a negative or positive answer resulted in an appearance of self-incrimination. During this experience, my husband was on an unaccompanied tour of duty in Korea and I attempted alone, without sucess, to do battle with the Department.

"I called and was denied any opportunity to review what had been recorded in my daughter's file. Likewise my daughter was denied any review of the file in order to verify or refute any of the record made by the State Department interviewer. This entire matter was handled as if applicants for State Department employment must subject themselves to the personal and intimate questions and abdicate all claims to personal rights and privileges.

"As a result of this improper intrusion into my daughter's privacy which caused all great mental anguish, I had her application for employment withdrawn from the State Department. This loss of income made her college education that much more difficult.

"Upon my husband's return, we discussed this entire situation and felt rather than subjecting her again to the sanctioned methods of Government investigation we would have her work for private industry. This she did in the summer of 1966, with great success and without embarrassing or humiliating Gestapo-type investigation."

Upon subcommittee investigation of this case, the Department indicated that this was not a unique case, because it used a "uniform policy in handling the applications of summer employees as followed with all other applicant categories." It stated that its procedure under Executive Order 10450 is a basic one "used by the Department and other executive agencies concerning the processing of any category of applicants who will be dealing with sensitive, classified material." Its only other comment on the case was to assure that "any information developed during the course of any of our investigations that is of a medical nature, is referred to our Medical Division for proper evaluation and judgment." In response to a request for copies of departmental guidelines governing such investigations and interviews, the subcommittee was told they were classified.

Section 1(e) would protect every employee and every civilian who offers his services to his Government from indiscriminate and unauthorized requests to submit to any test designed to elicit such information as the following:

"My sex life is satisfactory.

"I have never been in trouble because of my sex behavior.

"Everything is turning out just like the prophets of the Bible said it would.

"I loved my father.

"I am very strongly attracted by members of my own sex.

"I go to church almost every week.

"I believe in the second coming of Christ.

"I believe in a life hereafter.

"I have never indulged in any unusual sex practices.

"I am worried about sex matters.

"I am very religious (more than most people).

"I loved my mother.

"I believe there is a Devil and a Hell in afterlife.

"I believe there is a God.

"Once in a while I feel hate toward members of my family whom I usually love.

"I wish I were not bothered by thoughts about sex."

The subcommittee hearings in 1965 on "Psychological tests and constitutional rights" and its subsequent investigations support the need for such statutory prohibitions on the use of tests.

In another case, the subcommittee was told, a woman was questioned for 6 hours "about every aspect of her sex life—real, imagined, and gossiped—with an intensity that could only have been the product of inordinately salacious minds."

The specific limitation on the three areas of questioning proscribed in S. 1035 in no way is intended as a grant of authority to continue or initiate the official eliciting of personal data from individuals on subjects not directly proscribed. It would prohibit investigators, or personnel, security and medical specialists from indiscriminately requiring or requesting the individual to supply orally or through tests, data on religion, family life, [illegible] physician from doing so if he has reason to believe the employee is "suffering from mental illness" and believes the information is necessary to make a diagnosis. Such a standard is stricter than the broad "fitness for duty" standard now generally applied by psychiatrists and physicians in the interviews and testing which an employee can be requested and required to undergo.

There is nothing in this section to prohibit an official from advising an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge voluntarily.

POLYGRAPHS

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs, practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate the use of so-called lie detectors by Government, it assures that where such devices are used for these purposes it will be only in limited areas.

John McCart, representing the Government Employees Council of AFL–CIO, supported this section of the bill, citing a 1965 report by a special subcommittee of the AFL–CIO executive council that:

"The use of lie detectors violates basic considerations of human dignity in that they involve the invasion of privacy, self-incrimination, and the concept of guilt until proven innocent."

Congressional investigation[1] has shown that there is no scientific validation for the effectiveness or accuracy of lie detectors. Yet despite this and the invasion of privacy involved, lie detectors are being used or may be used in various agencies of the Federal Government for purposes of screening applicants or for pursuing investigations.

This section of the bill is based on complaints such the following received by the subcommittee:

"When I graduated from college in 1965, I applied at NSA. I went to 2 days of testing, which apparently I passed because the interviewer seemed pleased and he told me that they could always find a place for someone with my type of degree.

"About one month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the district line in Maryland, I talked with the polygraph operator, a young man around 25 years of age. He explained how the machine worked, etc. He ran through some of the questions before he attached the wires to me. Some of the questions I can remember are—

" 'When was the first time you had sexual relations with a woman?

" 'How many times have you had sexual intercourse?

" 'Have you ever engaged in homosexual activities?

" 'Have you ever engaged in sexual activities with an animal?

" 'When was the first time you had intercourse with your wife?

" 'Did you have intercourse with her before you were married? How many times?'

"He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked

[1] Hearings and reports on the use of polygraphs as "lie detectors," by the Federal Government before a Subcommittee of the House Committee on Government Operations, 1965 and 1966.

everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could ever get away with asking a girl those kind of questions.

"When I was finished, I felt as though I had been in a 15 round championship boxing match. I felt exhausted. I made up my mind then and there that I wouldn't take the job even if they wanted me to take it. Also, I concluded that I would never again apply for a job with the Government, especially where they make you take one of these tests."

Commenting on this complaint, the subcommittee chairman observed:

"Certainly such practices should not be tolerated even by agencies charged with security missions. Surely, the financial, scientific, and investigative resources of the Federal Government are sufficient to determine whether a person is a security risk, without strapping an applicant to a machine and subjecting him to salacious questioning. The Federal Bureau of Investigation does not use personality tests or polygraphs on applicants for employment. I fail to see why the National Security Agency finds them so fascinating."

COERCION TO BUY BONDS AND CONTRIBUTE TO CAUSES

The hearing record and subcommittee complaint files amply document the need for statutory protection against all forms of coercion of employees to buy bonds and contribute to causes. Involved here is the freedom of the individual to invest and donate his money as he sees fit, without official coercion. As the subcommittee chairman explained:

"It certainly seems to me that each Federal employee, like any other citizen in the United States, is the best judge of his capacity, in the light of his financial obligations, to participate or decide whether he will participate and the extent of his participation in a bond drive. That is a basic determination which he and he alone should make.

"I think there is an interference with fundamental rights when coercion of a psychological or economic nature is brought on a Federal employee, even to make him do right. I think a man has to have a choice of acting unwisely as well as wisely, if he is going to have any freedom at all."

The subcommittee has received from employees and their organizations numerous reports of intimidation, threats of loss of job, and security clearances and of denial of promotion for employees who do not participate to the extent supervisors wish. The hearing record contains examples of documented cases of reprisals, many of which have been investigated at the subcommittee's request and confirmed by the agency involved. It is apparent that policy statements and administrative rules are not sufficient to protect individuals from such coercion.

The president of the United Federation of Postal Clerks informed the subcommittee:

"Section I, paragraph (i) of S. 3779 is particularly important to all Federal employees and certainly to our postal clerks. The extreme arm-twisting coercion, and pressure tactics exerted by some postmasters on our members earlier this year during the savings bond drive must not be permitted at any future time in the Government service.

"Our union received complaints from all over the country where low paid postal clerks, most having the almost impossible problem of trying to support a family and exist on substandard wages, were practically being ordered to sign up for purchase of U.S. savings bonds, or else. The patriotism of our postal employees cannot be challenged. I recently was advised that almost 75 percent of postal workers are veterans of the Armed Forces and have proven their loyalty and patriotism to this great country of ours in the battlefield in many wars. Yet, some postmasters questioned this patriotism and loyalty if any employee could not afford to purchase a savings bond during the drive."

The president of the National Association of Government Employees testified:

"We are aware of instances wherein employees were told that if they failed to participate in the bond program they would be frozen in their position without promotional opportunities.

"In another agency the names of individuals who did not participate were posted for all to see. We have been made aware of this situation for some years and we know that Congress has been advised of the many instances and injustices Federal employees faced concerning their refusal or inability to purchase bonds.

"Certainly, the Government, which has thousands of public relations men in its agencies and departments, should be capable of promoting a bond program that does not include the sledge-hammer approach."

Some concern has been expressed by officials of the United Community Funds and Councils of America, the American Heart Association, Inc., and other charitable organizations, that the bill would hamper their campaigns in Federal agencies.

For this reason, the bill contains a proviso to express the intent of the sponsors that officials may still schedule meetings and take any appropriate action to publicize campaigns and to afford employees the opportunity to invest or donate their money voluntarily. It is felt that this section leaves a wide scope for reasonable action in promoting bond selling and charity drives.

The bill will prohibit such practices as were reported to the subcommittee in the following complaints:

"We have not yet sold our former home and cannot afford to buy bonds while we have both mortgage payments and rental payments to meet. Yet I have been forced to buy bonds, as I was told the policy at this base is, "Buy bonds or Bye Bye."

"In short, after moving 1,700 miles for the good of the Government, I was told I would be fired if I didn't invest my money as my employer directed. I cannot afford to buy bonds, but I can't afford to be fired even more."

* * * * *

"Not only were we forced to buy bonds, but our superiors stood by the time clock with the blanks for the United Givers Fund, and refused to let us leave until we signed up. I am afraid to sign my name, but I am employed at * * *."

A representative of the 14th District Department of the American Federation of Government Employees, Lodge 421 reported: "the case of a GS-13 professional employee who has had the misfortune this past year of underwriting the expenses incurred by the last illness and death of both his mother and father just prior to this recent bond drive. This employee had been unofficially informed by his supervisor that he had been selected for a then existing GS-14 vacancy. When it became known that he was declining to increase his participation in the savings bond drive by increasing his payroll deduction for that purpose, he was informed that he might as well, in effect, kiss that grade 14 goodby."

DISCLOSURE OF ASSETS, DEBTS, AND PROPERTY

Sections (i) and (j) meet a need for imposing a reasonable statutory limitation on the extent to which an employee must reveal the details of his or his family's personal finances, debts, or ownership of property.

The subcommittee believes that the conflict-of-interest statutes, and the many other laws governing conduct of employees, together with appropriate implementing regulations, are sufficient to protect the Government from dishonest employees. More zealous informational activities on the part of management were recommended by witnesses in lieu of the many questionnaires now required.

The employee criticism of such inquiries was summarized as follows:

"There are ample laws on the statute books dealing with fraudulent employment, conflicts of interest, etc. The invasion of privacy of the individual employee is serious enough, but the invasion of the privacy of family, relatives and children of the employee is an outrage against a free society.

"This forced financial disclosure has caused serious moral problems and feelings by employees that the agencies distrust their integrity. We do not doubt that if every employee was required to file an absolutely honest financial disclosure, that a few, though insignificant number of conflict-of-interest cases may result. However, the discovery of the few legal infractions could in no way justify the damaging effects of forced disclosures of a private nature. Further, it is our opinion that those who are intent on engaging in activities which result in a conflict of interest would hardly supply that information on a questionnaire or financial statement. Many employees have indicated that rather than subject their families to any such unwarranted invasion of their right to privacy, that they are seriously considering other employment outside of Government."

The bill will reduce to reasonable proportions such inquiries as the following questionnaire, which many thousands of employees have periodically been required to submit.

(Questionnaire follows:)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

(For Use By Regular Government Employees)

Name (Last, First, Initial)	Title of Position
Date of Appointment in Present Position	Organization Location (Operating Agency, Bureau Division)

PART I. EMPLOYMENT AND FINANCIAL INTERESTS

List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational, or other institutions: (a) with which you are connected as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or (b) in which you have any continuing financial interests, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or (c) in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. If none, write None.

Name and Kind of Organization (Use Part I designations where applicable)	Address	Position in Organization (Use Part I(a) designations, if applicable.	Nature of Financial Interest, e.g., Stocks, Prior Income (Use Part I(b) & (c) designations if applicable)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS—Continued

PART II. CREDITORS

List the names of your creditors other than those to whom you may be indebted by reason of a mortgage on property which you occupy as a personal residence or to whom you may be indebted for current and ordinary household and living expenses such as household furnishings, automobile, education, vacation, and similar expenses. If none, write None.

Name and Address of Creditor	Character of Indebtedness, e.g., Personal Loan, Note, Security

PART III. INTERESTS IN REAL PROPERTY

List your interest in real property or rights in lands, other than property which you occupy as a personal residence. If none, write None.

Nature of Interest, e.g., Ownership, Mortgage, Lien, Investment Trust	Type of Property, e.g., Residence, Hotel, Apartment, Undeveloped Land	Address (If rural, give RFD or county and State)

PART IV. INFORMATION REQUESTED OF OTHER PERSONS

If any information is to be supplied by other persons, e.g., trustee, attorney, accountant, relative, please indicate the name and address of such persons, the date upon which you requested that the information be supplied, and the nature of subject matter involved. If none, write None.

Name and Address	Date of request	Nature of Subject Matter

(This Space Reserved for Additional Instructions)

I certify that the statements I have made are true, complete, and correct to the best of my knowledge and belief.

(Date) (Signature)

The vagueness of the standards for requiring such a broad surrender of privacy is illustrated by the Civil Service Commission's regulation applying this to any employee whose duties have an "economic impact on a non-Federal enterprise."

Also eliminated will be questionnaires asking employees to list "all assets, or everything you and your immediate family own, including date acquired and cost or fair market value at acquisition. (Cash in banks, cash anywhere else, due from others—loans, etc., automobiles, securities, real estate, cash surrender of life insurance; personal effects and household furnishings and other assets.)"

The view of the president of the United Federation of Postal Clerks reflected the testimony of many witnesses endorsing sections 1 (i) and (j) of the bill:

"If the conflict-of-interest questionnaire is of doubtful value in preventing conflict of interest, as we believe, we can only conclude that it does not meet the test of essentiality and that it should be proscribed as an unwarranted invasion of employee privacy. Such value as it may have in focusing employee attention upon the problem of conflict of interest and bringing to light honest oversights that may lead to conflict of interest could surely be achieved by drawing attention to the 26 or more laws pertaining to conflict of interest or by more zealous information activities on the part of management."

The complex problem of preserving the confidential nature of such reports was described by officials of the National Association of Internal Revenue Employees:

"The present abundance of financial questionnaires provides ample material for even more abusive personnel practices. It is almost inevitable that this confidential information cannot remain confidential. Typically, the financial questionnaire is filed with an employee's immediate supervisor. The net worth statements are reviewed in the Internal Revenue Service [illegible] portion of the questionnaire is [illegible] tion, but they pass through the hands of local personnel administrators. We have received a great number of disturbing reports —as have you—that this information about employees' private affairs is being used for improper purposes, such as enforced retirement and the like."

Inadequacies in agency procedures for obtaining such information from employees and for reviewing and storing it, are discussed in the Subcommittee report for the 89th Congress, 2d session. Widely disparate attitudes and practices are also revealed in a Subcommittee study contained in the appendix of the printed hearings on S. 3779.

The bill will make such complaints as the following unnecessary in the future conduct of the Federal Government:

"DEAR SENATOR ERVIN: I am writing to applaud the stand you have taken on the new requirement that Federal employees in certain grades and categories disclose their financial holdings to their immediate superior. Having been a civil service employee for 26 years, and advanced from GS-4 to GS-15, and been cleared for top secret during World War II, and because I currently hold a position that involves the disposition of hundreds of thousands of the taxpayers' money, it is my conviction that my morality and trustworthiness are already a matter of record in the files of the Federal Government.

"The requirement that my husband's financial assets be reported, as well as my own assets and those we hold jointly, was particularly offensive, since my husband is the head of our household and is not employed by Government.

"You might also be interested in the fact that it required 6 hours of after-hours work on our part to hunt up all the information called for and prepare the report. Since the extent of our assets is our private business, it was necessary that I type the material myself, an added chore since I am not a typist.

"Our assets have been derived, in the main, from saving/estate/a portion of my employment [illegible] At our ages (64 and 58) we would be far less deserving of respect had we not made the prudent provisions for our retirement which our assets and the income they earn represent. Yet this reporting requirement carries with it the implication that to have "clean hands" it would be best to have no assets or outside, unearned income when you work for the Federal Government.

"For your information I am a GS-15, earning $19,415 * * *.

"Thank you for speaking out for the continually maligned civil servant.

"Sincerely yours,

"_____ _____."

"DEAR SENATOR ERVIN: I am a GS-12 career employee with over 15 years service.

"The highest moral and ethical conduct has been my goal in each of my positions of employment and I have found this to be true of a vast majority of my fellow workers. It may be true a few people do put material gain ahead of their ethics but generally these people are in the higher echelons of office where their influence is much greater.

"Our office has recently directed each employee from file clerk to the heads of sections to file a "Statement of Financial Interest." As our office has no programs individuals could have a financial interest in and especially no connections with FHA I feel it is no one's business but my own what real estate I own. I do not have a FHA mortgage or any other real property and have no outside employment, hence have nothing to hide by filing a blank form. Few Government workers can afford much real property. The principal of reporting to "Big Brother" in every phase of your private life to me is very degrading, highly unethical and very questionable as to its effectiveness. If I could and did use my position in some way to make a profit I would be stupid to report it on an agency inquiry form. What makes officials think reporting will do away with graft?

"When the directive came out many manhours of productive work were lost in discussions and griping. Daily since that date at some time during the day someone brings up the subject. The supervisors filed their reports as "good" examples but even they objected to this inquiry.

"No single thing was ever asked of Government employees that caused such a decline in their morale. We desperately need a "bill of rights" to protect ourselves from any further invasion of our private lives.

"Fifteen years ago I committed myself to Government service because: (a) I felt an obligation to the Government due to my education under the GI bill, (b) I could obtain freedom from pressures of unions, (c) I could obtain freedom from invasion of my private life and (d) I would be given the opportunity to advance based solely on my professional ability and not on personal politics. At this point I certainly regret my decision to make the Government my career.

"Sincerely

"_____ _____."

"DEAR SENATOR: I write to beg your support of a 'Bill of Rights' to protect Federal employees from official snooping which was introduced by Senator Ervin of North Carolina.

"I am a veteran of two wars and have orders to a third war as a ready reservist. And I know why I serve in these wars: that is to prevent the forces of tyranny from invading America.

"Now, as a Federal employee I must fill out a questionnaire giving details of my financial status. This is required if I am to continue working. I know that this information can be made available to every official in Washington, including those who want to regulate specific details of my life.

"Now I am no longer a free American. For example, I can no longer buy stock of a foreign company because that country may be [illegible] of the right or left.

And I cannot 'own part of America' by buying common stocks until an 'approved list' is published by my superiors.

"I can never borrow money because an agent may decide that debt makes me susceptible to bribery by agents of any enemy power. Nor do I dare own property lest some official may decide I should sell or rent to a person or group not of my choosing.

"In short, I am no longer free to plan my own financial program for the future security of my family. In one day I was robbed of the freedom for which I fought two wars. This is a sickening feeling, you may be sure.

"It seems plain that a deep, moral issue is involved here that concerns every citizen. If this thing is allowed to continue, tomorrow or next year every citizen may come under the Inquisition. The dossier on every citizen will be on file for the use of any person or group having enough overt or covert power to gain access to them.

"Sincerely,

"_____ _____."

In August 1966 Federal employees who were retired from the armed services were told to complete and return within 7 days, with their social security numbers, a 15-page questionnaire, asking, among other things:

"How much did you earn in 1965 in wages, salary, commissions, or tips from all jobs?

"How much did you earn in 1965 in profits or fees from working in your own business, professional practice, partnership, or farm?

"How much did you receive in 1965 from social security, pensions (non-military), rent (minus expenses), interests or dividends, unemployment insurance, welfare payments, or from any other source not already entered?

"How much did other members of your family earn in 1965 in wages, salary, commissions or tips? (Before any deductions.) (For this question, a family consists of two or more persons in the same household who are related to each other by blood, marriage, or adoption.) If the exact amount is not known, give your best estimate.

"How much did other members of your family earn in 1965 in profits or fees from working in their own business, professional practices, partnership, or farm?

"How much did any other member of your family receive in 1965 from social security, pensions, rent (minus expenses), interest or dividends, unemployment insurance, welfare payments; or from any other source not already entered?"

RIGHT TO COUNSEL

Section 1(k) of the bill guarantees to Federal workers the opportunity of asking the presence of legal counsel, of a friend or other person when undergoing an official interrogation or investigation that could lead to the loss of their jobs or to disciplinary action.

The merits of this clause are manifold; not least of which is that uniformity and order it will bring to the present crazy quilt practices of the various agencies concerning the right to counsel for employees facing disciplinary investigations or possible loss of security clearances tantamount to loss of employment. The Civil Service Commission regulations are silent on this critical issue. In the absence of any Commission initiative or standard, therefore, the employing agencies are pursuing widely disparate practices. To judge from the questionnaires and other evidence before the subcommittee, a few agencies appear to afford a legitimate right to counsel, probably many more do not, and still others prescribe a "right" on paper but hedge it in such a fashion as to discourage its exercise. Some apparently do not set any regulatory standard, but handle the problem on an ad hoc basis.

On a matter as critical as this, such a pointless diversity of practice is poor policy. So far as job-protection rights are concerned, all Federal employees should be equal.

A second anomaly in the present state of affairs derives from recent developments in the law of the sixth amendment by the Supreme Court. In view of the decisions of *Miranda* v. *Arizona*, 384 U.S. 436 and *Escobedo* v. *Illinois*, 378 U.S. 478, it is clear that any person (including Federal employees) who is suspected of a crime is absolutely entitled to counsel before being subjected to custodial interrogation. Accordingly, some agencies, such as the Internal Revenue Service, acknowledge an unqualified right to counsel for an employee suspected of crime but decline to do the same for coworkers threatened with the loss of their livelihoods for noncriminal reasons. In the subcommittee's view, this discrimination in favor of the criminal suspect is both bad personnel policy as well as bad law. It would be corrected by this section of the bill.

The ultimate justification for the "right-to-counsel" clause, however, is the Constitution itself. There is no longer any serious doubt that Federal employees are entitled to due process of law as an incident of their employment relation. Once, of course, the courts felt otherwise, holding that absent explicit statutory limitation, the power of the executive to deal wih employees was virtually unfettered.

The doctrinal underpinning of this rule was the 19th-century notion that the employment relation is not tangible "property." Both the rule and its underpinning have now been reexamined. The Supreme Court in recent years has emphasized the necessity of providing procedural due process where a man is deprived of his job or livelihood by governmental action.

While the courts have as yet had no occasion to articulate a specific right to counsel in the employment relationship, there can obviously be no doubt that the right to counsel is of such a fundamental character that it is among the essential ingredients of due process. What is at stake for an employee in a discharge proceeding—often including personal humiliation, obloquy and penury—is just as serious as that involved in a criminal trial. This is not to suggest that all the incidents of our civilized standard of a fair trial can or should be imported into Federal discharge proceedings. But if we are to have fair play for Federal employees, the right of counsel is a sine qua non. It is of a piece with the highest traditions, the fairest laws, and the soundest policy that this country has produced. And, in the judgment of this subcommittee, the clear affirmation of this basic right is very long overdue.

The need for such protection was confirmed at the hearings by all representatives of Government employee organizations and unions.

The president of the National Association of Letter Carriers testified:

"It is a practice in the postal inspection service, when an employee is called in for questioning by the inspectors on a strictly postal matter that does not involve a felony, to deny the right of counsel. The inspectors interrogate the employee at length and, at the completion of the interrogation, one of the inspectors writes out a statement and pressures the employee to sign it before he leaves the room. We have frequently asked the postal inspection service to permit these employees to have counsel present at the time of the interrogation. The right for such counsel has been denied in all except a few cases. If the employee is charged with a felony, then, of course, the law takes over and the right for counsel is clearly established but in other investigations and interrogations no counsel is permitted."

Several agencies contest that right to counsel is now granted in formal adverse action proceedings and that appeals procedures make this section unnecessary for informal questioning. Testimony and complaints from employees indicate that this machinery does not afford employees the opportunity of the employee to defend himself early enough in the investigation to allow a meaningful defense.

The predicament of postal employees as described at the hearings reflects the situation in other agencies as reported in many individual cases sent to the subcommittee. While it is undoubtedly true that in some simple questioning, counsel may not be necessary, in many matters where interrogation will result in disciplinary action, failure to have counsel at the first level reacts against the employee all the way up through the appeal and review. In the case of a postal employee, the subcommittee was told—

"The first level is at the working foreman's level. He is the author of the charges; then the case proceeds to the postmaster, who appointed the foreman and, if the individual is found guilty of the charge at the first level, it is almost inevitable that this position will be supported on the second level. The third level is the regional level, and the policy there is usually that of supporting the local postmaster. A disinterested party is never reached. The fourth level is the Appeals Board, composed of officials appointed by the Postmaster General. In some cases, the region will overrule the postmaster, but certainly the individual does not have what one could style an impartial appeals procedure."

Employees charged with no crime have been subjected to intensive interrogations by Defense Department investigators who ask intimate questions, make sweeping allegations, and threaten dire consequences unless consent is given to polygraph tests. Employees have been ordered to confess orally or to write and sign statements. Such interviews have been conducted after denial of the employee's request for presence of supervisor, counsel, or friend, and in several instances the interrogations have resulted in revocation of a security clearance, or denial of access to classified information by transfer or reassignment with the resulting loss of promotion opportunities.

Witnesses testified that employees have no recourse against the consequences of formal charges based on information and statements acquired during a preliminary investigation. This renders meaningless the distinction urged by the Civil Service Commission between formal and informal proceedings.

EXCEPTIONS

The bill, under section 7, does not apply to the Federal Bureau of Investigation. Furthermore, section 6 provides that nothing in the act will prohibit an official of the Central Intelligence Agency and the National Security Agency from requesting any employee or applicant to take a polygraph test or a psychological test, or to provide a personal financial statement, designed to elicit the personal information protected under subsections 1(e), (f), (i), and (j). In such cases, the Director of the Agency must make a personal finding with regard to each individual to be tested or examined that such test or information is required to protect the national security.

ENFORCEMENT

Enforcement of the rights guaranteed in sections 1 and 2 of the bill is lodged in the administrative and civil remedies and sanctions of sections 3, 4, and 5. Crucial to enforcement of the act is the creation of an independent Board on Employee Rights to determine the need for disciplinary action against civilian and military offenders under the act and to provide relief from violations.

Testimony at the hearings as well as investigation of complaints have demonstrated that in the area of employee rights, a right is only as secure as its enforcement. There is overwhelming evidence that employees have heretofore frequently lacked appropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citizens.

Under the remedies afforded by sections 3, 4, and 5 of the bill, an employee who believes his rights are violated under the act has several courses of action:

(1) He may pursue a remedy through the agency procedures established to enforce the act, but the fact that he does not choose to avail himself of these does not preclude exercise of his right to seek other remedies.

(2) He may register his complaint with the Board on Employee Rights and obtain a hearing. If he loses there, he may appeal to the district court, which has the power to examine the record as a whole and to affirm, modify, or set aside any determination or order, or to require the Board to take any action it was authorized to take under the act.

(3) He may, instead of going directly to the Board, institute a civil action in Federal district court to prevent the threatened violation, or obtain complete redress against the consequences of the violation.

He does not need to exhaust any administrative remedies but if he elects to pursue his civil remedies in the court under section 4, he may not seek redress through the Board. Similarly, if he initiates action before the Board under section 5, he may not also seek relief from the court under section 4.

The bill does not affect any authority, right or privilege accorded under Executive Order 10988, governing employee-management cooperation in the Federal Service. To the extent that there is any overlapping of subject matter, the bill simply provides an additional remedy.

THE BOARD ON EMPLOYEE RIGHTS

As a result of hearings on S. 3779, the section creating a Board on Employee Rights was added to the bill for introduction as S. 1035.

Employees have complained that administrative grievance procedures have often proved ineffective because they are cumbersome, time-consuming, and weighted on the side of management. Not only do those who break the rules go unpunished many times, but the fearful tenor of letters and telephone calls from throughout the country indicate that employees fear reprisals for noncompliance with improper requests or for filing of complaints and grievances. Oral and written directives of warning to this effect have been verified by the subcommittee. Section 1(e) of the bill, therefore, prevents reprisals for exercise of rights granted under the act and in such event accords the individual cause for complaint before the Board or the court.

Concerning the original bill in the 89th Congress, which did not provide for a board, representatives of the 14th department of the American Federation of Government Employees commented that the remedies are the most important aspects of such a bill because "unless due process procedures are explicitly provided, the remaining provisions of the bill may be easily ignored or circumvented by Federal personnel management. As a matter of fact, we believe, the reason employees' rights have been eroded so rapidly and so devastatingly in the last few years is the absence of efficient, expeditious, uniform, and legislatively well defined procedures of due process in the executive departments of the Federal Government."

An independent and nonpartisan Board is assured by congressional participation in its selection and by the fact that no member is to be a government employee. Provision is made for congressional monitoring through detailed reports.

Senator Ervin explained the function of the Board established by section 5 as follows:

"The bill sets up a new independent Federal agency with authority to receive complaints and make rulings on complaints—complaints of individual employees or unions representing employees. This independent agency, which would not be subject in any way to the executive branch of the Government, would be authorized to make rulings on these matters in the first instance. It would make a ruling on action in a particular agency or department that is an alleged violation of the provisions of the bill, with authority either on the part of the agency or the part of the individual or on the part of the union to take an appeal from the ruling of this independent agency to the Federal court for judicial review."

Throughout its study the subcommittee found that a major area of concern is the tendency in the review process in the courts or agencies to do no more than examine the lawfulness of the action or decision about which the employee has complained. For purposes of enforcing the act, sections 3, 4, and 5 assure adequate machinery for processing complaints and for prompt and impartial determination of the fairness and constitutionality of general policies and practices initiated at the highest agency levels or by the Civil Service Commission or by Executive order.

Finding no effective recourse against administrative actions and policies which they believed unfair or in violation of their rghts, ndivdual employees and ther families turned to Congress for redress. Opening the hearings on invasions of privacy, Senator Ervin stated:

"Never in the history of the Subcommittee on Constitutional Rights have we been so overwhelmed with personal complaints, phone calls, letters, telegrams, and office visits. In all of our investigations, I have never seen anything to equal the outrage and indignation from Government employees, their families, and their friends. It is obvious that appropriate remedies are not to be found in the executive branch.

"The complaints of privacy invasions have multiplied so rapidly of late that it is beyond the resources of Congress and its staff to repel effectively each individual official encroachment. Each new program brings a new wave of protest."

Prof. Alan Westin, director of the Science and Law Committee of the Bar Association of the City of New York, testified that these complaints "have been triggered by the fact that we do not yet have the kind of executive branch mechanism by which employees can lodge their sense of discomfort with personnel practices in the Federal Government and feel that they will get a fair hearing, that they will secure what could be called 'employment due process.'"

To meet this problem, Professor Westin proposed an independent board subject to judicial review, and with enforcement power over a broad statutory standard governing all invasion of privacy. Although it is continuing to study this proposal, the subcommittee has temporarily rejected this approach in the interest of achieving immediate enforcement o fthe act and providing administrative remedies for its violation. For this reason it supports the creation of a limited Board of Employee Rights.

Perhaps one of the most important sections of the bill, if not the most important section, according to the United Federation of Postal Clerks, is the provision establishing the Board. The subcommittee was told—

"It would appear absolutely essential that any final legislation enacted into law must necessarily include such a provision. We can offer no suggestions for improvement of this section. As presently constituted the section is easily understood; and the most excellent and inclusive definition of the proposed 'Board on Employees' Rights' which could possibly be enacted into law. It defines the right of employees to challenge violations of the proposed act; defines the procedures involved, as well as the authority of the Board, penalties for violation of the act, as well as establishing the right of judicial review for an aggrieved party, and finally provides for congressional review, and in effect, an annual audit by the Congress of all complaints, decisions, orders, and other related information resulting from activities and operations of the proposed act."

Sanctions

The need for sanctions against offending officials has been evident throughout the subcommittee's investigation of flagrant disregard of basic rights and unpunished flaunting of administrative guidelines and prohibitions. It was for this reason that S. 3779 of the 89th Congress and S. 1035, as introduced, contained criminal penalties for offenders and afforded broad civil remedies and penalties.

Reporting on the experiences of the American Civil Liberties Union in such employee cases, Lawrence Speiser testified:

"In filing complaints with agencies, including the Civil Service Commission, the Army and the Navy, as I have during the period of time I have worked here in Washington, I have never been informed of any disciplinary action taken against any investigator for asking improper questions, for engaging in improper investigative techniques, for barring counsel when a person had a right to have counsel, or for a violation of any number of things that you have in this bill. Maybe some was taken, but I certainly couldn't get that information out of the agencies, after making the complaints. I would suggest that the bill also encompass provision for disciplinary action that would be taken against Federal employees who violate any of these rights that you have set out in the bill."

Other witnesses also pointed to the need for the disciplinary measures afforded by the powers of an independent Board to determine the need for corrective action and punishment, and felt they would be more effective than criminal penalties.

In view of the difficulty of filing criminal charges and obtaining prosecution and conviction of executive branch officials which might render the criminal enforcement provision meaningless for employees, a subcommittee amendment has deleted the criminal penalties in section 4 from the bill as reported.

Although the Civil Service Commission and the executive agencies have advocated placing such administrative remedies within the civil service grievance and appeals system, the subcommittee believes that the key to effective enforcement of the unique rights recognized by this act lies in the employee's recourse to an independent body.

"The theory of our Government," Professor Westin testified, "is that there should be somewhere within the executive branch where this kind of malpractice is corrected and that good administration ought to provide for control of supervision or other practices that are not proper. But the sheer size of the Federal Establishment, the ambiguity of the relationship of the Civil Service Commission to employees, and the many different interests that the Civil Service Commission has to bear in its role in the Federal Government, suggest that it is not an effective instrument for this kind of complaint procedure."

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1(a) makes it unlawful for a Federal official of any department or agency to require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency or any person seeking employment to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears.

This section does not prohibit inquiry concerning citizenship of such individual if his citizenship is a statutory condition of his obtaining or retaining his employment. Nor does it preclude inquiry of the individual concerning national origin when such inquiry is thought necessary or advisable in order to

determine suitability for assignment to activities or undertakings related to national security within the United States or to activities or undertakings of any nature outside the United States.

This provision is directed at any practice which places the employee or applicant under compulsion to reveal such information as a condition of the employment relation. It is intended to implement the concept underlying the Federal merit system by which a person's race, religion, or national origin have no bearing on his right to be considered for Federal employment or on his right to retain a Federal position. This prohibition does not limit the existing authority of the executive branch to acquire such information by means other than self-disclosure.

Section 1(b)

Section 1(b) makes it unlawful for any officer of any executive department or executive agency of the U.S. Government, or for any person acting or purporting to act under this authority, to state, intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the U.S. Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than (1) the performance of official duties to which he is or may be assigned in the department or agency, or (2) the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

Nothing contained in this section is to be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

This provision is designed to protect any employee from compulsion to attend meetings, discussions, and lectures on political, social, and economic subjects unrelated to his duties. It prevents Government officials from using the employment relationship to attempt to influence employee thoughts, attitudes, and actions on subjects which may be of concern to them as private citizens. In particular, this language is directed at practices and policies which in effect require attendance at such functions, including official lists of those attending or not attending; its purpose is to prohibit threats, direct or implied, written or oral, of official retaliation for nonattendance.

This section does not affect existing authority for providing information designed to promote the health and safety of employees. Nor does it affect existing authority to call meetings for the purpose of publicizing and giving notice of activities or service, sponsored by the department or agency, or campaigns such as charitable fund campaigns and savings bond drives.

Section 1(c)

Section 1(c) makes it unlawful for any officer of any executive department or agency, or for any person acting or purporting to act under his authority, to require or request or to attempt to require or request any civilian employee serving in the department or agency to participate in any way in any activities or undertakings unless they are related to the performance of official duties to which he is or may be assigned in the department or agency or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

This section is directed against official practices, requests, or orders that an employee take part in any civic function, political program, or campaign [illegible] other activity which he might enjoy as a private citizen, but which is unrelated to his employment. It does not affect any existing authority to use appropriate techniques for publicizing existence of community programs such as blood-donation drives, or agency programs, benefits or services, and for affording opportunity for employee participation if he desires.

Section 1(d)

Section 1(d) makes it unlawful for any officer of any executive department or agency, or for any person acting under his authority to require or request or attempt to require or request, any civilian employee serving in the department or agency to make any report of his activities or undertakings unless they are related to the performance of official duties or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or (2) unless there is reason to believe that the employee is engaged in outside activities or employment in conflict with his official duties.

This section is a minimum guarantee of the freedom of an employee to participate or not to participate in any endeavor or activity in his private life as a citizen, free of compulsion to report to supervisors his action or his inaction, his involvement or his noninvolvement. This section is to assure that in his private thoughts, actions, and activities he is free of intimidation or inhibition as a result of the employment relation.

The exceptions to the prohibition are not legislative mandates to require such information in those circumstances, but merely provide an area of executive discretion for reasonable management purposes and for observance and enforcement of existing laws governing employee conduct and conflicts of interest.

Section 1(e)

Section 1(e) makes it unlawful for any officer of any executive department or agency, or any person acting under his authority, to require or request any civilian employee serving in the department or agency, or any person applying for employment as a civilian employee to submit to any interrogation or examination or to take any psychological test designed to elicit from him any information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

In accordance with an amendment made after hearings on S. 3779, a proviso is included to assure that nothing contained in this section shall be construed to prevent a physician from eliciting such information or authorizing such test in the diagnosis or treatment of any civilian employee or applicant where he feels the information is necessary to enable him to determine whether or not the individual is suffering from mental illness. The bill as introduced limited this inquiry to psychiatrists, but an amendment extended it to physicians, since the subcommittee was told that when no psychiatrist is available, it may be necessary for a general physician to obtain this information in determining the presence of mental illness and the need for further treatment.

This medical determination is to be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties.

Under an amendment to the bill, this language is not to be construed to prohibit an official from advising an employee or applicant of a specific charge of sexual misconduct made against that person and affording him an opportunity to refute the charge. While providing no authority to request or demand such information, the section does not prevent an official who has received charges of misconduct which might have a [illegible] from obtaining a clarification of the matter if the employee wishes to provide it.

This section would not prohibit all personality tests but merely those questions on the tests which inquire into the three areas in which citizens have a right to keep their thoughts to themselves.

It raises the criterion for requiring such personal information from the general "fitness for duty" test to the need for diagnosing or treating mental illness. The second proviso is designed to prohibit mass-testing programs. The language of this section provides guideliness for the various personnel and medical specialists whose practices and determinations may invade employee personal privacy and thereby affect the individual's employment prospects or opportunities for advancement.

A committee amendment in section 6 provided an exception to this prohibition in the case of the use of such psychological tests by the Central Intelligence Agency and the National Security Agency, only if the Director makes a personal finding that the information is necessary to protect the national security.

Section 1(f)

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority, to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate entirely the use of so-called lie detectors in Government, it assures that where such devices are used, officials may not inquire into matters which are of a personal nature.

As with psychological testing, the Central Intelligence Agency and the National Security Agency, under section 6, are not prohibited from acquiring such information by polygraph, provided certain conditions are met.

Section 1(g)

Section 1(g) makes it illegal for an official to require or request an employee under his management to support the nomination or election of anyone to public office through personal endeavor, financial contribution, or any other thing of value. An employee may not be required or requested to attend any meeting held to promote or support the activities or undertakings of any political party in the United States.

The purpose of this section is to assure that the employee is free from any job-related pressures to conform his thoughts and attitudes and actions in political matters unrelated to his job to those of his supervisors. With respect to his superiors, it protects him in the privacy of his contribution or lack of contribution to the civic affairs and political life of his community, State and Nation. In particular, it protects him from commands or requests of his employer to buy tickets to fundraising functions, or to attend such functions, to compile position papers or research material for political purposes, or make any other contribution which constitutes a political act or which places him in the position of publicly expressing his support or nonsupport of a party or candidate. This section also assures that, although there is no evidence of such activities at present, no Federal agency may in the future improperly involve itself in the undertakings of any political party in the United States, its territories, or possessions.

Section 1(h)

Section 1(h) makes it illegal for an official to coerce or attempt to coerce any civilian employee in the department or agency to invest his earnings in bonds or other govern-

ment obligations or securities, or to make donations to any institution or cause. This section does not prohibit officials from calling meetings or taking any other appropriate action to afford employees the opportunity voluntarily to invest his earnings in bonds or other obligations or voluntarily to make donations to any institution or cause. Appropriate action, in the committee's view, might include publicity and other forms of persuasion short of job-related pressures, threats, intimidation, reprisals of various types, and "blacklists" circulated through the employee's office or agency to publicize his noncompliance.

Section 1(i)

Section 1(i) makes it illegal for an official to require or request any civilian employee in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family. Exempted from coverage under this provision is any civilian employee who has authority to make any final determination with respect to the tax or other liability to the United States of any person, corporation, or other legal entity, or with respect to claims which require expenditure of Federal moneys. Section 6 provides certain exemptions for two security agencies.

Neither the Department of the Treasury nor any other executive department or agency is prohibited under this section from requiring any civilian employee to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law. This proviso is to assure that Federal employees may be subject to any reporting or disclosure requirements demanded by any law applicable to all persons in certain circumstances.

Section 1(j)

Section 1(j) makes it illegal to require or request any civilian employee exempted from application of section 3(i) under the first proviso of that section, to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditure or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

This section is designed to abolish and prohibit broad general inquiries which employees have likened to "fishing expeditions" and to confine any disclosure requirements imposed on an employee to reasonable inquiries about job-related financial interests. This does not preclude, therefore, questioning in individual cases where there is reason to believe the employee has a conflict of interest with his official duties.

Section 1(k)

Section 1(k) makes it unlawful for a Federal official of any department or agency to require or request, or attempt to require or request, a civilian employee who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he wishes.

This section is intended to rectify a long-standing denial of due process by which agency investigators and other officials prohibit or discourage presence of counsel or a friend. This provision is directed at any interrogation which could lead to loss of job, pay, security clearance, or denial of promotion rights.

This right inures to the employee at the inception of the investigation, and the section does not require that the employee be accused formally of any wrongdoing before he may request presence of counsel or friend. The section does not [illegible] department to furnish counsel.

Section 1(l)

Section 1(l) makes it unlawful for a Federal official of any department or agency to discharge, discipline, demote, deny promotion, relocate, reassign, or otherwise impair existing terms or conditions of employment of any employee, or threaten to commit any such acts, because the employee has refused or failed to comply with any action made unlawful by this act or exercised any right granted by the act.

This section prohibits discrimination against any employee because he refuses to comply with an illegal order as defined by this act or takes advantage of a legal right embodied in the act.

SECTION 2

Section 2(a) makes it unlawful for any officer of the U.S. Civil Service Commission or any person acting or purporting to act under his authority to require or request, or attempt to require or request, any executive department or any executive agency of the U.S. Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this act.

Specifically, this section is intended to ensure that the Civil Service Commission, acting as the coordinating policymaking body in the area of Federal civilian employment shall be subject to the same strictures as the individual departments or agencies.

Section 2(b) makes it unlawful for any officer of the U.S. Civil Service Commission, or any person acting or purporting to act under his authority, to require or request, or attempt to require or request, any person seeking to establish civil service status or eligibility for civilian employment, or any person applying for employment, or any civilian employee of the United States serving in any department or agency, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section is intended to assure that the Civil Service Commission shall be subject to the same prohibitions to which departments and agencies are subject in sections 1(e) and (f). The provisos contained in section 1(e) are restated here to assure that nothing in this section is to be construed to prohibit a physician from acquiring such data to determine mental illness, or an official from informing an individual of a specific charge of sexual misconduct and affording him an opportunity to refute the charge.

Section 2(c) makes it unlawful for any officer of the U.S. Civil Service Commission to require or request any person seeking to establish civil service status or eligibility for employment, or any person applying for employment in the executive branch of the U.S. Government, or any civilian employee serving in any department or agency to take any polygraph test designed to elicit from him information concerning his personal relationships with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

This section applies the provisions of section 1(f) to the Civil Service Commission in instances where is has authority over agency personnel practices or in cases in which its officials request information from the applicant or employee.

SECTION 3

This section applies the act to military supervisors by making violations of the act also violations of the Uniform Code of Military Justice.

SECTION 4

Section 4 provides civil remedies for [illegible] its violation.

lation of the act by granting an applicant or employee the right to bring a civil action in the Federal district court for a court order to halt the violation, or to obtain complete redress against the consequences of the violation. The action may be brought in his own behalf or in behalf of himself and others similarly situated, and the action may be filed against the offending officer or person in the Federal district court for the district in which the violation occurs or is threatened, or in the district in which the offending officer or person is found, or in the District Court for the District of Columbia.

The court hearing the case shall have jurisdiction to adjudicate the civil action without regard to the actuality or amount of pecuniary injury done or threatened. Moreover, the suit may be maintained without regard to whether or not the aggrieved party has exhausted available administrative remedies. If the individual complainant has pursued his relief through administrative remedies established for enforcement of the act and has obtained complete protection against threatened violations or complete redress for violations, this relief may be pleaded in bar of the suit. The court is empowered to provide whatever broad equitable and legal relief it may deem necessary to afford full protection to the aggrieved party; such relief may include restraining orders, interlocutory injunctions, permanent injunctions, mandatory injunctions, or such other judgments or decrees as may be necessary under the circumstances.

Another provision of section 4 would permit an aggrieved person to give written consent to any employee organization to bring a civil action on his behalf, or to intervene in such action. "Employee organizations" as used in this section includes any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of Federal civilian employees, and which deals with departments, agencies, commissions, and independent agencies regarding employee matters.

A committee amendment provides that the Attorney General shall defend officers or persons who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of the act.

SECTION 5

Section 5 establishes an independent Board on Employees' Rights, to provide employees with an alternative means of obtaining administrative relief from violations of the act, short of recourse to the judicial system.

Section 5(a) provides for a Board composed of three members, appointed by the President with the consent of the Senate. No member shall be an employee of the U.S. Government and no more than two members may be of the same political party. The President shall designate one member as Chairman.

Section 5(b) defines the term of office for members of the Board, providing that one member of the initial Board shall serve for 5 years, one for 3 years, and one for 1 year from the date of enactment; any member appointed to fill a vacancy in one of these terms shall be appointed for the remainder of the term. Thereafter, each member shall be appointed for 5 years.

Section 5(c) establishes the compensation for Board members at $75 for each day spent working in the work of the Board, plus actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence.

Section 5(d) provides that two members of the Board shall constitute a quorum for the transaction of business.

Section 5(e) provides that the Board may appoint and fix the compensation of necessary employees, and make such expenditures necessary to carry out the functions of the Board.

Section 5(f) authorizes the Board to make necessary rules and regulations to carry out its functions.

Section 5(g) provides that the Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this act, and to conduct a hearing on each such complaint. Moreover, within 10 days after the receipt of such a complaint, the Board must furnish notice of time, place, and nature of the hearing to all interested parties, and within 30 days after concluding the hearing, it must render its final decision regarding any complaint.

Section 5(h) provides that officers or representatives of any employee organization in any degree concerned with employment of the category in which the violation or threat occurs, shall be given an opportunity to participate in the hearing through submission of written data, views, or arguments. In the discretion of the Board they are to be afforded an opportunity for oral presentation. This section further provides that Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or loss in leave or pay. They shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such proceedings shall be held to be Federal employment for all purposes.

Section 5(i) applies to the Board hearings the provisions of the Administrative Procedure Act relating to notice and conduct of hearings insofar as consistent with the purpose of this section.

Section 5(j) requires the Board, if it determines after a hearing that this act has not been violated, to state such determination and notify all interested parties of the findings. This determination shall constitute a final decision of the Board for purposes of judicial review.

Section 5(k) specifies the action to be taken by the Board if, after a hearing, it determines that any violation of this act has been committed or threatened. In such case, the Board shall immediately issue any cause to be served on the offending officer or employee an order requiring him to cease and desist from the unlawful practice or act. The Board is to endeavor to eliminate the unlawful act or practice by informal methods of conference, conciliation, and persuasion.

Within its discretion, the Board may, in the case of a first offense, issue an official reprimand against the offending officer or employee, or order the employee suspended from his position without pay for a period not exceeding 15 days. In the case of a second or subsequent offense, the Board may order the offending officer or employee suspended without pay for a period not exceeding 30 days, or may order his removal from office.

Officers appointed by the President, by and with the advice and consent of the Senate, are specifically excluded from the application of these disciplinary measures; but the section provides that, in the case of a violation of this act by such individuals, the Board may transmit a report concerning such violation to the President and the Congress.

Section 5(l) provides for Board action when any officer of the Armed Forces of the United States or any person acting under his authority violates the act. In such event, the Board shall (1) submit a report to the President, the Congress, and to the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice through informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. When this determination [illegible] section 5(k) [illegible]

Section 5(m) provides that when any party disagrees with an order or final determination of the Board, he may institute a civil action for judicial review in the Federal district court for the district wherein the violation or threatened violation occurred, or in the District Court for the District of Columbia.

The court has jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board, or (2) require the Board to make any determination or order which it is authorized to make under section 5(k) but which it has refused to make. In considering the record as a whole, the court is to set aside any finding, conclusion, determination, or order of the Board unsupported by substantial evidence.

The type of review envisioned here is similar to that obtained under the Administrative Procedure Act in such cases but this section affords a somewhat enlarged scope for consideration of his case than is now generally accorded on appeal of employee cases. The court here has more discretion for action on its own initiative. To the extent that they are consistent with this section, the provisions for judicial review in title 5 of the United States Code would apply.

Section 5(n) provides for congressional review by directing the Board to submit to the Senate and to the House of Representatives an annual report which must include a statement concerning the nature of all complaints filed with it, the determinations and orders resulting from hearings, and the names of all officers or employees against whom any penalties have been imposed under this section.

Section 5(o) provides an appropriation of $100,000 for the Board on Employee Rights.

SECTION 6

Section 6 is a committee amendment which provides that nothing in the act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency, under specific conditions, from requesting an applicant or employee to submit a personal financial statement of the type defined in subsections 1 (i) and (j) or to take any polygraph or psychological test designed to elicit the personal information protected under subsection 1(c) or 1(f).

In these Agencies, such information may be required from the employee or applicant by such methods only if the Director of the Agency makes a personal finding with regard to each individual that such test or information is required to protect the national security.

SECTION 7

Section 7 provides that the Federal Bureau of Investigation shall be excluded from the provisions of this act.

SECTION 8

Section 8 is a subcommittee amendment. It provides that nothing contained in sections 4 or 5 shall be construed to prevent the establishment of department and agency grievance procedures to enforce this act. The section makes it clear, however, that the existence of such procedures are not to preclude any applicant or employee from pursuing any other available remedies. However, if under the procedures established by an agency, the complainant has obtained complete protection against threatened violations, or complete redress for violations, such relief may be pleaded in bar in the U.S. district court or in proceedings before the Board on Employee Rights.

Furthermore, an employee may not seek his remedy through both the Board and the court. If he elects to pursue his remedies [illegible] section 4 to take his case directly to the district court.

SECTION 9

Section 9 is a statement of the standard severability clause. In the event that any provision in this act is held invalid, the remaining parts of the act are not to be affected by its invalidity.

Mr. ERVIN. Mr. President, I ask unanimous consent that various articles and editorials reporting the purposes of the bill be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ERVIN. Mr. President, I ask unanimous consent that the committee amendments to the bill be agreed to en bloc, and that the bill, as amended, be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXHIBIT 1

EXCERPT FROM TESTIMONY OF PROF. ALAN WESTIN BEFORE CONSTITUTIONAL RIGHTS SUBCOMMITTEE HEARINGS ON S. 3779

There is a wealth of evidence, including hearings and reports of this subcommittee, that show the seriousness of the problem of Federal practices in the areas that are being examined in these hearings. First of all, personnel selection and periodic employee checking by means such as polygraphs and personality testings have been used by a wide variety of Federal agencies, and are still used today, often in situations where there is no real need to resort to such techniques of psychological surveillance and when other methods that intrude far less into personal privacy are available to serve the legitimate needs of Federal agencies.

If I can give one example of this—in the general field of personality testing the main argument that is made for the need to use personality testing, either to select among employees or to screen employees for promotion purposes, is that other techniques of assessing them are not as profound or not as penetrating as the personality tests. This is a premise which has never been proved in the psychological literature. More than that, there are other techniques such as the careful interview, record analysis of a person's performance in jobs in the past, aptitude tests that will allow you to form a judgment on the individual's capacity to perform the kind of job that he is being considered for, and simulated exercises which will present the kinds of problems an individual will be called on to deal with on the job. This is illustrated by the in-basket executive technique, which gives a person a set of descriptions of a company, and calls on him to write certain memos and react to certain problems.

Another kind of important test which gets at things important in making personnel decisions, but does not invade privacy improperly are tests to gage whether a prospective employee understands the role that he is going to play in the organization. This calls for individuals to be able to describe what kind of qualities are desirable in a salesman for Sears, Roebuck or a person going to be a farm agent for the Department of Agriculture. To be able to describe these in a way of insuring that the candidate comprehends the social role he is being called on to play, but does not try to find out whether he really is such a person deep down in his private self.

This is not an invasion of privacy because it does not use questions about sex, religion, ideology, and personal life to try to get an individual to reveal what he really is inside, but rather you ask him to project himself [illegible] considered for

in an agency, and thus you are able to ask a person: "Do you understand what is expected of you? Can you play the game that is expected of you as a corporate executive or as an employee of the Government?"

While some might argue that this still calls on him to say things that are an indication of his capacity to be like all others in the organization, it is not an invasion of privacy. * * *

It is often said that an interview is often more of an invasion of privacy than the administration of personality tests. This is not an effective argument because there is a saving human quality in the oral interview. People cannot be as aggressive or as deceptive in interviews as on the personality tests because American society has built up a set of social conventions about what is fair interviewing. Thus you cannot ask a person face to face many of the questions that are written down in personality tests for the individual to fill in or answer.

Also, if you ask someone a question directly, he knows about it, it becomes common knowledge in that agency, its use is reported to hearings such as this subcommittee is conducting or to the press. The questions are there for the public to judge and to assess. If an employer asks a candidate directly, "Do you believe in the second coming of Christ?" this would probably be regarded by the agency itself as an improper question for an interview, and society would decide very quickly that this is not the kind of question it wants in an oral interview for the selection of someone for the Peace Corps. But, because it is wrapped in the mantle of science, and there is supposed to be some kind of unproved scientific verification of this question being relevant in some way to the person's emotional stability, we have crept into the practice of allowing that question to be asked indirectly, through a personality test, in a way that we would never tolerate that question being asked directly in an interview with that person when he applied for selection or evaluation within an agency.

I use these as examples of the fact that we have allowed ourselves to let polygraphing and personality testing expand the scope of questioning in a way that our law and our governmental practice has rejected for direct oral questioning or written interrogation of individuals.

This is one of the key problems of science and privacy—that things are being done in the name of science which we would not allow to be done directly. It is at this point that scientists who support these techniques must justify their case, and do so in a way that persons who defend the personality test have never been able to justify in any public hearing—before the Congress or in their own literature nor has this been done in terms of the ethical issue of the role a psychologist is supposed to play in his relationship to the individual who trusts him and reveals himself for purposes of other kinds of occasions, such as helping an individual who is mentally disturbed or who seeks counseling for vocational choice. Trading on this kind of reputation for confidence the psychologist has allowed himself to become an agent of extraction for institutional employers—corporations and government.

I would suggest that, despite some ongoing work by special committees that have been set up by the executive branch, the Federal executive branch has not established clear and sensitive rules governing the occasions on which techniques such as polygraphs and personality testing might be used, and surely has not yet established careful procedures for conducting such interrogations in any of the limited areas in which it might be justified.

EXHIBIT 2

[From the Columbus (Ohio) Sunday Dispatch, July 30, 1967]

ERVIN BILL SEEKS TO CURTAIL NOSY ACTIONS OF BIG BROTHER

(By Richard Wilson)

Big Brother has been putting in overtime watching his good and faithful servants and reporting to the computers when and how long they go to the rest room, how many are pregnant, how they like their sex, and how many savings bonds they buy.

Five large filing cabinets in the offices of the Constitutional Rights subcommittee of the Senate Judiciary Committee are bulging with the complaints of the good and faithful servants who resent, not to say detest, Big Brother's nosiness.

Anyone who wishes to understand what intrusion of privacy really means can find out by getting a government job.

The range of the intrusion runs to psychiatric interviews, psychological testing, probing interrogations about religious, family, and sexual matters, coercion to buy bonds and support political parties, filling out race and national origin forms, disclosure of personal finances and creditors, pressure to take part in community activities having nothing to do with an employe's job, and the imposition of general behavior patterns conforming to those approved by a supervisor.

A majority of the United States Senate, 55 members, has joined in sponsoring legislation proposed by Sen. Sam J. Ervin, D-N.C., giving federal employes and their families, some 10 million people, a little more privacy.

But Senator Ervin's bill means more than that. It means that the federal government will set an example for many millions more of state and local employes, and for the still many more millions in the computerized world of private employment.

What is most astonishing about Senator Ervin's bill is that it must be stated in statutory form that executives of the government shall not order the federal employe to patronize any business establishment, shall not make him reveal "his attitude or conduct with respect to sexual matters," shall not make him take a lie detector test, shall not require him to buy savings bonds, shall not make him disclose his personal and domestic expenditures, shall not make him buy tickets to testimonial dinners, and so on.

And Senator Ervin's subcommittee could agree to a bill on employe rights only after eliminating criminal penalties for officials violating the act. The bill originally provided for a fine of $300 or 30 days in jail.

This indicated that a majority of the committee members had something less than strong convictions about the workability of the bill.

An independent board on employes rights would be set up and an employe could also make his complaint to a local federal judge.

As weak as these provisions are, they are at least a beginning in the war against the computerization of mankind.

A dozen million white collar workers ought to be grateful for this small beginning and write their congressmen about intrusions of privacy in private as well as public employment.

Either that, or be prepared for the day when all their behavior patterns and beliefs, private as well as public, have to be approved in advance by self-automated supervisors and bosses activated by the holes in IBM cards.

[From the Winston-Salem (N.C.) Twin City Sentinel, July 3, 1967]

ERVIN AND THE SNOOPERS

Before Sen. Sam Ervin Jr. came along, some federal agency chiefs evidently derived a great deal of pleasure—for what such pleasure was worth—snooping into the private lives of government employes.

The Library of Congress, for example, demanded from workers a complete description of their sexual habits. The U.S. Air Force, which was often portrayed by actor James Stewart as a swinging, liberal outfit, prohibited employes from visiting the personnel office without first explaining to their superiors why they wanted to visit the personnel office. The Federal Aviation Agency had a rule which threatened reprisals against employes who wrote letters of complaint to congressmen. The Defense Department twisted a few arms when it came to promoting saving bonds sales among military personnel—and the Civil Service Commission frowned on employes who were not part of a "Be a Booster" group.

These invasions of personal privilege and privacy have now gone by the board, not because the agencies no longer relish snooping but because Sen. Ervin is threatening them with his "Bill of Rights" for government workers. More than 50 senators have signed this bill and chances are that it will be passed in the 90th Congress. And just the threat of such legislation has been enough to scare federal officials into abolishing some of the more absurd regulations.

Sen. Ervin means many things to many people. But his efforts to free federal employes from bureaucratic pressures shows that his fight for individual choice is not strictly limited to restaurant owners engaged in interstate commerce. When Sen. Ervin says that the individual citizen must be absolutely protected from conformist government pressures, he isn't just whistling Dixie—and this connotes an honesty often lacking among those southern congressmen who, unlike Ervin, refuse to apply their "freedom of choice" doctrine to non-southerners.

[From the Washington (D.C.) Evening Star, June 20, 1967]

QUIET VICTORY FOR SENATOR ERVIN

The Civil Service Commission has moved to reduce the number of federal employes required to file statements on their personal finances. The announcement indicates this will affect a substantial segment of government workers, and it strikes us as a wise if overdue move by the Commission.

Until now employes in lower grades, with little or no influence in making policy, had been obliged to submit detailed information about their financial interests and those of their immediate families. The regulation was a blunderbuss, aimed at hundreds of thousands of persons who were not in a position to conduct conflict-of-interest shenanigans, even if they had the desire.

The development demonstrates that proposed legislation doesn't necessarily have to be signed into law to achieve results. Senator Ervin of North Carolina has been pressing for financial disclosure changes and included them in his "bill of rights" for federal employes introduced last year.

So far the Senate Constitutional Rights Subcommittee hasn't acted on the Ervin bill, but the CSC apparently has made this and other changes in response to reforms proposed in his legislation. The Commission has stopped federal agencies from requiring employes to state their race, for example. It also has taken action to bar unwarranted invasions of privacy, such as medical questionnaires which ask intimate sex questions.

The Ervin bill faces a long and difficult road before it can reach the President's desk. Even there the possibility of a veto exists because of objections to the harsh penalties provided for administrators who violate employes' rights.

But if the effects of the bill on the Commission continue at the present rate, it won't be many months before the Senator

will have achieved most of his worthy ends in a bloodless battle.

[From the Greensboro (N.C.) Daily News, July 5, 1967]

PRIVACY FOR FEDERAL EMPLOYEES

Sen. Sam Ervin Jr. continues his praiseworthy efforts to insure that federal employees will not have their private rights threatened by the government they serve.

From an original attempt to protect the national security by assembling personal data files for key workers, some federal agencies have gone on to sweeping personnel policies that include financial investigation, psychological testing, crude sleuthing and "confidential" interviews that border on institutional voyeurism.

Perhaps less insidious but equally annoying are directives for after-hours conduct, discriminatory record-keeping, and group pressures for certain contributions and "loyalty" demonstrations.

Senator Ervin was not the first to notice and deplore all of this, but he is leading a strong attempt to stop it.

The senator's methods are varied. He has written a "bill of rights" for government employees, and has persuaded more than half of the U.S. Senate to sign it. He is pushing for full congressional consideration of the bill and is hoping it can become law.

Using the bill and growing public sentiment for its guarantees, Sen. Ervin is applying pressure on many federal agencies to change "invasion of privacy" policies toward their employees. The threat of congressional action already has had some laudable effects.

The Civil Service Commission, for example, has reduced its widespread requirements for financial disclosures and has stopped insisting on race listings on personnel forms. The Library of Congress has discarded inquiries about sex habits. The Federal Aviation Agency no longer discourages its employees from complaining to their congressmen. The Defense Department and its branches have reduced pressures on servicemen to buy savings bonds and have withdrawn directives concerning off-duty associations.

Obviously, Sen. Ervin is not the only person working to protect the privacy of government workers; other officials and many agency leaders realize that their personnel policies have gone too far. The reported results are encouraging, but the protection needs to be consistent among the agencies and guaranteed for all employees.

In a recent letter to constituents Sen. Ervin noted that "the need for the (privacy) bill is still great, because regulations by government agencies are subject to change according to the whim and caprice of the administrators." Well said.

The senator's immdeiate concern is to protect employees of the federal government, and surely that is the most appropriate starting point. But no less compelling is the need to end invasions of employee privacy in business and industry. For that enormous task, Sen. Ervin will need the help of a great many others who believe that people have a right to be left alone.

[From the Federal Times, May 17, 1967]

BACK DOOR RIGHTS

The bill of rights proposed by Senator Sam Ervin may never become law. But, it already has had a good effect on government policy.

The Civil Service Commission now is acting to put into operation measures to curb abuses cited in the Ervin proposal.

Clear rules are being drafted on the conduct of charity drives. Ahead are restrictions on use of lie detector tests and the requirement for financial statements.

The questions on applications are being revised.

Prompt action by the commission may result in an agreement with Senator Ervin on the contents of his bill.

The present moves constitute a clear admission that the abuses pointed out by Ervin do in fact exist.

It is unfortunate that the commission had to wait to be pushed by Ervin before taking action.

[From the Indianapolis (Ind.) Star, April 23, 1967]

THE BOND BUSINESS

United States savings bonds are an excellent investment. They represent a share in the United States and are about as secure an investment as this nation is itself.

But the persons who purchase these bonds should have the right to decide for themselves if they wish to buy them.

In stories emanating from Vietnam are tales of American fighting men being badgered by their superiors to buy U.S. savings bonds. The reports are so prevalent that one is forced to believe the reports are true, which leads to the belief that the superiors doing the badgering are doing so on orders.

The situation is serious enough that Senator Sam J. Ervin, Jr., of North Carolina has introduced a bill to prohibit coercion of servicemen to buy bonds or contribute to charity fund drives. Senator Ervin said he was "disgusted" with stories of forced sale of bonds to servicemen flowing into his office.

These stories included one from a private who reported that men refusing to buy savings bonds had been threatened with extra duty and told it would "go hard" on anyone who did not subscribe to a bond plan.

We agree with the Army enlisted man who complained that his unit's savings bond officer had threatened to continue savings bond "pep rallies" until every soldier had signed up.

"I am here to do a job," the soldier wrote. "I ask little more than to be left alone to do that job. With commanders perpetually 'on one's back' it does not create a very good atmosphere for completing a mission."

The pay of our fighting men in Vietnam is the highest of any Army in the world. But we submit that those fighting men are privileged to spend their money in whatever way they see fit. By being in the service they are being asked to put their lives on the line for their country. They should not, in addition, be expected to finance their own service unless they choose, of their own free will, without coercion, to do so.

[From the Dothan (Ala.) Eagle, Apr. 24, 1967]

THEY HAVE RIGHTS, TOO

Senator Sam J. Ervin, Jr. (D.-NC) is chairman of the Senate's Subcommittee on Constitutional Rights and, as such, is concerned with the rights of all people—not merely those of loud, pushy and pampered minorities. In fact, he is exploring reports that rights of men in service have been abused and this is something all Americans will applaud.

Furthermore, Senator Ervin is letting the public in on what he finds as his search goes along. His latest accounting, which follows, should be of interest not only to members of the Armed Forces but to their families, friends and the public as well:

In the past two weeks numerous additional complaints about coercion to buy savings bonds have been received from servicemen stationed in many parts of the world, including Vietnam.

In connection with these cases, the Subcommittee's attention was directed to a recent advertisement which appeared in Sunday news supplements on March 26 showing men in battle uniform being presented a Minute Man flag for having over 90% participation in Payroll Savings plans. The ad [illegible] do" and continues: "These men, now in Vietnam, deserve your support. When you purchase Savings Bonds regularly, you show men of the 1st Brigade you're with them."

Commenting on the letters from servicemen, the Chairman stated: "I deeply believe that the fighting men in Vietnam deserve the support of all Americans. However, on the same day that I read this advertisement, I also read a letter from Vietnam signed by over 30 enlisted men expressing support for the Subcommittee's efforts to end coercion of these same fighting men. I can only endorse the plea of the airman who wrote: 'Aren't we doing enough for our fellow man as it is?'"

During March, complaints included the following: A private at Fort Hood, Texas, was called a Communist and threatened with denial of promotion because he refused to participate. Another private wrote that he and his comrades were threatened with K.P. on weekends if they didn't buy bonds. Eventually, the Battalion Commander was presented with his own Minuteman flag for obtaining 100% participation. A private writing from Pleiku, Vietnam, reported that non-buyers had been threatened with extra work and loss of three-day passes. Another soldier wrote from Germany, "It is the policy of this Battery that in order to get promoted, one must have a savings bond." A private wrote that his sergeant had trumped up a minor disciplinary charge and then offered a choice—take the punishment or take a bond. He took a bond.

Letters of support for S. 1036 to prohibit coercion have been received from officers as well as enlisted men. According to a Lt. Colonel, "the charity-abuse bill will protect not only the men, but the commanders themselves who suffer fantastic pressures from post commanders and high-level commanders who want 100% participation. If the soldiers think they are being pressured they should attend a commanders' 'kick-off' meeting at about the time the local community chest drive begins."

A Captain in Massachusetts stated that junior officers are expected to display their military "leadership ability by getting 100% participation from their units." This officer said that after 7 years of such pressure he had finally adopted the practice of contributing his own money to cover those of his men who did not wish to participate. In that way "I can meet the goals set for me and still live with my conscience," the officer wrote. Commenting on these letters, Senator Ervin stated: "As long as senior officers measure the 'leadership ability' of their junior officers in this way, all the fine-sounding directives from the Pentagon expressing support for 'voluntarism' will not end this coercion. These military techniques are by no means limited to servicemen, but apply with equal force to civilian employees of the Defense Department. Clear and unequivocal legislative prohibitions such as S. 1035 and S. 1036 are urgently needed."

[WSPD editorial, April 27, 1967]

CONGRESS SHOULD PROTECT THE GI AGAINST HIGH PRESSURE PROMOTERS

We imagine that it's a rare ex-serviceman who does not recall having his arm twisted by some superior to contribute to a particular charity or to buy savings bonds.

In the past, the long-suffering G.I. would simply continue to submit in silence. He would contribute rather than balk and be marked for some kind of subtle retaliation . . . such as being picked for extra k.p. duty, or missing a pass or liberty.

Apparently, today's serviceman is getting the same kind of pressures to sign up, but he's not keeping mum about it.

According to Senator Sam Ervin, Jr., of North Carolina, letters from men in Viet Nam are flowing into his office. The letters complain of coercion being used to make the [illegible] bonds and charities.

One letter from a father was followed by a second which gave permission to use his name, since his son had been killed in action and was beyond any retaliation for complaining.

Expressing disgust at the whole sorry spectacle of men being squeezed for money while they're risking life and limb, Senator Ervin has introduced a bill to prohibit any and all high-pressure fund-raising.

Here's one proposal that should have been on the books wars ago. Nothing could be more contemptible than an eager-beaver leaning on his subordinates to meet specious quotas that make a mockery of voluntary giving.

There's nothing wrong with servicemen being given an opportunity to save. But if a man doesn't want to contribute to a charity or to buy bonds . . . or if he wants to limit his giving, no superior should be allowed to punish him. This goes double for servicemen who are already doing everything anyone should ask of them.

[From the Rocky Mount (N.C.) Telegram, Apr. 11, 1967]

THE COERCION MUST BE STOPPED

The government drive to force civil federal employes and servicemen to buy U.S. savings bonds and participate in other such fund drives is beginning to stir up protests from the victims. American troops fighting a war in Vietnam complain they are being badgered by their superiors to buy bonds; many are quite unhappy about it.

They have written to Sen. Sam Ervin expressing their anger at being pressured into such contributions. "Aren't we doing enough for our fellowman as it is?" one American airman demanded in a letter to the senior Tar Heel senator.

Ervin has been fighting such harassment for a long time. He has proposed legislation to prohibit coercion of servicemen and civilian employes to buy bonds or contribute to charity fund drives.

One Army specialist-five complained that his unit's "savings bond officer" had threatened to continue having savings-bond pep rallies until every soldier had signed up. This sort of thing disgusts Ervin, as it should disgust every citizen.

Certainly a serviceman wearing the uniform of his country is obligated to obey orders; he would be a poor citizen if he didn't. But there are some limits to what he should be required to do. What he does with his meager pay is his own affair; the government has no right to force him to buy bonds or participate in any other charity fund drive. That should be solely a matter for the individual to decide personally, without coercion.

One soldier wrote: "I am here to do a job. I ask to do that job. With commanders perpetually on one's back, it does not create a very good atmosphere for completing a mission."

From Pleiku, South Vietnam, a private reported that men refusing to buy savings bonds had been threatened with extra work and loss of three-day passes. Some 34 GIs wrote to thank Ervin for his bill. They called arm-twisting to buy bonds "a problem which has troubled members of the military for quite some time."

A private first-class serving in Vietnam now recalled that during training at Ft. Gordon his company commander would announce, "there goes a cheapskate," when spotting non-bond-buying soldiers.

Ervin's files turned up one letter from a father in California who reported his son was fighting in Vietnam, despite the family's conviction that the war was unjust. "This is insult enough without his also being forced to buy savings bonds which he does not want, to make it easier for a government to spend money on a war we are ashamed of."

The man's son [illegible]

Citizens who oppose such bureaucratic coercion of individuals should offer their wholehearted support of Ervin in his fight to gain approval of his proposal which would prohibit coercion of servicemen and civilians who are on the government payroll.

[From the Southern Pines (N.C.) Pilot, Apr. 12, 1967]

MINOR FREEDOMS, TOO, ARE IMPORTANT

A "civilian employee privacy bill," to protect Federal workers from unwarranted invasions of their constitutional rights, was introduced recently in the U.S. Senate by Sen. Sam J. Ervin and 52 other Senators who are disturbed by the shocking amount of coercion and interrogations to which government agencies are increasingly subjecting their employees.

A companion bill was introduced at the same time, to protect the rights of military personnel from coercion in savings bond campaigns and charity drives.

The nation should be grateful for these efforts. How the proposed legislation stands as this is written we do not know, but we hope to see its enactment into law.

"Employees by the thousands," reports Senator Ervin, "are constantly badgered with interrogations on such intimate matters as sex, religion, their willingness to invest in savings bonds, their disclosures of property down to the last bottle-cap received from the Welcome Wagon hostess, and their willingness to work while off-duty for causes unrelated to their employment . . ."

All this, says the Tar Heel senator "smacks of Big Brotherism," and he makes this telling point: "What has been lost sight of in the bureaucratic process is that the best way to attract men of dignity to public service is to treat them with dignity."

There is a built-in coercive potential in a government job, in which a person's employer is not an individual or even a group of individuals, such as a private firm's board of directors—with whom rational, personal dealings are possible—but a vast, authoritative, administrative machine. This is even more true with the armed forces.

On the rights of military personnel, Senator Ervin notes: "I think it is a national disgrace to deny weekend passes, allot restrictions, assign K.P., specify forced marches and give adverse efficiency reports to military personnel simply because they are unwilling to spend their small paycheck as the Government dictates."

There is, of course, a great deal of sentimental nonsense spoken and written about the evils of "big government" and its domination of "private business"—and the like. In a huge nation, with a complicated economy and numerous areas of life in which "private" efforts are necessarily inadequate to meet people's needs, the government must be given and must exercise power.

However, the areas of rights and privileges and dignities which Senator Ervin's proposals would protect are a different matter and irrelevant to the main concerns of government.

Indeed, an old truth is revived here: the petty annoyances of minor bureaucrats can make life more miserable than legitimate major invasions of personal privacy such as the income tax, social security and the draft.

Senator Ervin and his colleagues are on the right track in their attempts to protect what might be called the minor freedoms that all citizens, but most particularly government employees, should enjoy.

[From the Columbia (S.C.) Record, Mar. 16, 1967]

CONTROLLING BIG BROTHER

Big Brother has breathed too long down the necks of Federal employees, intruding without warrant into the privacy of their lives and unduly interfering with their con-

Fifty-two Senators, including Sam Ervin of North Carolina, have set about correcting the injustice. Introducing his bill, the North Carolinian said: "It is time for Congress to forsake its outdated reluctance to tell the Executive branch how to treat its employees. When so many American citizens for so many years are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, or to reveal or not to reveal information about themselves, and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices and to penalize their resumption."

We hope that the bill passes and that Federal employees and their relatives will be relieved of the reams of regulations, guidelines and questionnaires they've been inundated with in the past.

We hope that the new Board on Employee Rights will protect the South Carolina employees of the Federal government from such indiscriminate requirements as disclosure of their race, religion or national origin; compulsory attendance at government-sponsored meetings not directly related to their work; submitting to very personal questioning needless to their employment; and support of political candidates or attendance at political meetings.

Coercion of employees to contribute to various charitable drives, to purchase bonds and the like will no longer—if the bill passes—be legal.

A great burden will have been lifted from the backs and minds of loyal federal servants, who've been smothered with Big Brotherism.

[From the Christian Science Monitor, Mar. 21, 1967]

IMPROPER QUESTIONS

Certain tests and questionnaires used by the federal government threaten an unjustified invasion of the privacy of government employees. For several years, Sen. Sam J. Ervin's subcommittee on constitutional rights has kept a sharp eye open to detect possible infringement of individual liberties.

The subcommittee extensively probed the psychological testing of federal government employees. It pointed to the use of some testing forms which include what many would consider objectionable questions relating to religion, sex, and other personal matters.

From one test, the following, for example, were to be answered "true" or "false":

"Christ performed miracles."

"I pray several times a week."

"I like to talk about sex."

"I am a special agent of God."

More recently, the subcommittee found that various government agencies were using a "report of Medical History" which includes questions of an extremely personal nature, some of which have no apparent bearing on the individual's physical fitness.

After the subcommittee and the American Civil Liberties Union pressed the matter with the United States Civil Service Commission, the commission dropped the form for all civilian employees and job applicants. But the Defense Department continues to use it for military personnel.

A "false or dishonest answer" to this questionnaire is punishable by fine or imprisonment. It was by no means clear that access to these forms would be strictly limited to medical staff. If they were made available to personnel or security officers, answers irrelevant to physical fitness might well have resulted in exclusion from government service.

Government must, of course, obtain certain information about applicants in order to select able, conscientious, and reliable employees. But there are some personal matters which government has no right to extract from an individual as a condition of employment.

We are encouraged that both Congress and

an organization dedicated to the preservation of civil liberties have seen fit to look into the matter. It deserves continuing surveillance.

[From the Winston-Salem (N.C.) Journal, Mar. 8, 1967]

ERVIN'S PRIVACY CAMPAIGN

Sen. Sam Ervin Jr. has summoned the faithful—that means most of us—to join him in a crusade to rid government and industry personnel files of information that infringes on individual privacy.

We are with him, right down to the last cartridge.

It is preposterous, silly, idiotic and maybe even a trifle totalitarianist for a bureaucrat or an industrial personnel director to have in hand the most intimate information about an employee.

Who do you love more—your father or your mother?

Do you ever dream of fire?

Do you seek extra-marital relations?

Have you ever had an impuse to murder another person?

Would you rather go hunting with a group of male friends or take your wife on a second honeymoon?

These and thousands of other similarly goofy questions appear on dozens of "personnel questionnaires" across the land. Sen. Ervin dislikes the compilation of such information—and seeks to put an end to it.

The defenders of such questionnaires and dossiers and lie-detector tests are numerous and powerful; and they rationalize their enthusiasm for this peek-a-boo nonsense by solemnly intoning the need to find out what "motivates" a potential employe. Their arguments rarely touch on the efficiency or dedication of such employees; what they are interested in primarily is his private thoughts, dreams and frustrations.

But what may win this war for those Americans who believe individual privacy to be as important as the constitutional bar to self-incrimination is the fact that those officials who demand such questionnaires are not serious men at all. They are *voyeurs*—sophisticated versions of those poor souls who derive pleasure from peeking into other people's windows at night.

Sen. Ervin believes they can be curbed; and the American people have a greater stake than most of us realize in the success of his efforts to do just that.

[From the Gainesville (Fla.) Sun, Mar. 5, 1967]

BILL OF RIGHTS FOR FEDERAL EMPLOYES

The Central Intelligence Agency (CIA) was accused recently of having threatened to forge psychiatric records in an effort to discredit an officer of the National Student Association (NSA).

Whether this charge is true or not, there is reason to believe that officials in some federal agencies have accused employes of being mentally ill as a method of forcing them to retire. Robert G. Sherrill made this charge in an article in The Nation magazine on Civil Service Commission practices. More than 13,000 civil service employes left government employment between 1955 and 1962 for what was labeled mental or nervous disorders—half of them under protest.

An employe may be told he needs attention and ordered to go to a Civil Service psychiatrist. If he refuses, he can be discharged for violating orders. Usually the employe does not get the opportunity to go to a private psychiatrist. There is no hearing before or after the psychiatric examination.

Senator Sam Ervin (Dem., N.C.) is again pushing for action at this session on legislation to protect federal employees against such treatment. Interest in the proposed "bill of rights" for federal employes has increased as a result of disclosures of spying, coercion and invasions of privacy.

The Ervin bill would create an independent Board on Employe Rights. This would give employes a place to make complaints without fear or reprisal.

The legislation would prohibit indiscriminate requirements that employes submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests or lie detector tests.

Federal employes would not be required to report to their bosses on outside activities unrelated to their business, nor would they have to attend political meetings. They couldn't be coerced into buying bonds. They would have the right to counsel or other representation at an interview which could lead to disciplinary proceedings. They also could bring civil action for violation of the act.

Senator Ervin thinks federal employes are being "smothered by tons of big brotherism." Congress has the responsibility, he believes, "to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies and administrative techniques."

We agree with Senator Ervin and hope this legislation gets favorable attention at this session of Congress.

[From the Charleston (S.C.) Evening Post, March 1, 1967]

SAM ERVIN'S RIGHTS BILL

Sen. Sam J. Ervin of North Carolina recently introduced a civil rights bill that all good and reasonable men can support. If his bill passes, federal employes will get back those rights of citizenship that our heavy-handed bureaucrats have robbed them of. Moreover, any future robberies could land the offending bureaucrats in jail.

It has long been the practice in many federal agencies to recruit political ambassadors from the ranks of civil service. Sometimes this has taken the form of requiring government workers to further, in their off hours, various community projects of which Big Brother approves. A case that recently came to light involved an agency directive commanding civil servants to enlist in local projects aimed at promoting "open housing" laws. This is only one example. Such compulsion is commonplace.

In election years, the machinery of bureaucracy operates in such a way as to enrich the political warchest of the ruling party. Donations are solicited on the sly, and a variety of subterfuges are resorted to in an effort to escape the prohibitions of the Hatch Act. Government workers have even been known to get the word from above that outright campaigning is expected of them.

Invasions of privacy are likewise a common occurrence. In the famous case of Otto Otepka, to cite a single example, employes spied on a fellow worker, bugged his office phone, rifled his trash basket and even broke into his confidential files—all on orders from higher up in an attempt to get evidence in no way related to furthering national security. In many other less celebrated cases, bureaucratic muckety-mucks have also trampled with impunity on the private rights of their underlings.

If Senator Ervin's bill is enacted into law, all this will change. His bill outlaws such practices altogether. Furthermore, it establishes a three-member Board of Employe Rights to investigate individual complaints, conduct hearings and fix penalties. No member of the board may be otherwise employed by the federal government, and the penalties it could impose are substantial: fines of up to $300 for each offense and jail terms up to 30 days.

Any federal supervisor who tampered with the rights or personal lives of his subordinates would be subject to punishment, and the *Washington Post* reports that the word is already spreading throughout the bureaucracy to lay off, lest some new scandal propel the Ervin measure through Congress.

Fortunately, the bureaucracy seems to have moved too late. Last year, the Johnson administration successfully fought off a similar measure, also introduced by Senator Ervin, but the bureaucrats learned little from the experience of a close shave. The old ways were resumed once the bill was beaten. This year is different. Senator Ervin has persuaded 50 of his colleagues—a majority—to co-sponsor the measure. If the House will go along, the temptation for the government to manipulate the private lives of its workers will be greatly reduced.

[From the Wilmington (N.C.) Morning Star, Feb. 23, 1967]

MATTER OF PRIVACY

The bugging with hidden microphones and the tapping of telephones are far from the only ways of depriving us of our personal privacy in this age which has become Orwellian before its forecast 1984 time.

Nearly every government questionnaire required to be filled out requests information that is not only pertinent to the subject and immediate usage, but gives away such personal matters as religion, living standards, politics, family relationships and like manner of data most of us have long held as privileged and private.

In the tracking down of income tax information, for further, instance, the federal government employs informers to come up with income dossiers on private citizens and taxpayers—for a fee, of course; a percentage of whatever additional taxable sums are unearthed.

As Sen. Sam J. Ervin, Jr., North Carolina's senior U.S. Senator charged Tuesday "a very large segment of our population is being smothered by tons of big-brotherism."

Sen. Ervin has introduced a bill, with 50 other senators as co-patrons, to protect the privacy of public workers. His bill would prohibit indiscriminate requirements that employes and applicants disclose their race, religion or national origin. It would also free these from having to report on much of their activity which is normally considered personal.

The Ervin bill would also protect servicemen from coercion in savings bond campaigns and in charity drives.

In this day of increasing person-to-person prying, Sen. Ervin's bill should be comforting to all those in public employment.

The bill, or an enlarging amendment to it, would be universally acclaimed if it could help restore a measure of privacy to private citizens.

[From the Richmond News Leader, Feb. 23, 1967]

THE PROPOSAL OF SENATOR ERVIN

Senator Sam J. Ervin of North Carolina was in fine form Wednesday night in his address here to the Virginia Sons of the Revolution and, needless to say, he was among friends. Senator Ervin's benignity, his judicial background and his shrewd balance have made him a formidable Southern tribune in Washington. All this was in evidence as he spoke in behalf of a remedy that would restrain the U.S. Supreme Court from acting as legislature and redeem it as an interpreter of the Constitution as written.

Yet Senator Ervin, for all the light he cast upon the subject and the force of his indictment of the court as a power pirate, did not convince all his listeners that he had indeed perfected the remedy.

Senator Ervin proposed a constitutional amendment altering the fashion in which justices of the court are appointed. He would provide that the chief justice of the highest State appellate courts recommend a small eligible roster of lawyers; the President

would make a selection; the Senate would be called upon to confirm.

The fact is, the 1787 constitutional provisions concerning the U.S. Supreme Court and its powers represented an unfinished symphony. No qualifications for the justices were established (until this day a justice need not be a lawyer and a non-lawyer has served) and it required the genius, not to mention inventiveness, of John Marshall to establish something so basic as Judicial Revue.

The thrust of Senator Ervin's proposal for insuring the appointment of fit justices is by no means new and is found in the 1787 debates within the Constitutional Convention. There was a strong disposition not to endow the President with exclusive appointive power, though this disposition was overcome. The genius of Benjamin Franklin had to have its horse laugh along with a seventh-inning stretch and, in the debate on Ervin-like proposals, he pointed to the custom in Scotland. There, Franklin said, the judges were nominated by the lawyers, and the lawyers happily selected the ablest of their brethren "in order to get rid of him and share in his practice among themselves."

This sally launched James Madison on an alternate mode of selection in which the power of appointment would have been confided to the Senate.

For much of the life of this Republic, the Supreme Court has been abominated by one-half of the citizenry and cherished by the other half. It has been packed and unpacked. It has bent to the political winds and has been flatly defied by Presidents such as Andrew Jackson and Abraham Lincoln, not to mention some of the States. All in all, we wonder that Senator Ervin has not given more thought to the election of the kind of President who could be depended upon to appoint fit justices to the exclusion of legislative justices. The means is there, only the will is missing.

[From Roll Call (D.C.), Feb. 2, 1967]

RIGHT TO PRIVACY—GOVERNMENT IS BIG BROTHER TO ITS EMPLOYEES

(By Allan C. Brownfeld)

The Founding Fathers did not specifically write a "right of privacy" into the Constitution. They felt that this was understood by civilized men, but history has shown us that this was not the case. In fact, Mr. Justice Brandeis felt the need in Olmstead vs. United States in 1928 to clearly state that "The right to be alone—the most comprehensive of rights, and the right most valued by civilized men" was one guaranteed by our laws.

This week Senator Sam Ervin of North Carolina will introduce in the Senate a bill which he calls a "bill of rights" for federal employees, protecting them from what his committee's hearings have found to be clear invasion of their privacy, coercion, and often forced indoctrination.

Senator Ervin's committee found that far from creating a "welfare state" in which the good of each employee is considered of overriding importance, the government had created for its own employees a system which they felt deprived them of their own freedom, and unfairly pried into their private lives.

The examples have been numerous. When President Johnson sought to increase the purchase of United States Savings Bonds the request that government employees step up their buying was often put in terms which left little to the imagination. At the National Science Foundation employees were asked if they had been "prudent and intelligent" and signed up for the program, or "are you a rebel without a cause who wants a little attention?" A marine general sent representatives into Vietnam foxholes and "kept track of the patrols so that every individual had an opportunity to hear how he could invest his money in a worthwhile program."

This, and other efforts by government agencies to intimidate their employees and pry into their privacy resulted during the last session of Congress in a series of hearings by Senator Ervin's Subcommittee on Constitutional Rights.

John F. Griner, president of the 220,000-member American Federation of Government Employees, spent nearly three hours before this committee telling of pressure, propagandizing, and intimidation, and of "secret dossiers" kept on government workers. In addition to the snooping, pressure to buy savings bonds, and similar coercion, Griner said that some Federal installations have held sessions with employees to mold their attitudes on civil rights, the United Nations, and other public issues.

He told of a case at a Defense Department field installation where groups of employees were assembled to hear a thirty minute recorded speech on the "Importance of integration" and the "greatness" of the United Nations. The AFL–CIO leader pointed out that if this continues an Administration with a different attitude might hold employee indoctrination sessions on the "Evils of the United Nations" or on whether or not we should be involved in the Vietnam war.

Government questionnaires ask employees to identify themselves as "American Indian, Negro, Spanish American, none of these." George B. Autry, a Committee staff aide, noted that preliminary reports indicate "that there are an awful lot of American Indians in the State Department which we didn't know about."

Employees have often refused to fill out such forms, believing that the government was meant to be "color blind" in its relationship with its employees, as with all citizens. It seems a clear double standard, for example, to have a national Civil Rights Act barring discrimination in private employment and have a federal government policy of keeping employee records on the basis of race.

Senator Ervin attacked the government questionnaires, which he said are supposed to be confidential but aren't, on the racial backgrounds of employees and their outside financial interests. He said that he "saw no need" for the racial questionnaires which the government says it uses to check on equal employment opportunities, "unless the government is interested in establishing a system of racial quotas."

Union leader Griner also accused the Internal Revenue Service of being especially hard on employees. He said it has bugged telephones and fired employees accused of, but not proven guilty of, taking bribes. He said that the IRS is an "outstanding example of an agency that believes every one of its employees is dishonest until proven honest."

In Huntsville, Alabama, the union leader said, Army investigators were questioning a man about some alleged thefts from a candy machine. During the long grilling session, they repeatedly asked "if he knew his wife was running around with a fellow employee?" In another instance a security investigator asked neighbors of a government employee whether or not he and his wife treated their adopted children in a proper manner. Until that time, no one in the community knew that the children had been adopted. Government prying led to this unfortunate circumstance.

Senator Ervin's proposed bill is meant to put an end to pressure from higher up on civilian and military people voluntarily to join in charity or bond drives which have pre-set quotas or dollar amounts for all the volunteers. The bill may provide criminal and/or administrative penalties for supervisors, who join in the pressure exercise, or otherwise invade the privacy of their workers.

Supreme Court Justice William O. Douglas spelled out in graphic detail the full extent of this whole trend. He said: "We are rapidly entering the age of no privacy; where everyone is open to surveillance at all times; where there are no secrets from government. The aggressive breaches of privacy by the government increase with geometric proportion. Wiretapping and 'bugging' run rampant, without effective judicial or legislative control . . . Personality tests seek to ferret out a man's innermost thoughts in family life, religion, racial attitudes, national origin, politics, atheism, ideology, sex and the like."

Justice Douglas notes that "Taken individually, each step may be of little consequence. But when viewed as a whole, there begins to emerge a society quite unlike any we have seen—a society in which government may intrude into the secret regions of a man's life at will."

In 1901 in the case of Roberson v. Rochater Folding Box Company, Chief Justice Alton B. Parker of the New York Court of Appeals stated that "A man has a right to pass through this world, if he wills, without having his pictures published, his business enterprises discussed, his succesful experiment written up for the benefit of others, or his eccentricities commented upon, whether in handbills, circulars, catalogues, newspapers or periodicals."

This is not 1901, but 1967. Senator Ervin believes that this right of privacy still exists for Americans, and as the Senate begins discussions of this bill we will see whether or not that is, in fact, the case.

[From the Greensboro (N.C.) Record, Feb. 24, 1967]

FIGHTING BIG BROTHER

In his battle with "big brotherism" in the federal bureaucracy, Sen. Sam Ervin has picked up some varied supporters.

Among the 50 senators supporting the Tar Heel's proposals to give federal employes a "bill of rights" against overly inquisitive job interviewers or supervisors, are Democratic liberal Joe Clark of Pennsylvania and Republican conservative Strom Thurmond of South Carolina.

Senator Ervin has uncovered a number of cases in which would-be secretaries were subjected to psychological examinations which would be of dubious value even when applied to prospective CIA employes. The call to kick in to various "voluntary" fund drives is also a target for Senator Ervin's wrath. All too often, the drives are voluntary in name only, and he wants to put a stop to it.

The aims of the bill are laudable, and its prospects for passage appear bright, given the broad spectrum of support it has won from both sides of the Senate aisle, and from federal employe groups. Senator Ervin has often presented a lamentably blind eye to civil rights proposals, but his latest effort does something to redress the balance.

He is quite right in contending that federal employes should enjoy the rights of other citizens. Regimentation and unwarranted invasion of privacy should not be part of the price for employment with the government.

RIGHTS FOR FEDERAL EMPLOYES

(This Editorial was broadcast on February 24 and 25, 1967, over WTOP Radio and Television.)

This is a WTOP Editorial.

On the theory that federal employes are full-fledged American citizens, Senator Sam Ervin of North Carolina has proposed a bill to protect certain fundamental rights of members of the federal establishment.

To say that his measure is receiving support is to understate the case. So far, 50 senators of all shades of political opinion have joined as co-sponsors, including the two senators from Maryland and the two from Virginia.

Mr. Ervin undoubtedly has found a popular cause. It grows out of the well-founded suspicion that federal employes sometimes

are exposed to interrogations and other techniques which go a long way beyond normal or decent practice.

By this we mean lie detector tests and impertinent psychological test questions about the private life of an employe or prospective employe, questions dealing with sex habits and other intimate matters which are nobody's business.

Inquiries like these, the senator declares, are intolerable invasions of privacy. He feels the same about attempts by the armed forces to use coercion—the threat of KP, for example—to compel servicemen to buy savings bonds or contribute to various charities. The bill would stop these abuses also.

The Senate Subcommittee on Constitutional Rights, which is handling the Ervin bill, intends to give the Civil Service Commission and other agencies plenty of time to make their views known. Civil Service was hostile to a similar measure last year; its attitude this year may be considerably more conciliatory.

Even if Senator Ervin's complaints about personnel abuses are overdrawn—which is always possible—there's plenty of reason to believe that abuses exist that ought to be corrected. Upward of three million federal employes obviously need protection they do not now have but are very likely to have before 1967 is over.

This was a WTOP Editorial, Jack Jurey speaking for WTOP.

[From the Washington (D.C.) Daily News, Aug. 2, 1967]

U.S. EMPLOYEES ARE DENIED BASIC RIGHT

(By John Cramer)

The Senate Constitutional Rights Subcommittee, headed by Sen. Sam Ervin (D., N.C.) reports a passel of Federal employe complaints alleging that U.S. agencies are ignoring—or greatly diluting—that recent Civil Service Commission order guaranteeing employes free access to their personnel offices.

Under heavy pressure, the commission issued the order several months ago after the sub-committee turned up numerous agency and installation policies virtually prohibiting employes with grievances or other problems from seeking personnel office advice.

The order itself is excellent. It directed agencies to make sure that they put no "road blocks" in the way of free access to personnel offices. Supervisors no longer can deny such access, as they frequently did in the past. They no longer can demand to know the employe's reasons. They may require only that he schedule his personnel office visit so as to cause minimum work disruption.

Consider, however, how descending echelons of the Railroad Retirement Board, Headquarters Chicago, diluted the order as they filtered it down to employees. According to the subcommittee files:

RRB itself relayed the order to major units almost word for word.

One lower echelon added language saying: "This is not to be construed as an invitation to go over the head of your immediate supervisor or violate lines of authority."

That can be read only as a warning to employees: Go to the personnel office, and you're in the doghouse.

And a still lower echelon told employees that if they wished to contact designated personnel officers, "you must ask your immediate supervisor to arrange an appointment for that purpose."

That, of course, was the precise sort of thing the commission order was designed to prevent.

SHOCKER

But for a real shocker, there's the Air Force case reported to the sub-committee by an Alaska official of the AFL–CIO American Federation of Government Employees.

The colonel in charge of a segment of a major AF unit there appeared, at least, to take the commission order seriously. He posted it on official bulletin boards. Along with it, he posted his personal notice assuring employees that he had "an open door" . . . that he and his station commanders were available "around the clock" to hear employe grievances . . . without fear of reprisal.

So a female employe took him at his word. She went to her station commander, an AF captain, with her problems.

Soon thereafter, she found herself confronted by her immediate superior and the base personnel director, who informed her she must never, ever go direct to the Station Commander again.

When she asked "Where, then, can I go?", the personnel director, according to the AFGE official, brightly replied:

"Oh, to the President, his name is Johnson, I believe . . . or the Vice President . . . or Secretary Rusk . . . or the Air Force Secretary."

RESOLVED

The AFGE took her grievance (an unusually messy one) to the Ervin sub-committee. It has since been resolved in her favor.

[From the Washington (D.C.) Daily News, July 27, 1967]

WHEN WILL THE NAVY GET WISE?

(By John Cramer)

Here I am, back again, on that piddling little matter I first wrote about a few weeks back—a Navy installation which requires its employes to display names and insurance expiration dates on bumper-sticker permits for on-base parking.

Piddling perhaps, but another example of Government-typo privacy invasion which never would be tolerated by employes in private enterprise.

The installation is the big Naval Training Center, Great Lakes, Ill., where some 15,000 vehicles park daily.

PROTEST

Sen. Sam Ervin (D., N.C.), the Constitutional Rights Subcommittee chairman, wrote Navy to protest the privacy invasion in the Great Lakes practice.

In reply, he got a letter from Richard A. Beaumont, Deputy Under Secretary for Manpower, who blandly supported everything about the Great Lakes rule . . . finding nothing "unreasonable" . . . absolutely no privacy invasion.

As Mr. Beaumont explained it, Great Lakes requires employes to have not less than $10,000/$20,000 bodily injury and $5000 property damage insurance.

He said that each bumper (or maybe windshield?) sticker must be of a distinctive color to indicate "whether the owner is an officer, enlisted man, civilian employe, vendor, or contractor's employe."

That's just about as bureaucratic as you can get, but no doubt it won a promotion for the eager-beaver Navy millcrat who dreamed it up.

PREVENT THEFT

In Mr. Beaumont's view, however, it's a highly-desirable system because he said it assists in identifying non-insured characters who have stolen stickers . . . helps prevent theft and speeds the recovery of stolen vehicles . . . makes for rapid owner identification when it's "necessary to remove automobiles at the scene of fires, emergency construction work, snow removal operations, etc."

All this sounds great.

But consider a moment, and you'll begin to wonder whether the Great Lakes system really accomplishes the things Mr. Beaumont claims.

Maybe I'm thick, but I completely fail to see what it can do to prevent theft or help recover stolen cars. And I suspect the great [illegible] capable of [illegible]

vehicles moved in emergencies—without requiring names and insurance expiration dates on parking stickers.

INSULTING

In fact if I were Sen. Ervin, I'd consider Mr. Beaumont's letter, with its absurd claims, pretty close to insulting.

That, however, isn't the point.

The point is that Government agencies have no damn business requiring of their employes more than is required by law . . . more than is required of employes in private enterprise.

No business demanding insurance in excess of state law—unless the agencies themselves are prepared to pay for it.

No business requiring an employe's name on his car—license tag identification is entirely enough.

At the risk of belaboring, let it be said again that if Government can require seat belts, and names-and-insurance-data on parking stickers, it also can require power brakes, power steering, air conditioning, roll bars, and any number of other desirable safety features.

I strongly suspect that Mr. Beaumont's letter was prepared by a subordinate . . . that Mr. Beaumont didn't take the time to read (or at least understand it).

May I say, sir: One of the things you're paid for is to double-check official Navy answers to U.S. Senators!

[From the Washington (D.C.) Daily News, July 6, 1967]

MONSTROSITY OF BIG BROTHERISM

(By John Cramer)

Perhaps this is just a piddling little thing. Perhaps it's something more.

Given the creeping Big Brotherism so evident in the Government's dealings with its employes (and the rest of us) I happen to think the latter. Mebbe I'm wrong. You judge.

Anyway, Senate Constitutional Rights Subcommittee Chairman Sam Ervin (D., N.C.), who had worked so effectively to educate U.S. agencies against invading Federal employe privacy, recently related a protest to Navy Department.

OBJECTED

Relayed the protest of employes at a small Navy installation, who resented an order directing that future bumper-style sticker permits for parking at the installation would carry spaces to show: (1) the employe's name; (2) the expiration date of his auto insurance.

To the Senator's letter, Navy blandly replied that it found in the order "nothing inappropriate"—or words to that effect.

Sen. Ervin disagrees. Me, too.

As it happens, I wish we had compulsory insurance for all drivers. But until we do, I can be nothing but unhappy with eager-beaver millcrats who buck for promotion by requiring more than is required by law.

ADVANTAGE

I can even see some advantage—to the millcrats—in requiring names to be displayed on parking stickers.

(And I also can understand that neither names nor insurance expiration dates would be necessary if the Navy people were bright enough to install relatively private coding systems for bumper stickers numbers.)

The line has to be drawn.

But so long as rank-happy "base security officers" or whatever they call them in various parts of the military, are permitted to do their own line drawing, we'll have privacy-invasions to disgrace the entire Federal Establishment.

COULD BE

Give them their heads, and we'll soon have base parking stickers with any number of additional blanks to help these characters

perform their assigned duties with more promotable efficiency. Like:

Social Security numbers—Well, lots of people have them don't they?

Home phone number—In case of serious on-base traffic accident.

Office phone—Ditto.

Grade and pay—To guide the arresting officer in issuing on-base traffic tickets.

National origin, whether white, Negro, American Indian, Spanish-American, or other—for same purpose as above.

Finanical assets of employe and family—as above.

Blood type—In case the on-base accident requires a transfusion.

Religion—In case it threatens to be fatal.

Name and phone number of pastor—ditto.

SUCKLES

Answers to all of these questions can help the base security officers spend more time at their jobs and appear to be more efficient and more worthy of promotion.

But Big Brotherism suckles, thrives, and eventually flourishes to full monstrosity on just such things.

Piddling, they may be. "Nothing inappropriate," that may be.

On guard, good citizens! On guard!

[From the Washington (D.C.) Daily News, July 3, 1967]

FTS CALLED SAD-SACK OPERATION

(By John Cramer)

Here's more about that sad-sack operation, the Federal Telecommunications System (FTS).

FTS is Government's own long distance telephone network. It's supposed to save tax dollars, but actually wastes them—because Federal secretaries lose so much time getting busy signals from its overloaded circuits.

Anyway, an Office of Education official tells me:

OE does a lot of business by long distance phone with university executives. Frequently, an OE man will place a call to an executive who isn't immediately available. The latter ordinarily then will call back by commercial phone—collect.

When that happens, OE has a policy.

The policy says the OE man's secretary must reject the collect call, explaining that her boss is out.

The boss then is supposed to return the call by FTS. And this is supposed to save money—because, theoretically, FTS calls are cheaper than commercial calls.

In practice, however, what the policy does is to force the boss's secretary to waste another half hour or more getting thru by FTS.

Its circuits overload badly each day as soon as West Coast Federal offices go to work.

General Services Administration is the agency in charge of this mis-managed operation.

BITING COMMENT

The independent National Federation of Federal Employees, in the current issue of its monthly newspaper, has biting comment on that recent Civil Service Commission order telling U.S. agencies to make sure their employes have free access to agency personnel offices.

The order was issued after the Senate's Ervin Constitutional Rights Sub-committee turned up numerous instances in which agencies had made it difficult or impossible for employees to consult personnel people.

Says the NFFE:

"Does it not seem ironical . . . does it not strike any unbiased observer as a graphic commentary on the unhappy state of employee-management relations in the Federal service . . . that in this day and time the CSC should find it necessary to issue, belatedly, an order on such a basic matter?

"Consider this directive in all of its implications . . . or consider only the single statement that Federal agencies should not deny Federal employees' access to personnel offices.' In either case, as a whole or in its separate parts, this directive, certainly well enough intentioned by CSC, is an unwitting but nevertheless shocking indictment of conditions prevailing in too many Federal agencies.

"It reflects how far the Federal Government has yet to go to improve and bring its employee relations fully into the third quarter of the twentieth century.

"In this directive the CSC is asking Federal departments and agencies to take only the most elementary of steps . . . only to accord Federal employees rights which are the most basic . . . only to be sure that the door is not kept locked or slammed in the employee's face.

"It is scarcely to be wondered that the issuance of this revelatory directive has not been greeted with loud huzzas by career Fedeal employes."

[From the Washington (D.C.) Daily News, June 13, 1967]

SHE SPOKE UP AND WAS FIRED

(By John Cramer)

Sen. Sam Ervin (D., N.C.), chairman of the Constitutional Rights Sub-committee, has called on Civil Service Commission to set up new safeguards for Federal employes fired from Government during their probationary first year of service.

He thoroly agrees with the idea of probation for newcomers.

His concern is for those who find their records permanently tarnished because they are dismissed by incompetent or unscrupulous supervisors.

WROTE MACY

Thus, he has written Commission Chairman John Macy:

"While I am aware of the need for a probationary period to insure that Government employes meet the highest standards, I believe that the present system may not contain sufficient guarantees to protect individuals, particularly professional people, from the impact of arbitrary dismissals and unfounded charges which can bar them from employment elsewhere, either in Government or private enterprise."

He suggested hearings, under certain circumstances, in such cases, or deleting the charges from personnel records.

The Ervin proposal was prompted by numerous complaints from former employes whose records—on the surface at least—strongly indicated they had been the victims of unscrupulous supervisors.

One case: A professional woman who antagonized her boss, and subsequently was dismissed as incompetent, because she correctly suggested that her agency's procedures in her field did not follow accepted professional safety standards.

Now she's saddled with a record—very possibly unwarranted—which may prove insurmountable handicap when she seeks other employment.

Surely, Sen. Ervin can be nothing but right when he proposes some form of appeal in such cases.

[From the Washington (D.C.) Daily News, June 5, 1967]

COMPROMISE IN "BILL OF RIGHTS" FOR EMPLOYES

(By John Cramer)

Both sides are cagey—but there's at least reason to hope that the Administration may be nearing essential compromises with Sen. Sam Ervin (D., N.C.), the Constitutional Rights Subcommittee, chairman, on his proposed "bill of rights" for Federal employes.

The Civil Service Commission, speaking for the Administration, has backed somewhat off its original position that there's no need whatsoever for the Ervin bill.

And Sen. Ervin, in response, has indicated increasing willingness to listen to commission proposals large and small, intended, it's said, to make the legislation more "workable."

There's a long way yet to go. But the signs are hopeful, a word used advisedly—because of an abiding conviction here that something aprpoaching the Ervin bill is desperately needed to protect rank-and-file Federal workers against the father-knows-best inclinations of their well-intentioned superiors.

FROM STRENGTH

Sen. Ervin pitches from strength. His bill has been cosponsored by 54 other Senators.

But the commission has a lot of clout, too. So long as the bill remains in its present form, it has every reason to believe it could persuade LBJ to veto.

The bill is designed to protect Federal workers against invasions of privacy by their agencies—officious orders requiring any number of supposedly good things not required by law.

It would, among other things, prohibit the coercion of employes in charity drives and U.S. bond drives . . . restrict financial disclosure by employes to those potentially in true conflict-of-interest situations . . . prohibit agencies from requiring employes to state their race, creed, or national origin . . . prohibit lie detector tests . . . drastically restrict so-called psychological tests.

It would set up an independent Board of Employe Rights to adjudicate complaints against alleged violations . . . provide both civil and criminal penalties for violators . . . give employes direct access to Federal Courts to seek redress or injunction against real or threatened violations.

The commission particularly dislikes:

The proposed independent Board of Rights.

Criminal penalties for violators.

Direct access to the Courts.

On all of these things, however, there are signs—at least some signs—of compromise.

For instance, there's a proposal that the commission itself set up machinery to perform many of the functions proposed for the Board of Rights. It would do this by making violations of key "bill of rights" provisions subject to employe appeal under strengthened Commission grievance procedures.

PENALTIES SCRAPPED

There's another proposal that criminal penalties in the Ervin bill be scrapped with only civil penalties—dismissal, suspension or the likes—remaining for violators.

Under this proposal, the civil penalties could be invoked either by the commission, under its grievance procedures, or by the Courts.

Finally, there's a proposal to limit the almost-unrestricted access to Federal Courts provided in the original Ervin bill.

The orignal would allow employes to go direct to Court to seek redress or restrainers. The compromise plan first would force them to exhaust their administrative remedies—whatever appeals processes were available thru their agencies or the Commission.

But the compromise also would place a time limit on the appeals processes. Neither agencies nor employes would be permitted to stall indefinitely.

INSISTENT

Also—and it's understood Sen. Ervin is insistent on this—employes, once their administrative remedies were exhausted, would be permitted to take their cases to Court "de novo."

In legal parlance, that means their cases would be considered by the courts as new . . . not confined by Executive Branch interpretation of the law . . . in no way affected by decisions reached as they exercised their administrative remedies.

There's no assurance these compromises will be worked out. As of now, they're discussion points—on both sides.

It's promising, however, that both sides are discussing.

[From the Washington (D.C.) Daily News, June 1, 1967]

YOU CAN, TOO, BEEF IF YOU WANT

(By John Cramer)

Here are two more major victories for the Senate Constitutional Rights Sub-committee, headed by Sen. Sam Ervin (D., N.C.), which is pushing that proposed "bill of rights" for Federal employees.

Victory No. 1—Civil Service Commission has issued a strongly-worded directive to all agencies, telling them to make sure that employes have free access to their personnel offices, and that "road blocks are not placed in the way of an employe who wishes to visit the personnel office, file a grievance, or talk with" appropriate officials.

The CSC action stems directly from hundreds of letters to the Ervin Sub-committee from employes complaining that they were denied the right to take problems to their personnel offices.

SUPPORTED

In many cases, the denials were supported by agency (or installation) regulations.

The CSC directive said:

"An employe has the right to communicate with the personnel officials of his agency, the equal employment opportunity officer, and a supervisory or management official of higher rank than his immediate supervisor . . .

"An employe has the right to file a complaint, a grievance, or an appeal under the procedures of his agency or the Commission without interference or threat of reprisal. An employe acting in an official capacity for an agency shall not interfere with or attempt to interfere with such right . . .

"It is not enough for a supervisor to abstain from overt acts or threats of interference; he should refrain from making any statement or taking any action that has the flavor of threat, interference or intimidation."

CSC said it's permissible for an agency to require that an employe wishing to consult his personnel office ask his supervisor to designate a convenient time which will not disrupt work.

UNNECESSARY

But the employe is not required to state his reasons for wanting to see a personnel officer or other management official.

Victory No. 2—involved a 1954 (McCarthy era) Defense Department regulation, which:

Warned employes against "indiscreet remarks; unwise selection of friends or associates; membership in an organization whose true objectives are concealed behind a popular or innocuous title . . ."

Advised them "to study and seek wise and mature counsel prior to association with persons or organizations of any political or civic nature, no matter what their apparent motives may be . . ."

A companion directive ordered key officials to provide the "wise and mature counsel."

Under pressure from the Ervin Sub-committee, both recently were canceled.

In addition, however, the Commission has ordered all agencies to re-examine their own regulations to make sure they contain nothing similar.

The Commission quoted the Sub-committee as being "concerned with a general climate of fear and coercion revealed by employe letters to the Sub-committee, and with the implications of a Government-wide policy of surveillance of citizens, especially employes."

It said it "shares this concern."

Chief officers of the Patent Office Professional Association, have recommended that PO employes undertake a boycott of merchants at Crystal Plaza, Va., to which major units of the Office recently were moved under circumstances shrouded in unusual secrecy.

MAIN OBJECTION

Their chief complaint: After a month in the new location, parking privileges in the PO garage have been jumped "by a whopping 50 per cent" to $15 per month.

They allege that the garage is "filthy with trash, mud and dust costing you a small fortune just to keep your car clean . . . large stagnant lakes . . . and no lighting at all in some areas."

Patents Office management: they say, disclaims all responsibility, but: "We challenge them to admit that they have a responsibility for the welfare of their employes."

The Association has asked all employes to ballot on the propositions: 1. Boycott of the garage; 2. Boycott of all Crystal Plaza facilities; 3. Boycott of both.

[From the Washington (D.C.) Daily News, May 19, 1967]

YOU COULD BE WRONG, MR. M!

(By John Cramer)

Civil Service Commission Chairman John Macy continues to insist there's absolutely no need for the "bill of rights" sponsored by Sen. Sam Ervin (D., N.C.) and 54 other Senators to protect Federal employes against privacy invasions by bureaucrats and militrats.

He should read my mail! Yesterday's, for instance.

There was a note from an employe at Andrews Air Force Base—

"Base regulations say we must have auto insurance in order to qualify for registration stickers entitling us to drive and park on the Base.

"If you utilize the parking facilities at Air Force Systems Command and are a GS–7 or higher, all that is required is a verbal statement that you have adequate insurance.

"However, if you are a GS–6 or lower or an enlisted person, you are required to submit the actual insurance policy to the Air Police. "This surely shows that the old military adage, 'RHP (Rank has its privileges), is practiced at Andrews here with a vengeance."

Here, Your Government Reporter interrupts with two questions:

Even tho permitted, as it is by AF regulations, is it really the proper business of the Andrews militrats to check employe insurance?

Do they honestly believe that GS–6s are less trustworthy that GS–7s?

The letter writer then goes on to say that, altho Andrews brass is real super-efficient about the insurance thing, it can't manage such a simple matter as soap for women's restrooms.

"There has been none for the last 2 or 3 weeks. We're told there will be none until the first of the fiscal year—July 1. No money appropriated for soap?!!"

By way of Sen. Ervin's Constitutional Rights sub-committee came a letter from a GS–9 employe at a military installation—

"Recently, my military supervisor called me into his office, and told me to join the Officers' Club or face the loss of my job.

"It seems the commander of our installation was dissatisfied with the response of civilian employes in attending his cocktail parties (to which he invites many non-paying guests for his personal gain).

"Dues at the Club are $7.50 per month for civilians with no voting rights or say in the management of the club. The rate is the same for military officers, who can vote and manage the club!

"Needless to say, civilians are 'second-class' members who are tolerated only because the club wants and needs the dues money."

And finally, a letter from a serviceman's wife in Indianapolis—

"On April 5, I was interrupted at my Government job by two military police and a county police sergeant, who had papers stating my husband was AWOL. I told them he was at Ft. Carson. They called me a liar, and said he never had been there.

"Since I had received numerous telephone calls and letters from him at Ft. Carson, I knew their accusation was unfounded.

"They informed me the Army never makes mistakes, and requested proof that he was at Ft. Carson. The only way this could be accomplished was to drive to my home, approximately 15 miles.

"I had to return to my office for the keys to my car, and when I came back, was escorted, like a common criminal, to the parking lot by the two M.P.'s. This was especially humiliating because the incident took place at a congested hour.

"At my home, they looked at the letters and still were not convinced. Therefore, I had to call Ft. Carson to satisfy them. When they had been assured that my husband was indeed there, they said it must have been a name mixup.

"After all this humiliation, I asked them to call my boss and explain.

"They refused."

Just one day's mail, Mr. Macy, from Federal employes who know just how badly they need a "bill of rights".

[From the Washington (D.C.) Daily News, Apr. 13, 1967]

KOOK HAS A PREGNANT QUESTION!

(By John Cramer)

Today, I crown a new Government privacy invading champion—A Pennsylvania-type kook, who richly deserves to be immortalized among the most officious of all Federal bureaucrats.

He succeeds to the throne briefly held by that Omaha, Neb., Air Force major, who, in an official order, now countermanded by top Pentagon brass, presumed to tell his subordinates exactly how far they could drive their private cars on week-end trips.

My new champion is a minor wheel—clearly of the two-bit variety—in Social Security Administration's Philadelphia Award Processing Branch.

LETTER

According to a letter to Sen. Sam Ervin (D., N.C.), chairman of the Constitutional Rights Subcommittee, from Lawrence B. James, president of Lodge 2006 of the AFL–CIO American Federation of Government Employes:

"On March 30, female employes of the Award Processing Branch, both married and single, were asked by their supervisors whether or not they were pregnant!

"We have signed statements from the employes who suffered this injustice."

On the phone, Mr. James told me:

That the Branch has about 200 female employes.

That the signed statements number 20.

That all eight supervisors in the Branch were asked to conduct the pregnancy poll.

That four, however, had the good sense to refuse.

That it's his understanding that Branch management justified the poll on "safety" grounds, saying it planned special consideration for the pregnant gals in fire drills.

REPORT ASKED

Sen. Ervin wrote Social Security Commissioner Robert M. Ball, April 5, requesting a full report.

So far, he has no reply.

When he gets one, I'll relay the word.

In the circumstances, I'd think Mr. Ball would want to convey his own apologies to the embarrassed employes.

And a sharp reprimand to my new privacy invading champ.

[From the Washington (D.C.) Daily News, Feb. 22, 1967]

BILL OF RIGHTS GETS BIG BACKING

(By John Cramer)

Sen. Sam Ervin (D., N.C.), chairman of the Constitutional Rights Subcommittee, yesterday re-introduced his proposed "bill of rights" for Federal employes, with impressive backing from 52 other Senators who signed as co-sponsors.

That means the bill now has the support of a clear majority of the Senate—a consensus which will bring no joy to Administration spokesmen who were alone in opposing it at Sub-committee hearings last year.

In 1966, co-sponsors totalled 35.

GUARD

The "bill of rights" is designed to protect Federal workers against growing invasions of their privacy by their agencies—invasion attested in a remarkable outpouring of thousands of letters to the Sub-committee.

In re-introducing it yesterday, in slightly-revised form, Sen. Ervin told the Senate:

"It is time for Congress to forsake its outdated reluctance to tell the Executive branch how to treat its employes.

"When so many American citizens for so many years are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, or to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices, and to penalize their resumption.

"The reams of regulations, guidelines, and questionnaires issued for applicants, employes and their families to promote various causes make it clear that a very large segment of our population is being smothered by tons of big-brotherism."

The bill would prohibit these agency practices, among others:

Requiring or pressuring employees to disclose their race, religion, or national origin.

Requiring or pressuring them to attend meetings or participate in other outside activities not connected with their duties.

Forbidding them to patronize specified business establishments.

Requiring them to submit to psychological or lie detector tests which include questions about their relationships with relatives, religious beliefs, or sex attitudes and conduct. An exception to the general ban on psychological tests would be made for individual employes being examined for possible mental illness.

Requiring or pressuring employes to attend political fund-raising functions.

Coercing employes to purchase U.S. Bonds, or contribute to charity campaigns. However, reasonable, noncoercive solicitation would continue to be permitted.

Requiring employes to disclose financial assets and those of their relatives. The Ervin bill would restrict such disclosure to employes in potential conflict-of-interest situations—and only to such portion of their assets as might occasion a conflict.

Requiring employes undergoing criminal investigation to submit to questions without benefit of counsel.

WOULD APPLY

The bill's prohibitions would apply—in slightly different manner—to both civilian and military supervisors of civilian employes.

It would give employes the right to bring civil actions in Federal District courts to enjoin threatened violations—or redress actual violations.

And it would make "willful" violation a misdemeanor, punishable by up to $300 fine or 30 days in prison.

In addition, the bill would set up a three-member Board of Employe Rights, appointed by the President and confirmed by the Senate.

The Board would have the power to investigate and conduct hearings on alleged violations, and issue cease-and-desist orders.

In the case of first violations by civilian officials, it could issue official reprimands and suspensions up to 15 days. For subsequent violations, it could suspend up to 30 days, or order the official's dismissal.

Military violators would be reported to the President, the Congress and the heads of their services, and would be subject to Code of Military Justice procedures.

Both officials and employes would have the right to ask Federal District Courts to review Board decisions.

A Ervin bill introduced yesterday would outlaw coercion of military personnel in Savings Bond and charity campaigns.

[From the Greensboro, (N.C.) Daily News, June 23, 1967]

ERVIN BILL BRINGS FEDERAL WORKERS PERSONAL PRIVACY

(By Roy Parker, Jr.)

WASHINGTON.—Employes of the Library of Congress no longer must fill out medical forms describing their sexual habits.

The Air Force has called off a directive forbidding most employes from telephoning or visiting their personnel office without explaining to their immediate boss.

The Federal Aviation Agency has quietly buried a personnel rule which threatened reprisals against employes who wrote complaining letters to their congressman.

The Civil Service Commission has reversed a policy order which encouraged government workers to take part in off-duty "community activities."

These and other reversals of policy have flowed from North Carolina Sen. Sam Ervin's pressure on the federal bureaucracy to stop what he calls "invasions of privacy" of the army of government workers.

The Tar Heel senator has authored a "Bill of Rights" for government workers that has been signed by more than half the 100 members of the Senate.

Ervin this week listed some of the changes that have been wrought by the mere threat of the legislation.

While he negotiates with executive branch officials for even further shifts in policy, Ervin said he would continue to push for Senate consideration of his bill. He did not rule out the possibility that the original version might be watered down somewhat in view of the policy changes.

However, said Ervin in a newsletter to constituents, "the need for the bill is still great, because regulations by government agencies are subject to change according to the whim and caprice of the administrators."

One of the most significant results of Ervin's pressure was a Civil Service Commission order reducing the requirement that thousands of federal workers file financial disclosure information in a program designed to head off influence-peddling and conflict of interest.

The commission has also called off its race-count program under which government workers were encouraged to list their race on personnel forms. Instead, government managers will keep such statistics through an informal "head count" method.

The government has also begun to relax some of the "be a booster" programs which were borrowed from private industry and business.

The Defense Department has watered down its promotional methods for savings bond sales among military personnel. It has also withdrawn a directive telling employes to "seek wise and mature counsel" concerning friendships, associations, and civic activities.

To head off Ervin's call for an independent personnel grievance council, the Civil Service Commission has also issued a new regulation [illegible] employe rights [illegible] interference or threat of reprisal" to visit personnel offices and make formal complaints, appeals, and grievance claims under existing personnel regulations.

[From the Washington Post, June 8, 1967]

CSC LAUNCHES EMPLOYE STUDY

(By Jerry Kluttz)

A broad review of the Government's collection and use of data on its nearly 2.9 million civilian employes has been undertaken by the Civil Service Commission.

Chairman John W. Macy said the inquiry had a dual purpose: to assist Federal managers to plan and meet manpower needs, and to guarantee that the privacy of individual employes will not be violated.

The study is another victory for Sen. Sam J. Ervin (D-N.C.) who has been pounding away at the Government in general, and CSC in particular, for violating the privacy of Federal workers.

Charles J. Sparks, deputy director of CSC's Bureau of Management Services, will head the study group. Serving with him will be half a dozen agency personnel directors. The group also hopes to find better ways to use computers in personnel work.

Meantime, CSC is exploring the possibility of working out a compromise on Ervin's bill which is cosponsored by more than 50 senators, a majority of the Senate. The bill would protect the constitutional rights of both civilian and military personnel.

[From the Washington Post, Apr. 16, 1967]

ERVIN FIGHTING THE BATTLE

(By Jerry Kruttz)

Sen. Sam J. Ervin (D-N.C.) turned his spotlight yesterday on two practices at the Navy Finance Center here which he said were invasions of privacy and unwarranted surveillance of its civilian employees.

The chairman of the Constitutional Rights Subcommitte said that Navy efficiency experts monitor the women's restrooms to determine how many minutes they are in there.

The agency, located in the Munitions Building here, checks on all actions by its employes, including the blowing of their noses, according to the Senator, who was given the information by an employe there.

Ervin contends that we look to the First Amendment to the Constitution for protection against any form of tyranny and that Federal agencies in recent years had disregarded it. Said he:

"A regulation which threatens surveillance, or worse, for indiscreet remarks or unwise choice of associates is covered by this Amendment. Within its restrictions fall requirements to submit to interviews, tests and polygraphs which solicit information about a person's politics, religious beliefs and practices, sexual attitudes and conduct, or relationships with members of one's family.

"To condition a citizen's employment on submission to such pumping of his mind and thoughts and beliefs, is to exercise a form of tyranny and control over his mind which is alien to a society of free man.

"Similarly," the Senator continued, "to require him to state his associations, his outside activities, his financial interests and his creditors, and to make them factors in decisions affecting his employment interests, is to force conformity of thought, speech and action to some subjective, pre-established standard, unrelated to his official assignments.

"To ask him to report his civic and political organizations is as intimidating as to tell him to go out and lobby for legislation, or to take part in beautification projects when he would rather go fishing. Yet the Government does both.

"To coerce him to contribute a given amount to charity, or to buy savings bonds [illegible] of employ-

ment is equally reprehensible. Yet Federal officials do this.

"These practices affect not only the right to speak and act according to the dictates of his conscience; they invade also his right not to speak at all, not to act at all, and not to participate at all. In today's society . . . this may be the most precious right enjoyed by civilized man."

Voting Block: Nine Civil Service Commission investigators have been restrained from compiling eligible voter lists in the Louisiana parishes of DeSoto, Caddo, and Bossier. The temporary order was issued by Federal District Judge Ben Dawkins of Shreveport.

Dawkins concluded that Attorney General Ramsey Clark who had ordered CSC investigators into the three parishes, had said earlier that there was no voter discrimination in them. The Government will appeal the case.

Meantime, CSC will continue to list voters in five other Louisiana parishes that weren't affected by the ruling. Under the Voting Rights Act the Attorney General has the authority to order CSC investigators into counties where he believes voter discrimination is practiced to police voter registration and voting.

[From the Atlanta (Ga.) Constitution, May 20, 1967]

PROTECTING GOVERNMENT WORKERS

There has been considerable comment that college graduates find no challenge in working for private enterprise and that they would rather work for some branch of government. It is therefore interesting to read an article in the March, 1967, "Engineer in Government Newsletter," published monthly by the National Society of Professional Engineers.

It says that Sen. Sam J. Ervin of North Carolina is sponsoring a federal employe "Bill of Rights" which would guarantee employes legal protection from snooping and coercion by federal agency officials.

Ervin's bill "would . . . outlaw the practice of coercing employes to make political or charitable contributions, and would greatly restrict the conditions under which an agency could require the submission of information concerning an employe's financial or other private affairs . . . make it unlawful to: Require employes or applicants to take tests asking questions about their personal relationships . . . their attitudes about religion or sexual matters. . . . Forbid employes to patronize any business; require employes under investigation to answer questions without the presence of counsel; request or require employes to refrain from participating in outside activities unless related to official duties, or to state that notice will be taken of attendance or lack of attendance at non-job related meetings."

Other coercive practices are objected to by the engineers. Working under such restrictions would seem to be depressant rather than a challenge to an energetic and ambitious individual with forward-looking ideas.

[From the Washington Post, May 11, 1967]

PRESSURE HIT IN FUND DRIVES

(By Mike Causey)

Memo to fund-drive keymen and Savings Bond salesmen.

Subject: Arm-twisting.

From: Civil Service Commission Chairman John W. Macy Jr.

Remarks: Don't do it!

That, in effect, is the message Macy has sent around for all agencies to read and not forget.

Macy doesn't want to put a damper on any of the programs. But he wants to head off any intimidation or setting individual goals, which have been common in many agencies during the last couple of years.

The CSC Chairman echoed the words of Savings Bond Chairman Lawrence F. O'Brien, who earlier told his keymen not to lean on people to buy bonds.

Macy's directive said that agencies are to make it plain that the fund drive and bond programs are voluntary, and if people can't or won't give, they should be left alone.

Agencies may continue to use the "fair share" guides, which indicate what donations people might make according to their salary. "But there may be no requirement that individual employe contributions meet such guides," Macy warned.

In addition, donations and bond purchases are supposed to be kept confidential this year. They were supposed to be confidential last year, but some overzealous supervisors—military and civilian—posted the names of nongivers or "cheapskates" on bulletin boards, or accused them publicly of being un-American. Macy said CSC would issue instruction soon to advise employes of grievance procedures, if they are being pressured to give.

Sen. Sam J. Ervin Jr. (D-N.C.) has gotten CSC's report * * * which would protect employes from pressure, snooping and invasions of privacy. Fifty-five other Senators are cosponsoring Ervin's bill, which would provide stiff enforcement penalties for supervisors found guilty of invading employe privacy.

But Ervin says that CSC doesn't want any criminal penalties for arm-twisting officials, that it feels the situation can be met "with administrative proclamations."

Ervin, the chairman of the Senate Constitutional Rights Subcommittee, will meet with CSC officials Friday, when he hopes agreement can be reached on his bill.

[From the Durham (N.C.) Herald, April 29, 1967]

ERVIN OUTLINES BATTLE TACTICS IN ALL-OUT WAR ON SNOOPING

A U.S. Senator who has waged an all-out war against government snooping outlined his battle tactics at the Duke University Law School Friday.

Sen. Sam. J. Ervin Jr. denounced invasion of privacy on the part of federal administrators and predicted Congress will enact additional legislation this year to protect employes and job applicants.

Sen. Ervin said his experience as chairman of the Senate Constitutional Rights Subcommittee has convinced him "about the most important thing a man has is his right to privacy and to individual dignity."

The senator charged the federal government has been bent on setting itself up as the "Great Protector" of personal habits, thoughts, actions and emotions of its vast work force.

"This over-protectiveness and big brotherism of government has led it to devise ingenious means to rob employes of the American dream of freedom," he asserted.

Questions addressed to an individual's sex habits, religion, and family relationships were attacked by Ervin in his appearance before the Duke law students. He denounced them as "an unwarranted and substantial invasion of privacy."

Ervin said his investigation led to the uncovering of abusive uses of financial questionnaires required of employes as far down the Civil Service scale as the raisin inspectors in the Department of Agriculture.

He acknowledged that conflict-of-interest scandals provided the use of financial disclosures to apprehend a few corrupt individuals.

"Still it seems unwarranted to require countless thousands to reveal personal business and financial affairs," he added.

Ervin said he is proud to be a sponsor of the administration's current bill to restrict wiretapping. And he announced that his own bill restricting the use of questionnaires has the signatures of 54 colleagues in the Senate—or a comfortable majority.

Prior to his address, Ervin told a news conference he will vote for the censure of Sen. Thomas Dodd of Connecticut as recommended by the Senate Committee on Standards and Conduct.

He also criticized members of Congress who have voiced opposition to an address by Gen. William Westmoreland, commander of American forces in Vietnam.

"I'm a great believer in free speech. The people opposing him believe in free speech when they are involved," Ervin told the newsmen.

Expressing vigorous opposition to a bill that would allow taxpayers to deduct from their annual income taxes $1 for a presidential campaign fund. Ervin offered his own program for contributions.

He suggested that each taxpayer be allowed a "reasonable deduction"—he mentioned $50—for contributions to the party or candidates of his choice.

[From the Washington (D.C.), Evening Star, June 9, 1967]

RULES EASED ON EMPLOYE FILING OF DETAILED FINANCIAL STATEMENTS

(By Joseph Young)

The Civil Service Commission today acted to "significantly reduce" the number of federal workers who must file detailed financial statements on behalf of themselves and their families.

The CSC modified its regulations on the ethics and conduct of government employes after the Senate Constitutional Rights subcommittee headed by Sen. Sam Ervin, D-N.C., had sharply criticized the system. Heretofore hundreds of thousands of federal employes, many of them in lower grades and in non-policy jobs, had been required to file these statements.

The CSC said the revised program will be limited "to those in positions in which the possibility of conflict-of-interest involvement is clear."

RECOMMENDED DIVISIONS

The former mandatory inclusion of all employes above grade GS–15 and all hearing examiners has been eliminated. Statements on an employe's outside employment and financial interests, including those of members of an employe's immediate family, will be required only from employes in grade GS–13 and above who are responsible for making decisions or taking actions in regard to contracting, procurement, grant or subsidy administration, regulating a non-federal enterprise, or another activity having an economic impact on a non-federal enterprise.

An employe who merely recommends a decision or action will no longer be required to file a financial statement. An employe below grade GS–13 will be required to file only if his employing agency justifies to the CSC that his filing is essential.

To further assure that the filing requirement extends only to employes whose positions make it essential for the government to have the information sought, the CSC has authorized agencies to exclude any employe whose duties make the likelihood of his involvement in a conflict-of-interest situation remote.

Also, an agency may exclude employes from the reporting requirement when the agency has an alternative procedure that the CSC has approved.

The new regulations also specify that no question may be used in an agency's form on employment and financial interests unless it is one included on the CSC's standard form or has the CSC's approval.

GRIEVANCE PROCEDURE

Also, each employe must be informed that his agency's grievance procedure is available to settle any complaint against being required to file a statement. Also, agencies may

excuse an employe from reporting an interest too remote or inconsequential to affect the integrity of his work.

The former requirement that employes file quarterly supplements to their statements of employment and financial interests has been canceled. From now on, only an annual statement will be required from those who must file.

Other changes will provide better assurance of the confidentiality of financial statements by requiring agencies to designate which employes are authorized to review the statements and by making these employes responsible for restricting the use of information contained to that necessary in carrying out the purpose of the ethics regulations.

The new regulations also incorporate a recent decision by the Comptroller General that federal officials and employes are not to accept non-government reimbursement (such as from industry) for travel on official business.

[From the Washington (D.C.) Evening Star, Apr. 21, 1967]

VOIDING OF "BIG BROTHER" DIRECTIVE MAY HAVE STARTED IN HOME DRAMA

(By Joseph Young)

From the Federal Spotlight Column, Evening Star, April 18: Ervin subcommittee discloses Defense directive cautioning civilian employes against joining any organization, political or civic or forming friendships, without first getting the "mature advice" of their supervisors. Employes also admonished about use of "indiscreet" remarks.

AP Story, Evening Star, April 20. Defense cancels directive.

The Defense Department's decision to cancel its Big Brother directive could have stemmed from its employes getting into sticky situations like the one described below.

Scene: the living room of a Navy civilian employe. The employe is seated, reading "Alone" by Adm. Richard Byrd, while his wife stands over him and glares.

WIFE. I'm sick and tired of our boring existence. No friends, not even neighbors that we can talk to . . . no place to go.

HUSBAND (sighing). I know what you mean. But I'm a loyal Navy employe. And you know what that means.

WIFE. I think you're a Casper Milquetoast. Why can't you at least make friends with some of our neighbors? We've lived here for a month now, but we're not on speaking terms with anyone.

HUSBAND. But you know what the directive said . . . It . . .

WIFE (interrupting). The hell with the directive!

HUSBAND. Careful! You know what it says about indiscreet language.

WIFE. (her face flushed with anger). I never was so humiliated in my life as I was the day we moved in. Mr. Jones, our next door neighbor came over to say hello and introduced himself . . . and what did you do!

HUSBAND. Well, I was sorry to have to ignore his outstretched hand. And I really felt very bad about slamming the door in his face without replying to his greeting. But what could I do? I'm not allowed to make any friendships without the mature advice of my supervisor.

WIFE. Well, why don't you clear it with your supervisor?

HUSBAND. I'm afraid to. He's a misanthrope. He hates everyone, and I'm sure he would blackball our neighbor.

WIFE (ignoring his explanation). And why did we have to hide and pretend we weren't home when the Welcome Wagon lady came to our door with those little gifts.

HUSBAND. Simply following instructions not to strike up new acquaintances or friendships.

WIFE (continuing to vent her indignation). And forbidding me to say good morning to the mailman. And to think that they're the ones who get us our pay raises each year!

HUSBAND (suddenly contrite). I guess we are a little harsh on him.

WIFE. As if all this isn't bad enough, you're even afraid for us to join the Parent Teachers Association or let Junior join the Boy Scouts.

HUSBAND. But you know what the directive says about that. (He moves over to the television set and takes from the top of the set the Defense directive. He looks for a particular passage.)

Here, I found it. (He reads aloud) . . . "A number of our citizens unwittingly expose themselves to unfavorable or suspicious appraisal which they can and should avoid. This may take the form of an indiscreet remark, an unwise selection of friends and associates, membership in an organization whose true objectives are concealed behind a popular and innocuous title. . . .

Therefore, it is advisable to seek wise and mature counsel prior to association with persons or organizations of any political or civic nature. . . ."

WIFE (interrupting). That's enough. You've read that to me 50 times.

HUSBAND. But that's why I'm hesitant about us joining the PTA or Junior joining the Boy Scouts. The way things are happening these days, these groups could be fronts for hippies, topless something or others or heaven knows what.

WIFE (starting to cry). But what's left for us. What kind of a life are we destined to lead.

HUSBAND (suddenly brightening). Well, who knows. Maybe one of the television networks will reschedule our favorite program and we can "Sing Along with Mitch" again.

[From the Washington (D.C.) Star, Apr. 18, 1967]

SOME WORKERS CAN'T BLOW NOSES WITHOUT ENTRY IN PERSONNEL FILE

(By Joseph Young)

Such is the rapid encroachment of Big Brother in government that some employes literally can't even blow their noses without it being noted in their records.

The Senate Constitutional Rights subcommittee discloses that eagle-eyed methods engineers in one Navy unit sit in front of the room monitoring all actions of employes.

When an employe blows his nose, this is noted on his "personal" card, the subcommittee said.

In another Navy office, methods engineers monitor the women's restrooms to see how much time each female employe spend there.

Sen. Sam Ervin, D-N.C., chairman of the Senate unit, describes these indignities as ranging from the "ludicrous to the pathetic."

While Ervin feels such actions are definitely symptomatic of an increasing invasion of employes' rights to privacy, he is even more concerned over a recent Navy directive to employes.

The directive instructs employes not to join any organization, political or civil, or strike up new friendships without first securing "mature counsel" as to the wisdom of these moves.

Presumably the "mature counsel" is the employe's supervisor who will advise in this sort of thing.

Employes also are cautioned to be careful at all times of their conversation. "An indiscreet remark" could backfire on an employe, the Navy directive warns.

John Macy, chairman of the Civil Service Commission, in response to Ervin's query as to what he thought of the directive, said he felt Navy "had gone too far."

"It goes beyond the bounds of reasonable security precautions," he said.

Meanwhile, Ervin predicts early action by his subcommittee on his "bill of rights" for government employes.

He has given government agencies until April 20 to file their reports on this bill. The subcommittee is expected to approve it shortly after that.

Fifty-four senators—a majority of the Senate—have joined Ervin in sponsoring the measure.

[From the Omaha World-Herald, Apr. 8, 1967]

U.S. EMPLOYEES SAY RIGHTS INVADED

The chairman of the Senate Constitutional Rights subcommittee has asked Defense Department opinion of a series of policy letters issued by an Omaha Army officer, which the Senator suggests are "misguided . . . paternalistic."

Senator Sam J. Ervin's (Dem., N.C.) letter to Secretary of Defense McNamara, which are tied to his long-continuing legislative battle to prevent unwarranted invasion into the private lives of military and civilian employees of the Government, deals with policy letters issued in January over the signature of Maj. Edward M. Corson, commander of the Armed Forces Examining and Entrance Station in Omaha.

Since the subcommittee began its investigation several years ago, it has received thousands of complaints from all the states from Federal employees contending that their rights have been invaded.

Mr. Ervin is the author of two pending bills, one relating to civilian employees and another to military personnel.

They are designed to prohibit coercion in solicitation of charitable contributions or the purchase of United States Savings Bonds—a frequent complaint—as well as requests for disclosure of race, religion and national origin, or pressure to attend functions, or reports on their outside activities unrelated to their work.

In one of his policy letters, Major Corson wrote that the President had urged Government personnel to buy Savings Bonds, and he said:

"All personnel of this station will aid this program by participation in the Army Savings Bond program."

Of this, Senator Ervin told Secretary McNamara:

"Major Corson's enthusiasm on behalf of the savings bond drive appears to be misguided."

A memorandum issued by the Pentagon last December 21 says "The choice of whether to buy or not to buy a United States Savings Bond is one that is up to the individual concerned. He has a perfect right to refuse to buy and to offer no reasons for that refusal."

In another policy letter, relating to military personnel, Major Corson wrote:

"Several functions and activities are planned and sponsored by this station during the course of the year. All personnel will attend such events unless excused by the commander because of extenuating circumstances, such as financial hardship, physical indisposure, leave, etc."

In another policy letter, the major said all personnel "are required to have at least two front seat belts in their privately owned vehicles." He said also that maximum travel in a privately owned vehicle on a two-day week end is 250 miles, for a three-day week end, 350 miles.

A number of Nebraska employes of the Federal Housing Administration protested FHA practices, particularly what they said was a requirement that questionnaires regarding outside employment include information on an employe's family and outside jobs held by them.

There was criticism of a regulation said to require information on either the sale or purchase of a residence even when FHA is not involved.

MAJOR CORSON: NO STATEMENT

Contacted in Omaha Friday, Major Corson said he has no statement at this time.

Russell M. Bailey, director of the Nebraska

FHA, was asked for comment. He said his office follows the regulations of the Civil Service Commission and the Federal Employment Manual.

These include rules to avoid conflict of interest, he said, which is why questions are asked about outside employment and property purchases.

[From Newsday, Garden City, Long Island (N.Y.) 1967]

THE ABSOLUTELY TRUSTWORTHY IDIOT

(By Charles McDowell, Jr.)

WASHINGTON.—A reporter was talking on the telephone the other evening to an official of the International Monetary Fund who was working overtime in his office at the agency's fancy new building here. Suddenly the official said, "Oops, pardon me. The computer just turned off my lights."

There was the sound of the telephone being laid on the desk, followed by the sound of the official 'stumbling over his wastebasket in the dark. Then he returned to the telephone after switching on the lights.

The poor fellow explained that the agency's computer turned off the lights in all the offices at 6:30 p.m. every day. This officious machine's regular job involved, of course, things like calculating interest rates in Peru, car-loading in Zambia, and the potential export market for Australian wombats.

In its spare time, however, the computer handled a variety of economical housekeeping chores like turning off a man's lights and causing him to trip over his wastebasket.

This sort of reliance on computers is sweeping Washington. The federal government has 2,600 computers attended by 71,000 keepers. According to the Budget Bureau, the computers are saving money left and right as they track space satellites, issue Social Security checks, shuffle census figures, order supplies, file records and perform heaven knows what duties for the CIA.

Senator Sam J. Ervin, a Democrat of North Carolina, thinks the computers are getting out of hand and something ought to be done about them before it is too late.

He is worried but he is not stuffy about it. Ervin says, for instance, 'The day may come when we will replace politicians with computers. Judging from some of the reasoning of politicians I've seen over the years, I know I would sooner take the logic of a computer. The machine may suffer the same lack of intelligence as some politicians, but at least there is consistency in its idiocy."

As chairman of the Senate Subcommittee on Constitutional Rights, Ervin is seriously concerned about the information that computers are storing up on 3,000,000 civilian employees of the federal government. With every test and interview these people ever submitted to being available at the push of a button, Ervin sees the danger of wholesale invasions of privacy.

Various government agencies give so-called personality tests when screening people for employment and promotion. Ervin is frankly appalled to know that computers keep a record of individual citizens' reactions to such test propositions as these:

I am very seldom troubled by constipation.

At times I feel like swearing.

I do not always tell the truth.

I believe in a life hereafter.

My mother was a good woman.

Many of my dreams are about sex matters.

It is hardly reassuring to Ervin to know that mighty machines can remember forever anyone's responses to such nosiness, co-ordinate it with even more personal information gathered in lie-detector tests, cross-file it with job histories, credit checks and random gossip, and regurgitate it all instantly for a button-pusher. (Today a computer tricks a man into falling over his wastebasket; tomorrow it blabs his private life to a computer in California that tells anyone who is interested.)

Senator Ervin suggests "a massive nationwide clean-up campaign to cleanse present files of improperly acquired, irrelevant personal information." He is proposing legislation to protect federal employees from psychologists, snoops and Orwellian nuts working in conspiracy with computers.

Like everyone who gets serious about computers, Ervin knows that mankind must take the blame for what the machines do. As Dr. Charles DeCarlo, a computer expert, told him, "A computer is an absolutely trustworthy idiot."

And the villainy of small-minded men in all this reminds Sam Ervin of a line from William Faulkner: "Men ain't evil; they jest ain't got no sense."

[From the Boston (Mass.) Christian Science Monitor, Mar. 21, 1967]

IMPROPER QUESTIONS

Certain tests and questionnaires used by the federal government threaten an unjustified invasion of the privacy of government employees. For several years, Sen. Sam J. Ervin's subcommittee on constitutional rights has kept a sharp eye open to detect possible infringement of individual liberties.

The subcommittee extensively probed the psychological testing of federal government employees. It pointed to the use of some testing forms which include what many would consider objectionable questions relating to religion, sex, and other personal matters.

From one test, the following, for example, were to be answered "true" or "false":

"Christ performed miracles."

"I pray several times a week."

"I like to talk about sex."

"I am a special agent of God."

More recently, the subcommittee found that various government agencies were using a "report of Medical History" which includes questions of an extremely personal nature, some of which have no apparent bearing on the individual's physical fitness.

After the subcommittee and the American Civil Liberties Union pressed the matter with the United States Civil Service Commission, the commission dropped the form for all civilian employees and job applicants. But the Defense Department continues to use it for military personnel.

A "false or dishonest answer" to this questionnaire is punishable by fine or imprisonment. It was by no means clear that access to these forms would be strictly limited to medical staff. If they were made available to personnel or security officers, answers irrelevant to physical fitness might well have resulted in exclusion from government service.

Government must, of course, obtain certain information about applicants in order to select able, conscientious, and reliable employees. But there are some personal matters which government has no right to extract from an individual as a condition of employment.

We are encouraged that both Congress and an organization dedicated to the preservation of civil liberties have seen fit to look into the matter. It deserves continuing surveillance.

[From the Norfolk (Va.) Virginian Pilot, Mar. 8, 1967]

THOSE QUESTIONS—AGAIN

Senator Ervin of North Carolina, long a champion of the right to privacy, has renewed, and broadened, his crusade. In a speech before the American Management Association's annual conference on electronic data processing, he called for the government and private employers "to cleanse present files of improperly acquired, irrelevant personal information."

As examples of such information, the Senator cited questions being asked in Federal "personality tests" administered to job applicants. They include queries about sex life, belief in the second coming of Christ, and love of parents. Mr. Ervin says such questions, whatever the source, are invasions of privacy. We agree. And that such questions have been asked for a long time makes even more pertinent not only a purge of such information from present files, but a revision of business and government estimates of the nature and relevancy of information demanded from employes.

The spreading use of computers—which can instantly produce potentially damaging information without the applicant's having an opportunity to explain, modify, or challenge answers that might have been given under stress years before—heightens the urgency for regulation. Mr. Ervin's assessment of the threat as coming not from the computer as a machine but from its abuse by political executives, managers, and technicians is correct. His call for a "code of ethics" involving "self-regulation and self-restraints," however, seems insufficient.

The need is for a re-establishment of the Fourth Amendment, for Congressional action to extend its guarantee of privacy to cope with the insidious erosion produced by man's amazing technology. Unnecessary probing into private lives by whatever means, and necessity exists only in national security cases, must cease if the Bill of Rights is to win the race with electronics—and the political executives, managers, and technicians.

[From the Charlotte (N.C.) Observer, May 7, 1967]

ERVIN HITS PRIVACY INVASION—NATIONAL DRIVE URGED BY SENATOR

NEW YORK.—Senator Sam J. Ervin Jr., D-N.C., called Monday for a massive nationwide campaign to rid government and industry personnel files of data that jeopardizes privacy.

Ervin told the American Management Association that business and management must place immediate restraints on the type of information they force employes to give about themselves.

"They must launch a massive nationwide clean-up campaign to cleanse their present files of improperly acquired, irrelevant personal information," Ervin added.

Ervin said if these steps are not taken before proposed personnel data computer centers are set up, the public will demand strict congressional controls.

"Government appropriations for research and development will be denied and the computer will become the villain of our society," Ervin said.

Ervin, chairman of a Senate Judiciary subcommittee on constitutional rights, addressed the association's annual conference on electronic data processing.

He said the subcommittee has a huge dossier of complaints by federal employes about computerized questionnaires and even lie-detector interviews that probe into their private affairs.

If such information is consolidated into a central computer center it will make possible a massive invasion on the privacy of millions of persons, Ervin said.

"Decisions affecting a person's job, retirement benefits, security clearance, credit rating or many other rights may be made without benefit of a hearing or confrontation of the evidence," he said.

"The computer reduces his opportunity to talk back to the bureaucrats, Ervin said. "It raises the specter of a possible program of routine denial of due process."

[From the Washington Post, Sept. 3, 1967]

OUTSIDE THE LAW

The Central Intelligence Agency has not shown any valid reason for its demands for exemption from a bill designed to protect the privacy of Federal employes. Senator

Ervin h[illegible]overstated the case when he asserted [illegible]e agency was seeking an "unmitigate[illegible]ht to kick Federal employes around." This "right" is sought, of course, in the name of national security; and there is no question that the CIA needs to screen its personnel with the utmost care. But national security is not served by disregarding the rights of Government employes.

As reported to the Senate, the Ervin bill already contains an amendment exempting the CIA and the National Security Agency from provisions which prohibit Federal agencies from asking their employes about their religion, sexual activities or family relationships. There is no reason for such an exemption and no reason why any Federal agency should intrude so offensively upon areas of privacy. Government investigators have too often been known to make such inquiries wantonly and pruriently. They demean the Government itself as well as the individuals involved. And it is highly doubtful that they yield information of the slightest value in determining the trustworthiness of employes.

To make matters worse, moreover, these offensive inquiries are commonly undertaken in conjunction with lie detector tests. Lie detector tests ought to be forbidden in determining qualification for employment in any Federal agency—and especially an agency affecting national security—if for no other reason than that they are, like the reading of tea leaves or other forms of divination, notoriously unreliable.

The CIA and the NSA are now seeking exemption, in addition, to provisions of the Ervin bill which give Federal employes the right to have legal counsel present during disciplinary hearings and which permit employes to bring suits to enforce their rights. These are elements of due process designed to insure fairness in dealing with employes, and there is no reason why sensitive agencies should be empowered to deal with personnel arbitrarily and capriciously.

Senator Ervin gave the CIA and the NSA ample opportunity to present their case for exemption in the course of committee hearings. Instead, they chose, after the bill had been reported out, to state their objections in a letter stamped "Secret" and in private conversations with Senators; and for this purpose they have persuaded the Senate to postpone a vote on the bill. One can hardly help supposing that their arguments are so specious that they will not bear inspection. We commend to the Senate Lord Acton's wise observation that "Everything secret degenerates, even the administration of justice; nothing is safe that does not show it can bear discussion and publicity."

[From the Raleigh (N.C.) News and Observer, Aug. 31, 1967]

IN THE NAME OF SECURITY

Sen. Sam J. Ervin has proposed, and already guided through the Senate Judiciary Committee, an excellent bill to protect the privacy and civil rights of federal employes. In the main, it would prevent agency officials from delving into the unquestionably private aspects of an employe's life. And it would give government workers protection against being pressured to support supposedly worthy causes unrelated to their jobs, sometimes outside of government offices.

Senator Ervin has worked long and carefully to shape this bill. It deserves—almost certainly it will gain—passage in both the House and the Senate. Perhaps it should apply equally to protect workers within the Central Intelligence Agency and the National Security Agency. But doubts about that, particularly from CIA officials, have resulted in postponement of Senate action and the provoking of Senator Ervin's anger. Some exceptions are written into the bill to meet CIA objections, he insists, and the measure ought not to be delayed [illegible]

This is not just a collision between basic rights of individual workers and the practiced abuses of an overbearing employer. The CIA does indeed operate above the law, as most of us understand that phrase. It is answerable only to a small, select committee of the Congress; its appropriations are not identifiable in the budget; its expenditures are not audited for public accountability; its activities, which include discrete violation of American codes of law as well as those of enemy, neutral and allied nations, are shrouded in super secrecy. Such a spy agency is deemed essential to the security of this country and the furtherance of its foreign policy. Changing its posture or limiting the scope of its activities is not at issue in Senator Ervin's bill.

The question which his measure raises is whether CIA employes should not be entitled to legal protection of their privacy the same as all other government workers. That could be amended to ask whether the CIA should even seem to be just another government agency. It ought not to abuse the rights of its employes. It is given, and no doubt it uses, the authority to do much more in the name of security.

[From the Raeford, (N.C.) News-Journal, Sept. 7, 1967]

SAM GETS MAD

Sen. Sam Ervin of North Carolina all but "blew his stack" on the floor of the U.S. Senate one day last week after the Central Intelligence Agency (CIA) maneuvered behind the scenes and allegedly had scratched from the Senate agenda an Ervin-sponsored bill to safeguard the rights of federal employes. The senator was justifiably perturbed, and his allegation that the CIA wants "to stand above the law . . . wants the unmitigated right to kick federal employes around . . . deny them the basic rights which belong to every American" has the familiar ring of CIA super-secrecy and behind the curtain intrigue.

The Central Intelligence Agency, the Federal Bureau of Investigation, the Secret Service, and other agencies enjoy almost total immunity to regulation and supervision. There have been many criticisms of the CIA, dating back to the Bay of Pigs fiasco, but Senator Ervin's denunciation was the strongest attack to date.

He objects to the CIA and the National Security Agency—or any other investigating agency—asking employes or job applicants about their sex habits, family relations or religious beliefs as part of certain tests. The sole exception is that when the national security may be involved.

Senator Ervin contends federal employes are brow-beaten by the CIA and others. Certainly, the rights of federal employes ought to be protected, and the CIA ought to be restrained from lobbying. Senator Ervin may have yet another shot at the CIA, however, because he is a member of the Senate Armed Services Committee, which has jurisdiction over the CIA.

[From the Boston (Mass.) Morning Globe, Aug. 29, 1967]

FOOT-IN-MOUTH DISEASE

The Central Intelligence Agency, backed by the National Security Agency, has been caught with its foot in its mouth again. This awkward position is deplorable in any event, but it is twice to be deplored in the case of agencies which could play a vital role in the international cloak-and-dagger market if they were run judiciously.

Their latest affront to the democratic process is the successful maneuver, uncovered by The Christian Science Monitor, to remove from the U.S. Senate calendar a scheduled debate on a bill designed to protect Federal employees from police-state intrusion. It is the so-called "Right to Privacy [illegible]

palled at the CIA–NSA technique of "strapping an applicant (for employment) to a machine and subjecting him to salacious questioning" to determine whether he would or would not be a "security" risk.

Sen. Sam J. Ervin (D-N.C.), chief sponsor of the bill, points out that the Federal Bureau of Investigation does not resort to such tests in hiring its staff and overseeing employee conduct because it knows that such tests are not foolproof in sifting truth from falsehood and because other and acceptable techniques are available for testing the character, reputation and capacity of job applicants.

"The basic premise of the bill," says Sen. Ervin, "is that employees of the Federal government sell their services, not their souls. The idea that a government agency is entitled to 'the whole man' and to the most intimate knowledge and control of all the details of his personal and community life, his religious beliefs and sexual attitudes is more appropriate for totalitarian countries than for a society of free men. The questioning process disgusts many applicants and sours some against taking any Federal job."

The CIA and NSA, which spurned all requests to testify before a Senate subcommittee, now demand to be heard by the Judiciary Committee behind closed doors. The request has been denied on the ground that there is already too much secrecy in government, that the public business should be conducted publicly.

A showdown on this issue can come none too soon, for it is even larger than the rights of Federal employees to be treated as American citizens. What is at stake is nothing less than the right of the U.S. Senate to conduct its own affairs, and certainly its own debates, without behind-the-scenes interference, especially from what is essentially a secret police agency.

[From the Christian Science Monitor, Aug. 29, 1967]

"SPY" AGENCIES RESIST "PRIVACY" BILL COVERAGE

(By Lyn Shepard)

WASHINGTON.—The Central Intelligence Agency is making an 11th-hour effort to remain exempt from a "right to privacy" bill before the Senate now.

The bill, sponsored by Sen. Sam J. Ervin Jr. (D) of North Carolina, would protect federal employees from prying questionnaires and other means of invading a worker's private life.

But the CIA holds that its mission requires the "right to pry" by means of polygraph or "lie detector" tests in order to know the personal attitudes of its staff. It contends that the national security is often at stake.

The Edvin bill, which boast 54 cosponsors, cleared the Senate Judiciary Committee unanimously Aug. 21. It was scheduled for floor debate Aug. 25 but withdrawn from the calendar following a unique CIA request.

Though the agency earlier spurned Senator Ervin's invitation to testify before his subcommittee, it now has asked to state its case before the full Judiciary Committee.

This poses an unusual dilemma for Sen. James O. Eastland (D) of Mississippi, its chairman. Senator Ervin has consented to the unprecedented request—but only if the CIA testifies in public. The agency follows a strict rule of speaking "off the record" and behind closed doors.

Thus Senator Eastland must decide whose wish to grant; the CIA's or a close Southern ally's. Senator Ervin holds two aces which could sway his chairman's thinking.

A committee amendment already gives the directors of the CIA and the National Security Agency (its counterpart in the Defense Department) the authority to use polygraph tests in individual cases when they [illegible] national security demands it.

The Federal Bureau of Investigation does not rely on such tests in hiring its staff or overseeing its conduct. Nor does it regard them as foolproof in sifting truth from falsehood.

Behind the closed doors of the Judiciary Committee, Senator Ervin had opposed any moves to grant the CIA and NSA special "right to pry" privileges. The limited-testing amendment proposed by Sens. Birch Bayh (D) of Indiana and Edward M. Kennedy (D) of Massachusetts, gained a majority anyway.

AGENCIES STAY QUIET

Despite this amendment, the agencies have sought a hearing in hope of recommitting the Ervin bill. In a letter to Judiciary Committee members dated Aug. 25 Senator Ervin fought back.

"These agencies are apparently lobbying for complete exemption on the Senate floor from all provisions of the bill, an action which I consider both unwise and unconstitutional," he wrote.

The Senator reminded his colleagues that FBI Director J. Edgar Hoover found the polygraph unreliable. Even if it were dependable, he said, questions relating to an applicant's family relationships, religious beliefs, and sexual attitudes do not belong in such a test.

"The basic premise of this bill," he noted, "is that a man who works for the federal government sells not his soul, but his services.

"The idea that a government agency is entitled to the 'total man' and to knowledge and control of all the details of his personal and community life is more appropriate for totalitarian countries than for a society of free men."

The security agencies decline official comment on their operation, including the use of polygraph tests without the proposed restrictions.

One Senate source close to the issue, however, said that such tests serve a dual purpose. At times they screen out undesirable applicants who might be subject to enemy blackmail pressure. And sometimes they are used to deliberately "screen in" such undesirables so the agency can make contacts in vice circles.

"The other big issue is the 'right to pry'" the source said. "These agencies are in the prying business. They have to ask some of these questions—no matter who they offend.

"They have to recruit some drug addicts and sex deviates to contact others like them in London, Paris, or hippy circles wherever to find out what the agencies need to know."

In this way, the source maintained, the CIA and NASA seek to justify their curiosity in the "total man." Senator Ervin contended during hearings that the questioning process disgusts many applicants and sours some against taking any federal job.

"Surely," he said, "the financial, scientific, and investigative resources of the federal government are sufficient to determine whether a person is a security risk, without strapping an applicant to a machine and subjecting him to salacious questioning."

SENATOR UNMOVED

The CIA–NSA arguments obviously leave Senator Ervin unmoved.

"They want the unmitigated right," he told other members, "to kick federal employees around, deny them respect for individual privacy and the basic rights which belong to every American regardless of the mission of his agency."

The administration has opposed the Ervin bill from the beginning. Its spokesman, the chairman of the Civil Service Commission, John Macy, testified that any grievances can be resolved without a law through federal employee unions.

But a majority of the Senate—including at least 35 Democrats—disagrees. It is this support which Senator Ervin looks to as a showdown with the security agencies draws near.

[From the New York Times, Aug. 30, 1967]

CIA WINS DELAY IN BILL TO RESTRICT U.S. JOB INQUIRIES

(By Fred P. Graham)

WASHINGTON, August 29.—The Senate granted today an 11th-hour plea by the Central Intelligence Agency for a delay in considering a bill designed to protect Federal employees from being asked personal questions.

The action evoked an angry outburst from the bill's author, Sam J. Ervin Jr., Democrat of North Carolina, who said the C.I.A. was seeking a complete exception from the bill to give it the "unmitigated right to kick Federal employees around."

A spokesman said the agency would make no comment on Senator Ervin's charges. However, it was learned that the C.I.A. has complained that the bill might undermine its ability to protect itself from penetration by enemy agents.

Under the bill, which had been scheduled to be debated and possibly voted upon today, Federal agencies would be prohibited from asking their employes about their finances, religion, sex activities or family relationships. It would also forbid questions about employes' outside activities, unrelated to their work, and their race, religion or national origin. In addition the bill would prohibit pressure tactics aimed at coercing Federal workers to buy bonds or support political candidates.

The bill contains an exemption that would permit the C.I.A. and the National Security Agency to ask its employes about their finances, sex attitudes, religion and family affairs if necessary in specific cases to protect the national security.

FEAR OF DISCLOSURES

However, these agencies would be covered by the other provisions of the law, and the C.I.A. is said to fear that the law would expose it to suits that could embarrass the agency and disclose some of its secrets.

Among the provisions that reportedly worry the C.I.A. are those that give employes the right to have legal counsel present during disciplinary discussions with superiors and that permit employes to bring suits in Federal court to enforce their rights.

Both security agencies are also said to resent the fact that the Federal Bureau of Investigation has been exempted entirely from the bill.

A spokesman for Senator Ervin said today that this was done to give the F.B.I. a free hand in investigating employes of other agencies.

Senator Ervin appeared particularly miffed today because the C.I.A., after declining twice in the last two years to testify publicly about the bill, asked for a delay only hours before the final Senate vote was scheduled to be held.

He said such a request by a Federal agency was "without precedent."

Senate majority leader Mike Mansfield said in an interview that he had "never heard of such a request" before, but that he granted it to give the agency time to explain its case to Senate leaders before the vote was taken.

Mr. Mansfield announced later from the Senate floor that the bill would be taken up on Sept. 19.

In his speech, Senator Ervin said the C.I.A. had given its objections to the bill in a 10-page letter stamped "secret," and in private meetings with his staff.

He said the agency's objections were so "specious" that he insisted that any C.I.A. testimony be given publicly. The intelligence agency has agreed only to private hearings. It is known that a number of changes have been made in the original bill to make it more palatable to the agency.

One significant C.I.A.-inspired amendment modified a section that, in the original version, forbade any agency to ask its employes about their participation in political campaigns, political opinions or political beliefs. The C.I.A. wanted to be able to ask employes about their political activities.

The C.I.A. also wanted the bill to forbid employes to engage in political activities, but Senator Ervin refused to go that far. The bill would forbid employes to solicit political contributions or to coerce others to support any political party or policy by promising or withholding promotions.

The C.I.A., which has been accused on occasion of dabbling in foreign political affairs, was reportedly responsible for an amendment that changed this section to apply only to elections within the United States.

[From the Winston-Salem Journal, Aug. 30, 1967]

SENATOR ERVIN PROTESTS BILL'S DELAY

(By Bill Connelly)

WASHINGTON.—Sen. Sam J. Ervin, Jr. of North Carolina protested angrily yesterday when the Senate postponed action at the request of the Central Intelligence Agency, on a bill to protect the private rights of government employes.

In a 30-minute floor speech, Ervin said it was unprecedented for such an agency to hold up the Senate's business. He said the bill has been under study for a year.

He questioned whether the CIA, by seeking the Senate delay, has violated a federal law which forbids excessive lobbying activities by employes of federal agencies.

He also implied that CIA employes need more protection than most civil servants from snoopy supervisors and lie-detector tests.

HAS CLEARED COMMITTEE

Ervin introduced the bill, which prohibits federal departments from questioning employes on personal matters and from asking them to take lie detector tests and psychological tests.

The measure has cleared the Senate Judiciary Committee. It includes a partial exemption for the CIA and the National Security Agency. But the CIA is said to want total freedom in its personnel policies.

The bill was scheduled for floor action yesterday, but was postponed at the request of minority leader Everett Dirksen, R-Ill., who said the CIA had asked him to seek the delay.

Dirksen later told an informal news conference that he favors the Ervin bill, with or without an exemption for the security agencies, but feels there will be no harm in postponing a vote.

BLUNT SPEECH

Because of the postponement, the Senate probably wil not act on the measure until after the Labor Day recess. The majority leader, Mike Mansfield, D-Mont., said it likely would come up around Sept. 19.

Ervin said in his blunt speech that he sees "no practical or policy reasons" for exempting the CIA from his bill. "It is neither necessary nor reasonable," he said.

The safeguards of the Constitution, Ervin said, "were meant to apply to all Americans; not to all Americans with the exception of those employed by the Central Intelligence Agency and the National Security Agency.

"My research has revealed no language in our Constitution which envisions enclaves in Washington, Langley or Fort Meade, where no law governs the rights of citizens except that of the director of an agency. Nor have I found any decision of the (Supreme Court) to support such a proposition."

Ervin said it is inconceivable that the CIA and NSA could be hampered by provisions of the bill. The bill would—in addition to prohibiting personal questions, lie detector tests and psychological tests—keep agencies from making employes buy bonds, lobby for legislation, support political candidates or take part in activities unrelated to their work.

Do the CIA and NSA, Ervin asked, want to make their employes do these things?

"Is (their mission) such that they must be able to order their employes to go out and lobby in their communities for open housing legislation or take part in Great Society poverty programs?" he asked.

"Must they order them to go out and support organizations, paint fences, and hand out grass seeds . . .?"

Ervin said the Constitutional Rights subcommittee, of which he is chairman, has found ample evidence of very personal questioning of government employes and prospective employes. One of the worst offenders, he said, is the CIA.

He said "some of the brightest young people in this country" are refusing employment with the CIA because of its "deplorable personnel practices." He said applicants for jobs in this and other agencies had been asked intimate questions about sex, family relationships and personal finances.

Nevertheless, he said, the privacy bill as now written allows the directors of the CIA and NSA to waive the restrictions when they feel employes must be questioned in specific cases involving national security. Ervin opposed even this exemption, which he said was unnecessary.

"What more do they want?" Ervin asked. "Apparently, what they want is to stand above the law."

It was earlier reported that both the CIA and NSA were attempting to have Ervin's bill returned to committee. Ervin said yesterday, however, that only the CIA appears to be trying to hold up action. It is uncertain now whether there will be an attempt to return it to committee or whether an amendment will be offered on the Senate floor.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. ERVIN. Mr. President, I gladly yield to one of the cosponsors, the able and distinguished Senator from Nebraska, who has done a tremendous amount of work in bringing the bill to its present state.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HRUSKA. Mr. President, I thank the Senator from North Carolina.

Mr. President, prior to the Labor Day recess, I spoke in favor of the Constitutional Rights Subcommittee's bill which had been approved by the full Judiciary Committee. S. 1035 is designed to protect Government employees as to personnel and employment practices, and it has my wholehearted approval.

This bill is long overdue. Case after case of flagrant violation of basic rights has been reported to and reported by the subcommittee. These documented incidents compel this Congress to draw the line, to decide how much of his dignity a man must surrender to become a Government employee.

This Government was the first to proclaim in a Constitution the first amendment freedoms, the fifth amendment freedoms, the concepts of due process and equal protection of the laws. Our courts vigorously defend these constitutional restrictions. Government agencies espouse the principles. And yet the Government is a flagrant violator of those rights.

Subcommittee hearings over the last three Congresses have documented the need to protect the employee. However well intentioned the Civil Service Commission, however voluntary the study, however beneficial the goal of surveys and fund drives, the fact remains that the individual has been coerced into revealing personal information, forced to account for his off duty hours, and compelled to donate his time and money to projects and drives. His integrity has been questioned without reason, and, in extreme cases, he has been stripped of his dignity. All of this has been done in the name of high ideals.

We all recognize that procedures are required to insure that capable employees perform governmental duties. We recognize that, in some cases, the security of the Nation depends on the integrity and stability of these employees. This bill does not restrict control over the qualifications of Federal employees.

What is prohibited is indiscriminate probing, snooping, direction, and control. Overzealous officials and well meaning supervisors are restrained. But with all the resources and resourcefulness of our Federal Government, security risks can be detected, criminal conduct can be discovered, and charitable fund drives can succeed. The ligitimate activities of Government can continue, hampered only by the constitutional requirements of due process and equal protection.

Mr. President, I wish to take this occasion once again to commend the senior Senator from North Carolina for his very steadfast and persistent efforts. I hope and trust that the Senate will approve this measure.

Mr. ERVIN. I thank the Senator from Nebraska for his very gracious remarks. I should like to reiterate my statement that if it had not been for the diligence and the dedication of the Senator from Nebraska, this measure would not be here in its present state.

Mr. KENNEDY of Massachusetts. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. KENNEDY of Massachusetts. I should like to join with the Senator from Nebraska and the other Members of the Senate in congratulating the Senator from North Carolina for the work he has done in the preparation and the development of this measure. It is a tribute to his own sense of fairness and his conscientiousness, and his efforts to provide legislation which would protect Federal employees, that S. 1035 is before us today.

I have had an opportunity to review the Senator's statement, and I am reminded that on page 3 the Senator said:

> I confess that were I legislating alone, I would rather see fewer compromises and exceptions than are now contained in the bill. I see no necessity for any of the practices prohibited in S. 1035.

Since I believe this is important, I am wondering if the Senator, recognizing that his own personal views may differ, could review for the Senate and for the record the principal reasons asserted for the exemptions in the bill and the need for such exemptions. I should also appreciate being apprised of the Senator's own attitude toward this matter.

Mr. ERVIN. There is an exception of a special type, and that is one which exempts the Federal Bureau of Investigation entirely from the provisions of the bill. That exemption was made for two reasons. In the first place, the Federal Bureau of Investigation has been operated in such a way that it has not been charged with any substantial violations of any of the provisions of this bill. On the contrary, if all the agencies and departments of Government had been operated in the manner in which the Federal Bureau of Investigation has been operated, there would be no necessity for a bill of this character. That is one of the reasons for the exemption of the Federal Bureau of Investigation.

The other reason for the exemption of the Federal Bureau of Investigation from the coverage of the bill is the feeling among many of the cosponsors of the bill that the Bureau should not be included for the reason I have stated, and for the further reason that it must conduct investigations in respect to violations of law and should not be handicapped in so doing by any of the provisions of the bill.

In addition to this specific provision exempting the FBI from the coverage of the bill, certain exemptions are written into the bill to meet objections voiced by various departments and agencies, principally the Central Intelligence Agency and the National Security Agency.

Most of the exemptions for certain activities otherwise covered by the bill were included in order to meet objections voiced by those agencies, for which I believed there might be some reasonable basis.

I believe that in its present form the bill meets all legitimate objections that can be raised to the bill by any agency or department of the Government. It also provides employees of the Federal Government a minimum of protection in having their constitutional rights observed and their rights to privacy respected.

I should also like to say that the distinguished senior Senator from Massachusetts, as a member of the committee which considered and reported this bill, has done a great service in assisting in bringing the bill to its present state.

Mr. KENNEDY of Massachusetts. I appreciate the comments of the Senator from North Carolina, and also the explanation that he has given with regard to the exemptions.

I, too, share the understanding of the Senator from North Carolina with respect to the fine record of the Federal Bureau of Investigation in conducting investigations and in recruiting their personnel. My understanding is similar to that of the Senator from North Carolina, that they have not, particularly recently, engaged in polygraph tests and the other kinds of tests which are proscribed in the pending measure.

Mr. ERVIN. That is my understanding. I have been assured by the FBI that it does not use psychological tests or polygraph tests in its personnel work.

Mr. KENNEDY of Massachusetts. Is the Senator satisfied, and has he received assurances from people within the Bureau who have the principal responsibilities in this connection, that in the future these rights will continue to be respected?

Mr. ERVIN. I have been assured by the FBI that it does not regard psychological testing or polygraph testing as a reliable method of determining the capacity and the loyalty of employees. I have been assured by the FBI that it considers other methods of determining these qualities of an employee far superior to those that [illegible] extensively—more than

by any other branches of the Government—by the Central Intelligence Agency and the National Security Agency.

Mr. KENNEDY of Massachusetts. And the Senator is further satisfied that the techniques which are utilized by the FBI are not violative of the spirit or the letter of the measure which the Senate is considering this afternoon?

Mr. ERVIN. Yes. With the exception of one case which has been called to the attention of the subcommittee, in which an employee was interrogated without an attorney or a friend, I have received no reports of transgression on rights or activity on the part of the FBI which would constitute a violation of the proposed bill. In that particular case, my understanding is that no request was made by the employee for the presence of counsel or a friend at the time of the interrogation.

Mr. KENNEDY of Massachusetts. Is the Senator prepared to give us what assurance he can that he at least is satisfied that the FBI will respect the purposes and the spirit of the measure? I would be interested in his assurances with respect to this matter, because I know of the great amount of time he has spent on the problem and the amount of study he has given to it. I am of the opinion that his assurances would be very helpful to many of us who are concerned about the problem of the exemptions from this bill.

Mr. ERVIN. I reiterate that if all the departments and agencies in the executive branch of the Government had been conducted as the FBI has been conducted in times past, insofar as its relationship with its employees is concerned, there would be no necessity for a measure of this nature.

In view of the statements made to me about their practices and their evaluation of psychological testing and the use of polygraphs, I am satisfied that the FBI will not resort to their use in the future.

However, I would say to the Senator from Massachusetts that if they should depart from that course of conduct, I would be one of the first to offer an amendment to the law to make the agency comply with the terms of the act.

Mr. KENNEDY of Massachusetts. I appreciate the response of the Senator.

Mr. ERVIN. I thank the Senator from Massachusetts not only for his concern in this matter, but also for the very fine assistance he gave in bringing the bill to its present state.

Mr. HRUSKA. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. HRUSKA. One of the complaints in the political field that was quite typical was the practice of soliciting Government employees to buy tickets to political testimonial dinners.

Page 5 of the bill, commencing at line 23, makes it illegal "to require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States."

Is that language broad enough to cover letter solicitations of Government employees for the purpose of buying tickets to testimonial dinners, or other such political activities?

Mr. ERVIN. I think there is no doubt of that because this would prohibit requiring or requesting, or attempting to require or request any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value, these political activities.

Mr. HRUSKA. However, that language is applicable only, as line 2 on page 6 indicates, to the "nomination or the election of any person or group of persons."

A testimonial dinner could be held to replenish the coffers of the Republican Party or the Democratic Party.

Mr. ERVIN. I think it is broad enough because the money put in the coffer of the national committee is put there to assist in the election of certain candidates for the presidency and vice presidency of the party.

Mr. HRUSKA. Even though the efforts of the national committee are somewhat indirect, nevertheless, they do affect the elections of certain persons or groups of persons. Is it sufficiently clear that the intent of the section would include such activity?

Mr. ERVIN. It is my judgment that a proper construction of this section would include that.

As the Senator from Nebraska knows, a person goes to one of these dinners and makes a contribution far in excess of the value of the food or entertainment he is going to receive. The object is to have a surplus above cost and value of those things, to be devoted to political purposes, to promote the election of the presidential and vice-presidential candidate, or the election of some person for some other office.

Mr. HRUSKA. My recollection is that the matter had been discussed in the subcommittee and in the committee; that the language is considered sufficiently broad for the purposes interrogated into; and that there are other statutes applying to such situations.

Mr. ERVIN. Yes.

Mr. HRUSKA. I am satisfied that this will be the fact. However, I thought it would be well to develop the legislative history and intent.

(At this point, Mr. INOUYE assumed the chair.)

Mr. BAYH. Mr. President, will the Senator yield at this point in this context, so that my remarks may be consistent?

Mr. ERVIN. Mr. President, I am delighted to yield to the Senator from Indiana, with the understanding that I do not lose my right to the floor.

Mr. BAYH. I would not want to deprive the Senator of his right to the floor. However, it might be helpful, inasmuch as the Senator from Nebraska is making some important legislative history, to point out specifically an item to which he referred, and that is the fact that we have just passed another measure, the campaign financing measure, which deals with Federal employees.

I thought it might be helpful to get the opinion of the Senator, as well as the opinion of the distinguished chairman of the committee, that Senators were careful, as I recall the colloquy on this amendment, to point out that we were talking about efforts made directly to zero in on coercion only of Federal employees. Indeed, we would not be wise, it seems to me, to consider in either of these bills the establishment of a small group or class of U.S. citizens which could be denied the right to participate in the political process. In other words, if a person were collecting funds throughout an entire neighborhood, and he solicited individual Federal employees by chance, we do not want to get ourselves into the position where the bill which was passed the other day or this bill would make that a crime.

Mr. HRUSKA. It would not, and this bill would make it unlawful for any officer of an executive department or executive agency to try to levy tributes on employees in his department, which is another thing from an active party official who can solicit contributions from Government employees, but any party official not an official in the executive agency or department would not be in a position to say, "Well, you are now up for this position, but when I sent a letter for that $100 ticket last fall, you did not respond. I am sorry."

That is the situation we are trying to meet here. There would be no detriment to engaging in politics by Government employees under the Hatch Act.

Mr. BAYH. I agree with the Senator. I wanted to be sure the RECORD brought that matter into better focus.

Mr. GRUENING. Mr. President, will the Senator yield?

Mr. ERVIN. I yield to the Senator from Alaska.

GOVERNMENT EMPLOYEES SHOULD NOT BE TREATED AS SECOND-CLASS CITIZENS

Mr. GRUENING. Mr. President, for far too long loyal, dedicated Federal civil servants have often been made the object of unwarranted harrassment. These civil servants perform a vital role in the functioning of the Federal Government, working quietly and efficiently at their tasks.

The least we could expect is that their constitutional rights should be safeguarded and that their right to privacy should be preserved.

Because a man or woman is employed by the Federal Government should not mean that he or she thereby is somehow downgraded to second-class citizenship.

S. 1035, which would protect the privacy and rights of Federal employees, is a highly commendable effort to clarify the position of Federal employees and to set an example of good employer-employee relations in this age of the growing use of electronic snooping devices and computers.

I am happy to be a cosponsor of S. 1035 and hope that it will go a long way toward accomplishing its three objectives of, first, establishing a statutory basis for the protection and preservation of the rights not only of those who work for the Federal Government now but also of those who will be employed in the future; second, serving as an incentive in attracting the best brains in the country to work for the Federal Government; and, third, acting as a model for the protections which should be accorded all employees in the United States working for State and local governments or working for private employers.

The able and distinguished senior Senator from North Carolina [Mr. ERVIN] is to be highly commended for his leadership in this very important matter and in bringing this bill to the Senate for a vote.

I hope that the bill will be speedily enacted and will be rigidly enforced so that no person employed by the Federal Government will be subjected to any form of harassment or will be considered to have given up any of his rights by virtue of that employment.

Mr. President, I have just recorded my enthusiastic support for the pending bill, but I wish to make a reservation against one of the amendments approved by the committee and now incorporated in the revised version.

In the report of the distinguished chairman, the Senator from North Carolina [Mr. ERVIN], on pages 21 and 22 of the report, is the section on polygraphs, beginning with the first paragraph and ending with the words "so fascinating," I ask unanimous consent to have it printed in the RECORD because it gives the reasons for the exclusion in the sponsor's draft of the bill of one very objectionable type of harassment, but which, regrettably, was in part restored by the committee.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

POLYGRAPHS

Section 1(f) makes it unlawful for any officer of any executive department or agency or any person acting under his authority to require or request or attempt to require or request any civilian employee or any applicant for employment to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs, practices or concerning his attitude or conduct with respect to sexual matters. While this section does not eliminate the use of so-called lie detectors by Government, it assures that where such devices are used for these purposes it will be only in limited areas.

John McCart, representing the Government Employees Council of AFL–CIO, supported this section of the bill, citing a 1965 report by a special subcommittee of the AFL–CIO executive council that "the use of lie detectors violates basic considerations of human dignity in that they involve the invasion of privacy, self-incrimination, and the concept of guilt until proven innocent."

Congressional investigation[1] has shown that there is no scientific validation for the effectiveness or accuracy of lie detectors. Yet despite this and the invasion of privacy involved, lie detectors are being used or may be used in various agencies of the Federal Government for purposes of screening applicants or for pursuing investigations.

This section of the bill is based on complaints such as the following received by the subcommittee:

"When I graduated from college in 1965, I applied at NSA. I went to 2 days of testing, which apparently I passed because the interviewer seemed pleased and he told me that they could always find a place for someone with my type of degree.

"About one month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the District line in Maryland. I talked with the polygraph operator, a young man around 25 years. He explained how the machine worked, etc. He ran through some of the questions before he attached the wires to me. Some of the questions I can remember are—

"When was the first time you had sexual relations with a woman?

"How many times have you had sexual intercourse?

"Have you ever engaged in homosexual activities?

"Have you ever engaged in sexual activities with an animal?

"When was the first time you had intercourse with your wife?

"Did you have intercourse with her before you were married? How many times?

He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could ever get away with asking a girl those kinds of questions.

"When I was finished, I felt as though I had been in a 15 round championship boxing match. I felt exhausted. I made up my mind then and there that I wouldn't take the job even if they wanted me to take it. Also, I concluded that I would never again apply for a job with the Government, especially where they make you take one of these tests."

Commenting on this complaint, the subcommittee chairman observed:

"Certainly such practices should not be tolerated even by agencies charged with security missions. Surely, the financial, scientific, and investigative resources of the Federal Government are sufficient to determine whether a person is a security risk, without strapping an applicant to a machine and subjecting him to salacious questioning. The Federal Bureau of Investigation does not use personality tests or polygraphs on applicants for employment. I fail to see why the National Security Agency finds them so fascinating."

Mr. GRUENING. Section 6, which is now in the bill, was also not favored by the sponsor of the bill, the distinguished Senator from North Carolina. He made an eloquent statement on it, pointing out that, although he was personally opposed to it, he decided to accept it.

I ask unanimous consent that that portion of his prepared statement, beginning on page 4 with the words "With one exception" and continuing through the words "use it with restraint," on page 5, be included in the RECORD as a part of my remarks. It gives his reasons for his personal opposition to the amendment and his acceptance of it because of the committee's action.

There being no objection, the extract was ordered to be printed in the RECORD, as follows:

With one exception, all of the amendments added in Subcommittee and Committee are meritorious. They clarify possible ambiguities and insure that the purpose of the bill is achieved.

The one exception is the new section 6 pertaining to the Director of the Central Intelligence Agency or the Director of the National Security Agency. Upon a personal finding that any psychological testing, polygraph testing or financial disclosure is required to protect national security, they could allow these measures in individual cases.

Prior to adoption of this amendment, I met several times with representatives of the CIA and NSA; and all legitimate objections on grounds of security were met.

Personally, I would not favor even the limited exemption in section 6. As I have stated before, the Subcommittee's study of psychological testing clearly demonstrated that such tests are both useless and offensive as tools of personnel administration; and my own research has convinced me that polygraph machines are totally unreliable for any purpose. If the security of the United States rests on these devices, we are indeed pitifully insecure. Fortunately, it does not, for the FBI does not use these examinations.

But even if it could be shown that psychological tests and polygraphs have mystical powers and can be used to predict behavior or divine the truth, I would still oppose their being used to probe the religious beliefs, family relationships or sexual attitudes of American citizens. A fundamental ingredient of liberty is the right to keep such matters to oneself. And without liberty, "national security" is a hollow phrase. The truth is, there is no place for this sort of 20th Century witchcraft in a free society.

Nevertheless, I am requesting the Committee amendment granting a partial exemption to the CIA and NSA be accepted with the other amendments. I do this for two reasons. First, the amendment will require that use of the examinations by the two agencies be severely curtailed; and for the first time Congress will be withholding its permission for the agencies to kick American citizens around with impunity. Second, it is clear to me that a member of the bill's 56 cosponsors prefer that the CIA and NSA be allowed this partial exemption. I trust the Directors of the agencies will use it with restraint.

Mr. GRUENING. Mr. President, I share Senator ERVIN's view that this is not a desirable amendment. Considering its restraints, so that the action permitted it limited to the executive directors of the two agencies, and in view of the committee's action, we have to accept it, but I want to say I was not one of those referred to when the distinguished sponsor of the bill said it was clear to him that a majority of the 55 cosponsors preferred that the CIA and the NSA be given this partial exemption. I am not in favor of giving those agencies this partial exemption. I regret to see any vestige of salacious snoopery remain in the bill. Nevertheless, the bill has so much good in it that, with the reservation here stated, I repeat my expression of hope that this bill will become law.

Mr. HRUSKA. Mr. President, it is observed that the Senator from Delaware [Mr. WILLIAMS] is in the Chamber, and he was present in the Chamber when there was colloquy in connection with subsection (g), which has to do with soliciting political contributions from Government employees. I ask the Senator from Delaware if the colloquy between the Senator from Indiana [Mr. BAYH] and the Senator from Nebraska was in

[1] Hearings and reports on the use of polygraphs as "lie detectors," by the Federal Government before a Subcommittee of the House Committee on Government Operations, April 1964 through 1966.

accord with his understanding insofar as his amendment to the elections law approved by the Senate yesterday is concerned?

Mr. WILLIAMS of Delaware. The amendment which was adopted yesterday specificially prohibits any solicitation of campaign contributions from Government employees as Government employees. I think we have adequately taken care of the situation. The present law reads to the effect that whoever being a Senator or Representative or delegate or resident commissioner to or candidate for Congress, or an individual elected as a Senator or Representative, and so forth, solicits these employees would be subject to certain penalties. But the loophole in the existing law was that someone could solicit employees on our behalf or on behalf of the political party. For example, the head of an agency would not be a member of Congress nor would he be a candidate for public office, yet either he or on one of the State or national committees, could make the solicitation. Perhaps a private citizen outside of Government might make the solicitation. Thus, we amended that law in the bill passed yesterday. In addition to continuing the same prohibitions we also declared that whoever acting on behalf of a political committee or acting on behalf of any public official knowingly or intentionally solicits Government employees, would be subject to rather severe criminal penalties.

I believe that the amendment adopted yesterday to the campaign reform bill, will adequately take care of that situation and prohibit the solicitation of campaign contributions in any manner whatsoever, whether through the sale of dinner tickets or whatever, of Government employees by anyone acting either for or on behalf of elected officials or on behalf of any political committee.

Mr. HRUSKA. The Senator is aware, is he not, that section 1 of the bill, S. 1035, page 1, reads:

> It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

Mr. WILLIAMS of Delaware. Yes.

Mr. HRUSKA. So that the bill we are considering today is much more limited in character in this regard than the bill approved by the Senate yesterday; is that not correct?

Mr. WILLIAMS of Delaware. Yes, I think it will take care of the situation, coupled with the amendment adopted yesterday. I have the feeling that Government employees will be fully protected against any coercion in all of these solicitations. All that we will need is proper enforcement.

Mr. HRUSKA. I thank the Senator for his enlightening information.

Mr. BAYH. If the Senator from Delaware would indulge me, I should like to pursue this question one step further. I recall, last year, when we discussed this same amendment, the Senator and I had an exchange as to the interpretation of the amendment.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Indiana yield at that point for a unanimous-consent request?

Mr. BAYH. I yield.

Mr. BYRD of West Virginia. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. BYRD of West Virginia. I thank the Senator from Indiana.

Mr. BAYH. Interpretation of the measure, as I understand it, last year, is different from the interpretation the Senator places on it this year.

In colloquy before passage of the bill last year, as I recall—and I would be the last one to want to put any words in the mouth of my distinguished colleague—the effort was directed at any solicitation of Federal employees, whereas this year the Senator makes clear the fact that the effort is to prohibit direct zeroing in on Federal employees, by organizations, parties, or candidates canvassing an entire neighborhood in which resides Federal employees, that they would be treated exactly as citizens; namely, that they would have the right to refuse or agree to make a contribution.

Mr. WILLIAMS of Delaware. I do not believe there is any difference in the amendment offered last year and the one of yesterday. That question was raised both times. I checked with legislative counsel, who made it clear that the amendment as it was drawn both times was directed to solicitation of Federal employees as such, and would not have covered a situation, for example, of a party making a wholesale mailing list solicitation. For example, if they sent a form letter to all boxholders in the city of Washington and some of them happened to be Government employees they would have no way of distinguishing that. That was not intended to be covered. The amendment makes it clear that if solicitation were intentional and knowingly or willfully done it would be a violation of the law. It does stop the abuse which all of us know did exist; namely, that employees were being solicited on a more or less free-will offering as it was called, yet, at the same time, they knew they were going to be checked up on, either by their bosses or someone else, who would note whether they were present. On occasions they would invite the employees to stop by the bosses' house for a reception before the dinner, which made it easier to check up on those who were actually going, and at the same time it presented an opportunity to gently remind them of the dinner or the fund drive.

But all of those subtle approaches to coerce employees would be specifically abolished under the amendment approved yesterday. In my opinion the bill now before us carries out the same intent.

Mr. BAYH. I thank the Senator from Delaware for his information.

Mr. ERVIN. Mr. President, on that question, we had evidence—and placed an article in the record of the hearings on page 455—that the Democratic National Committee solicited the sale of $100 tickets to an affair in Washington and had the invitations sent out through the agency in such a way as to chill the employees who received them, because their grade number was written in ink on a corner of the invitation.

The article further stated they took that as an indication that if they wanted to rise to a higher grade, they had better buy a ticket. This, I think, is a very subtle form of coercion.

Mr. WILLIAMS of Delaware. I think it is, too. That was one of the specific examples in mind when the amendment was approved yesterday, and that would definitely be a violation of the law.

Mr. ERVIN. This bill covers only supervisors of employees and makes it illegal for any officer of any executive department or agency even to request any political contribution. We put in the word "request" there, along with the words "or require" advisedly. When we discussed the bill with the Chairman of the Civil Service Commission, Mr. Macy, he said that some of the things Federal employees were asked to do which are outlawed in this bill, were just requests and not requirements.

I told him that when I served in the Army and was studying the infantry drill regulations, one little sentence imbedded itself indelibly in my mind; namely, that the request of a superior is equivalent to a command.

Mr. WILLIAMS of Delaware. Yes.

Mr. ERVIN. That is the reason why we used those words advisedly. I think this provision of the bill supplements the bill passed yesterday and also the provisions of the Hatch Act, in that it provides security from such coercive practices against Federal employees.

Mr. WILLIAMS of Delaware. I think it does. We recognized that occasionally the head of an agency or an official may turn over a list of names to someone entirely outside the Government who might act on behalf of these people. I think we have this fully airtight now, and the measure before us will supplement it.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BAYH. Mr. President, in the judgment of the junior Senator from Indiana, this bill, protecting the privacy and rights of Federal employees, could be called a monument to the determination and dedication of the distinguished Senator from North Carolina [Mr. ERVIN]; in particular, to his continuing dedication to the principles and spirit of the Constitution of the United States, for which he is so well known in this body.

We often hear in our Nation today the fear expressed that Government, unreined and unchecked, could become the "big brother" portrayed in the frightening Orwell novel. We have taken great and unprecedented strides throughout our history as a nation to guarantee to every individual American his sacred right to privacy; his right to be left alone; to have within his own home and in his own mind his own thoughts and hopes and dreams that could be his alone, inviolable by any power except that of the Almighty.

Like freedom itself, the right to privacy is a blessing which must be preserved through constant vigilance in every generation.

There have been chapters in our history that tend to darken the otherwise

shining light of liberty that the United States of America has provided for the world—from the witch hunts in Salem to the witch hunts of the 1950's; from the panic over suspected Jacobins after the French Revolution to the panic over Americans of Japanese ancestry after Pearl Harbor.

But always, after that beacon of freedom had flickered so slightly, it burned back strong and true, as we remembered that ours is a government of laws and not of men, of inalienable rights and not of momentary emotions.

Ours has grown into a vast, complicated and interactive society in a complex and sometimes chaotic world—and the Government has, of necessity, grown apace.

We search for the most talented among us to devote at least a portion of their lives to Government service so that the difficult and often gravely important tasks of Government may be performed in a manner acceptable to and beneficial for the people, which is and must always remain the master of Government.

It seems, therefore, logical fitting, and supremely just that Government itself, in relation to its employees, should be the first and strongest guardian of all individual rights—not the least of which is the right to privacy.

This bill, S. 1035, upon which we will act today, was developed with the concept that Government employees—vast numbers of whom work for less than they could demand in private industry, and do so because they have a desire to serve their fellow Americans—should not be treated as second-class citizens; that they should not be subjected to indignities of prying, snooping, and inquisition that no other group of American workers would ever be subjected to, much less tolerate.

It is a straightforward proposal that does much to clarify and solidify the implicit and explicit guarantees contained in our fundamental law regarding an American's right to privacy.

I must admit that, if it were left to me alone, I would have preferred, as the distinguished Senator from North Carolina knows, to have exempted from the provisions of this bill two agencies of Government—the Central Intelligence Agency and the National Security Agency.

Just as the Senator from Alaska, as one of the cosponsors of the bill, reported that he was not one of those who supported the amendment contained in section 6, I did support it. I would like to point out that these two agencies, the CIA and the NSA, as most Members of this body know, deal every hour of every day with matters of the most urgent national security; and it is no exaggeration to say that much of the highly classified material that passes through these agencies is occasionally available to many individuals, ranging from the Director to a courier, to the person in the lowest echelon.

These agencies are so specialized in their work, and their work is of such a sensitive nature, it seemed to me that practices which I would not condone elsewhere in Government would be permissible, in regard to the interrogation and testing of prospective employees, in these two agencies, because, in my judgment, the interrogation might very well be necessary to protect the security of our country. It is an unfortunate fact of life that Communists and others who would wish to subvert our Government have made and will continue to make vigorous efforts to infiltrate these agencies or to find weaknesses among agency employees that could be viciously exploited at the expense of national security.

I would like to once again say that, in my judgment, the Senator from North Carolina has earned another star in his crown, which is already resplendent with many which have preceded this new one, because he has long championed this effort, over a period of 3 or 4 years. I trust that in the near future he will see the success of his efforts in this body and ultimately in the other body.

In my opinion the aspects of the bill as he described them are meritorious. I for one firmly believe that those who work for the Federal Government are dedicated persons and that we owe them deep gratitude for their service; many of them receive far less compensation than they could in private industry. The Government needs the best people it can get.

However, in my judgment—and I am sure the Senator from North Carolina agrees with me in this statement, although he disagrees on the import of the exclusion of these two agencies—I believe no one has a right to seek Federal employment if he would be a security risk to our country. It seems to me no one can argue that question. The place where we have disagreed is in the means, the extent to which we should go to try to find, before a person is employed, whether one is a security risk who might endanger our Government.

This is not a milk and honey world. It is not entirely a rosy world. There are those who would try to take our freedoms away from us, and who would use tactics of the worst magnitude to do so. It seems to me it is important that the Nation have someone who is willing, if necessary, to fight fire with fire. I know the agencies involved have been subjected to a tremendous amount of criticism. I suppose it is not popular for one to stand on the floor of the Senate and say there is a need for a CIA or a National Security Agency. As long as there are those who would threaten our security, we need someone who can deal with them on a fight-fire-with-fire basis.

There are certain aspects of this measure which clearly should be applied to the National Security Agency and the CIA. For example, I do not think anyone should compel any of their employees to participate in political activities. I do not think anyone should compel them to contribute to political functions. I do not think they should be compelled to contribute to the Red Cross, meritorious as that sounds. I do not think they should be compelled to attend political meetings.

But if the directors of these agencies feel that it is important to use certain of these tests to try to ferret out weaknesses of character which sometimes exist in human beings today, if they feel that that is better than having the fact disclosed by a breach in our security, then I, for one, think those agencies should be excluded from the bill, and be given the opportunity to use such techniques.

The work and efforts of the Senator from North Carolina—as, let me say, I am sure he knows—will cause the directors and the interrogators of these agencies to pay much closer attention to the questions that are asked and the means that are pursued to guarantee our security. But I would be somewhat less than honest with myself, being a member of the Committee on the Judiciary, to sit here and watch this measure pass, and vote for it—which I intend to do—without pointing out that in my judgment it contains one or two weaknesses about which I would feel much better were they not there.

Mr. President, I have no further comment.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed——

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is open to amendment.

Mr. ERVIN. Mr. President, I should like to make just a few observations in response to the remarks of my good friend, the distinguished Senator from Indiana.

I thank him, first, for his most gracious remarks.

Mr. President, there is nothing in this bill which will handicap the Central Intelligence Agency or the National Security Agency in protecting America against her enemies. All this bill does is try to make these agencies and every other Federal agency respect the right to privacy of their employees, and the constitutional rights of their employees.

Personally, I have no faith in the polygraph test. I have no faith in psychological tests which put such a question as this to applicants for Government employment:

> When telling a person a deliberate lie, do you have to look away, being ashamed to look him in the eye?

I have no respect for polygraph or personality tests that require the individual applying for employment to evaluate what kind of parents he has. I have no respect for the validity of psychological tests and polygraph tests which require an individual to reply to such questions as this:

> Have you ever committed a serious undetected crime? Have you ever suffered from a serious mental or nervous disorder? Have you taken part in any homosexual activity during your adult life? Have you engaged in any unethical practices? Have you been involved in any way with illegal drugs or narcotics? Have you done anything else of a similarly serious nature?

If they depend on the individuals to confess those things themselves, I do not think they are properly guarding the security of this country. I think they could better find out about those things by making inquiries about the individual involved, and conducting the thorough background investigations they should be making.

When I had the privilege to serve as a superior court judge in North Carolina, I was confronted with the problem of whether or not I would receive in evidence a polygraph test in a homicide case.

At that time, I made a serious study of the polygraph, and I have continued the study ever since. I have found that the polygraph test merely measures physical reactions such as respiration, temperature, blood pressure, pulse rate, and heart beat.

I found that the polygraph test is not admissible in any court in the United States, because of its unreliability. I came to the conclusion that you can give a polygraph test to a man, and if he is a brazen liar, he can pass it without difficulty. If he is a nervous man or an agitated person, or a person who resents insults, no matter how honest he might be, he would flunk the polygraph test. It is a totally unreliable test, and has been outlawed by statute in at least five States, including the State of Hawaii, whose able and distinguished junior Senator now occupies the chair.

I have done a little CIA-ing for myself, and I can tell you the number of polygraph tests that the CIA and the NSA administered to applicants for employment and to their employees during a recent year. I am not going to do it, but every Member of the Senate would be astounded to know how many thousands of people were required to take those tests.

I might say, incidentally, that the two employees of NSA who betrayed the United States and defected to Russia, Vernon F. Mitchell and William H. Martin, both passed polygraph tests.

Furthermore, Mr. President, it is my belief that a man who will believe in the polygraph will believe in witchcraft.

I hate to think that the security of the United States is dependent upon persons who want to have polygraph tests administered to those who seek employment in the U.S. Government.

Here is a complaint received by the subcommittee, which I cited in my remarks on August 29 when the bill was postponed. A man who applied for a job with the NSA was given a polygraph test in their installation in Maryland. Here is what he said about it:

When I graduated from college in 1965, I applied at NSA. I went to 2 days of testing, which apparently I passed because the interviewer seemed pleased and he told me that they could always find a place for someone with my type of degree.

About one month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the district line in Maryland. I talked with the polygraph operator, a young man around 25 years of age. He explained how the machine worked, etc. He ran through some of the questions before he attached the wires to me. Some of the questions I can remember are—

When was the first time you had sexual relations with a woman?

How many times have you had sexual intercourse?

Have you ever engaged in homosexual activities?

Have you ever engaged in sexual activities with an animal?

When was the first time you had intercourse with your wife?

Did you have intercourse with her before you were married? How many times?

He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could ever get away with asking a girl those kind of questions.

When I was finished, I felt as though I had been in a 15 round championship boxing match. I felt exhausted. I made up my mind then and there that I wouldn't take the job even if they wanted me to take it. Also, I concluded that I would never again apply for a job with the Government, especially where they make you take one of these tests.

If I were legislating all by myself, I would outlaw every polygraph test. The courts have found them totally unreliable; and, as I say, five States have outlawed them. However, this bill, as introduced, allows any official in the CIA or in the NSA to ask any kind of question during any polygraph test except questions about a man's religion, his personal relationship to his immediate relatives, and his sexual attitudes and practices. And even under the amendment which my good friend, the Senator from Indiana [Mr. BAYH], offered and persuaded a majority of the members of the Judiciary Committee to accept, the Director of the CIA or the Director of the NSA can even ask questions of that type if he deems it necessary to the national security. I do not know what more the CIA or the NSA could want. They could ask all other questions at any time but with respect to these three restricted types, they could only ask them if it is directed by the Director himself.

Mr. YARBOROUGH. Mr. President, will the Senator yield?

Mr. ERVIN. I yield.

Mr. YARBOROUGH. Mr. President, under the provision that the distinguished Senator referred to, would it be possible for the Director of the CIA in his discretion to decide that he would ask everybody those questions?

Mr. ERVIN. It would not be.

Mr. YARBOROUGH. Does the Director have to have a good reason to ask that kind of question?

Mr. ERVIN. It has to be on the individual basis. And it has to be based on a personal finding by the Director that the examination of each individual to be so tested or examined is required to protect the national security.

Mr. YARBOROUGH. Is it not a fact also that the results of polygraph tests can often be determined by the examiner?

Mr. ERVIN. The polygraph test does not interpret itself. All the polygraph machine does is to note a record of various physical reactions such as blood pressure, respiration, temperature, and heart beat.

Mr. YARBOROUGH. And is it not a fact that a person who has taken the polygraph test a number of times can so conduct himself that the examiner cannot learn anything from the test?

Mr. ERVIN. The Senator is correct. I stated a moment ago that if a man is a brazen liar and cannot be insulted by insulting questions, he can pass the test with flying colors. However, a man such as myself who is concerned about the rights of individuals could not pass the test. I could not pass the test because if I happened to think about the outrageous conduct of the CIA and the NSA with respect to their employees, it would certainly make my blood pressure shoot up high.

Mr. YARBOROUGH. I congratulate the distinguished Senator for his leadership on this bill. I think he is fighting for the liberty and rights of the people of the United States.

I agree with the Senator. I wish that the restrictions on people who give the polygraph tests were tougher. They run around and when they give the test they ask about all the girl friends a man has ever had. I am suspicious of that type of test. Psychology teaches us to be suspicious of people that have that kind of matter on their minds all the time.

Mr. ERVIN. There is a very interesting article in the Science Newsletter of August 14, 1965, concerning an experiment being made in the development of a lie-detecting machine by means of which a person can be tested without his knowing it. It is a very interesting article.

The machinery referred to in the article is called the "wiggle seat." The device looks like an ordinary office chair. At least, that is what it is supposed to look like. A person sits in this office chair, which is really a "wiggle seat," and is given a lie detector test without his knowing anything about it.

I have been informed by reliable sources that the CIA has been engaged in research on the project.

So, if the Senator has any contact with the CIA, he had better be careful of where he sits. I do not know if they have it in operation yet, but they have contemplated it.

Mr. YARBOROUGH. A person does not generally come into one's office and say: "I am representing the CIA." We may have all seen representatives of the CIA without ever knowing it.

Mr. ERVIN. It grieves me to think that the security of the United States is in the hands of men who place their faith in the polygraph machine and the "wiggle seat."

The CIA has a most important job to do, and the NSA has a very important job to do. It is their duty to guard the security of the United States. I think they would do a far better job of it if they would spend less time kicking their employees around and abandoned their fascination with the polygraph machine and the "wiggle seat."

Mr. YARBOROUGH. I agree. I think they would win more of the confidence of the American people if they were to use a more ethical type of examination, pursue more ethical methods, and ask more ethical questions.

I do not believe that they can win the confidence of the American people with

some of the tactics that the distinguished senior Senator from North Carolina has uncovered in the course of the hearings had on the pending bill.

Mr. ERVIN. The statement just read by me of the young man who applied for a job with the NSA shows that these methods are driving away from Government some of our most able young people. They are being driven away because they do not want to be insulted by the type of questions asked in the course of a polygraph test.

I thank the Senator from Texas.

Mr. YARBOROUGH. I congratulate the Senator from North Carolina.

Mr. ERVIN. The Senator from Texas is one of the cosponsors of the pending bill, as is, indeed, my good friend, the Senator from Indiana [Mr. BAYH], who has contributed much to bringing the bill in its present state.

Mr. BAYH. Mr. President, I wish to ask my friend, the Senator from North Carolina, some questions in order to explore the matter a little further for the RECORD.

How many complaints has the Senator received from applicants for positions, such as the young man whose sensitivity was shocked so greatly? I believe what the Senator from North Carolina and the Senator from Texas have said is very true—that the person who administers the polygraph can indeed, if he improperly administers it, get a wrong answer.

I, for one, believe that those charged with administering NSA and CIA—General Carter and Director Helms—have one primary objective: They both want to protect the security of the country. They do not want to embarrass young men and women newly graduated from school. They want to take the steps they believe are necessary for this purpose. If they have an unreliable or incompetent administrator, I believe they would be as anxious as the Senator or I would be to dismiss him, at least as far as polygraph tests are concerned.

Is there substantial evidence demonstrating that this particular series of questions is the series of questions that is asked repeatedly?

Mr. ERVIN. Yes.

Frankly, employees of these agencies come in and talk with staff members individually. They telephone, and in a few cases they have committed their complaints to writing.

I am informed by the general counsel of the Subcommittee on Constitutional Rights that 10 of them have called within the past week.

Mr. BAYH. Ten of them?

Mr. ERVIN. Yes; the majority of them telephone.

Mr. BAYH. How many people are employed at CIA and NSA?

Mr. ERVIN. I asked them that question. They said it is top secret information. But I can tell the Senator how many polygraph tests they have conducted.

Mr. BAYH. If we could clear the Chamber, I could tell the Senator how many people have been apprehended who have passed every other scrutiny, every other test that was given; yet, they were not discovered to be a weak link, in the judgment of the CIA, until these tests were given.

Perhaps it is unpopular to champion the CIA. I do not know. But I believe the Senator recognizes, as do I, that the country needs both the CIA and the NSA. It is rather foolish to say we need these agencies and then not give them the proper tools to make them as effective as possible.

Mr. ERVIN. I agree with the Senator. I would have them concentrate their attention on counterintelligence and preservation of our national security instead of devoting their time to these matters.

This is what one young lady informed the committee she was asked by the CIA:

> When did your mother stop buying your clothes?
>
> When did your great grandparents die, and where are they buried?
>
> What diseases did they have?

What does that have to do with protecting the security of this country?

Mr. BAYH. That is a good question, and I should like to take 5 minutes or so to state what, in my judgment, they may have to do with security.

I am not an expert polygrapher or a psychological tester. In fact, I hesitate to say what might be learned if I were asked to interpret an ink blot. But let me reiterate that I do not believe that those in charge of these programs are asking questions just for spite, or because they like to make people sit on the "wiggle seat." Those who are charged with responsibility at CIA and NSA do not sit on the "wiggle seat"—they sit on the "hot seat." All of us recognize that this is a tough job.

Although I agree with the Senator from North Carolina in many respects, I do not agree with his statement that anyone who thought there was a place for polygraphs or psychological testing believed in witchcraft. I do not believe in witchcraft.

Mr. ERVIN. I say that, in my judgment, faith in polygraph testing is similar to belief in witchcraft.

Mr. BAYH. I am sure we have such respect for each other that, although the Senator from North Carolina might in all fairness think it is witchcraft, he would not attribute that to his friend from Indiana. I do not think it is witchcraft. In fact, I would be the first to say that even if applicants were given all sorts of tests, even if they were subjected to bodily torture—which no one in this Chamber would be in favor of—there is no perfect way of guaranteeing that a human being would not crack under some of the circumstances to which he might be subjected in some of the perilous posts where he would be asked to serve.

Mr. ERVIN. I would say that I think that a man who would not crack under the type of tests I read awhile ago is unfit to be trusted with employment with the Government.

Mr. BAYH. The Senator from North Carolina recited accuratey some of the interrogatories that are asked. He doubted whether there was any reason to ask particular questions concerning whether a person had been previously convicted of a crime, whether he had any previous mental disorder, whether he was subject to the use of drugs, whether he had participated in homosexual activities, whether he had become involved in or ever practiced unethical conduct. It seems to me that those are very real matters of concern, not only so far as the NSA and the CIA are concerned, but also, frankly, so far as membership in this body is concerned. I believe those are proper questions for real concern.

The question that the Senator is driving at, it seems to me, is how do we find out whether the individuals involved are participating or have participated in this type of activity.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. BAYH. I yield.

Mr. ERVIN. Does not the Senator from Indiana agree with the Senator from North Carolina that the FBI engages in investigations comparable intelligence work within the borders of the United States?

Mr. BAYH. The Senator is correct.

Mr. ERVIN. The FBI does not use the polygraph machine or psychological testing. Why is it necessary for the NSA and the CIA to use a method of investigation which the FBI repudiates as being worthless?

Mr. BAYH. Let me suggest to the Senator that the FBI and the CIA are playing in a somewhat different league. The FBI is known to employ, perhaps, the highest-trained, highest-caliber individuals of any agency in the Government. The Senator from North Carolina, as a distinguished member of the bar, and I, as a relative neophyte member of the bar, know the extent to which the FBI will go in trying to get this caliber of individual. They ferret out persons accused of crimes and those who might be enemies of this country in every way possible, within the continental United States; and they are to be complimented for their jobs.

However, let me point out that the very nature of a CIA agent means that some individuals must be employed who will be able to associate with individuals of their type, with persons who are not college honor graduates, who are willing to work in a country that does not have the safeguards—the police at his telephone—that are available in this country. Some of these people have to go into the jungles of Communist countries and live with rather sordid and suspicious characters. If they cannot do that, they will not be successful agents.

For example, one of the subjects that has been a matter of some concern is whether an applicant should be asked what his race is. As the Senator from South Carolina knows, I have been one of the main supporters of some of the Civil Rights Acts. In fact, perhaps it is only in that area that we have differed, because we usually fight elbow to elbow for or against some of the most important issues; today I find myself in the unique circumstance of opposing the Senator on a matter of constitutional right such as this. But why should someone be asked what his race is? Is not that a violation of his constitutional rights? How in the world can a CIA agent be effective in one of the countries

of darkest Africa, where everybody's skin is dark colored, if his own skin is not likewise so colored? So the CIA Director must know whether the agent's skin is dark colored.

Mr. ERVIN. Could not the CIA Director tell by looking at the agent's skin, without subjecting him to a polygraph test? [Laughter.]

Mr. BAYH. The Senator is absolutely correct; but when we talk about such a person being effective, it is then that the polygraph test becomes useful.

Another question sometimes asked concerns a man's religion or his ethnic background. It would be rather questionable wisdom to send a person into an Arab country today, if he were of Jewish background. I think there are reasons why it is often necessary to seek such information.

Let me discuss the practice that is followed. The Senator from North Carolina is absolutely correct in saying that if the only thing to be done is to bring prospective job applicants through the front door and immediately subject them to being wired for sound. That is the wrong way to approach the problem.

A complete check of prospective employees is made by the CIA. They are carefully investigated and interviewed. All procedures known to man, short of psychological and polygraphic testing, are used by the CIA in determining which persons it thinks are acceptable.

It is only at that stage, when the examination reaches the place where the CIA or NSA want and need to make the final check, that applicants have been subjected to tests that I wish, frankly, were not necessary. I wish that we lived in a world where it was not necessary to subject anyone who seeks Federal employment to a polygraphic test or a psychological test. But that is not the kind of world we live in.

In examining the procedure that is followed, it must be understood that neither the Director of NSA or CIA ask these questions. I doubt that either of these gentlemen is a qualified psychologist or polygraph operator. These agencies must rely on eminent psychologists for their purpose. If they are trying to find a flaw in someone's character, or determine whether someone participates in homosexual activity, or learn whether a person would crack under strain, what are the questions that are going to be asked? I could not say what those questions should be—a qualified psychologist must draw up those questions. Leeway must be allowed to ask those questions which will bring out the answers. For instance, it may be necessary to know whether an individual will crack when he is subjected to great strain or severe stress.

The Senator from North Carolina acquitted himself with honor and distinction in pursuing this measure to provide safeguards for Federal employees, but I wish to reiterate that no one in my opinion has a vested interest in seeking employment or being granted employment if his very presence might provide a security risk. To be sure, one cannot be perfect, but if I am going to err on matters of national security I would rather err on the side of safety rather than leniency.

(At this point, Mr. HOLLINGS assumed the chair.)

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. BAYH. I yield.

Mr. ERVIN. I think the Senator can answer this question without difficulty.

Is there anything in the bill that would prevent the Director of CIA from asking a person any question whatever by way of a psychological test or by way of a polygraph test?

Mr. BAYH. Shall we place section 6 in the RECORD at this time? I think the Senator from North Carolina, as a good lawyer, knows the answer before he asks the question. There is nothing in the bill to prohibit the Director of CIA from making a personal finding with regard to each individual to be so tested or examined.

That means that if the CIA agent in charge of an area in Eastern Europe feels we need an agent selected in one of the Communist countries, he cannot make a test or decision; no determination can be made in this area unless the Director himself makes it.

It seems to me if we are going to require the Director of CIA to determine all of these questions or make the test, we are going to give him a burden which would make him ineffective as the Director.

Mr. ERVIN. The President of the United States, a rather busy man, has to sign every commission of a regular military officer and each of the hundreds of bills passed by Congress; is that correct?

Mr. BAYH. The Senator is correct. The President does not ask questions about polygraph and psychological testing.

Mr. ERVIN. And there is nothing in the bill which would prevent the CIA or the NSA from asking any question they wish to ask on a psychological test or on a polygraph machine test. A person can be asked any question on a polygraph test or psychological test by any department or agency of the Government with the exception of three types of questions: First, questions which relate to his personal relationship to his relatives; second, questions which relate to his religion; and, third, questions relating to his attitude on matters of sex. With the exception of those three questions, any department or agency can ask the questions during a psychological test or a polygraph test.

Under the amendment of my distinguished friend from Indiana, which was adopted by the Committee on the Judiciary, and which I have asked with reluctance be included in this bill, and which has been approved, the Director of the CIA or the Director of NSA can ask questions even in those three forbidden fields if he makes a personal finding that it is necessary to the national security.

Mr. BAYH. That is correct. I wish to explain. I do appreciate the willingness of the Senator from North Carolina to hear me on this matter. He is the author of this bill and has worked on it for many years. I know that he feels very strongly about it and he is a fighter. He does not think this should be in the bill at all.

Mr. ERVIN. I do not.

Mr. BAYH. This amendment is a great concession from him and I appreciate it. However, I would like to explain that as far as I am concerned and as far as the Directors of these Agencies are concerned this is a very small salve for a very deep wound. The problem is that a personal finding means, literally, a personal finding.

This means that a man who is supposed to be the director of an international intelligence agency will have to make a personal finding that an examination should be made using polygraph machines or psychological testing, which seems to me to be poor administrative practice.

Mr. ERVIN. All that means is that the Director has to make the decision instead of the agency charwoman.

Mr. BAYH. I think the Senator from North Carolina is correct. I do not want the charwoman or a half-baked psychologist making the determination. We want a psychologist who is thoroughly trained and competent.

I think the insistance of the Senator from North Carolina is going to make these two agencies more careful in applying the tests. Let me answer the question about the weakness I see in section 6. If we are talking about a personal finding, it seems to me that this means if an administrator is to abide by the law, and there is no need to put it in there unless he does so, he is going to have to accumulate a significant amount of evidence. By the time he can accumulate this evidence, in my opinion, it means the man could already be employed and already be in a position where he could damage the country. By the time the director could make a personal finding to fire him or not hire him, there would be no longer the need to make that finding.

Mr. ERVIN. I disagree with that interpretation.

Mr. BAYH. I know the Senator disagrees with the interpretation.

Mr. ERVIN. If the Director wanted to send an undercover agent to Poland or Czechoslovakia he could say, "I find it is necessary for him to have a polygraph test or take a psychological test in the interest of national security."

The very nature of the job assigned to him would fully justify making that finding.

Mr. BAYH. I explored this procedure in my mind, and I think that the Senator from North Carolina is judicious in his thoughts on this—at least we have both thought about it, so it must be judicious—but I have reached a different conclusion. Very frankly the National Security Agency, on occasion, has refused to inform the Congress of sensitive activities in which they are engaged until some public disclosure has necessitated replies to congressional inquiries. The CIA purchases land out in the country and attempts to secure it so that no one could shoot a laser beam off a window and read the sound vibrations inside to find out what the CIA is doing. If we are talking about security activities to protect the

health, safety, and ...are of the country, then anyone, ... chauffeur or a courier could hide ... bushes and, by using the latest ...tific technology available, acquire secrets which are important to the United States.

This may be an exaggeration, but we are living in a tough world. I know that the Senator from North Carolina is sincere in his thought, and I know that he shares my concern. As previously mentioned, I am going to support the bill, but I am obliged by my deep concern about this matter to speak out.

We live in a hard world in which war, bribery, and espionage are common intelligence tools. Frankly, I do not like polygraph tests or psychological tests. But, in this kind of world, these things do exist. The other side will use them. There will be occasions when we will have no alternative but to use the same unscrupulous methods in order to protect the freedom of this country.

Mr. STENNIS. Mr. President, the provisions of the pending bill that have been discussed by the Senator from North Carolina and the Senator from Indiana for the past several minutes are the subject to which I should like to address myself, if I may speak to the Senate on this subject as one of the members of the CIA Subcommittee of the Armed Services Committee—there is also a subcommittee on the CIA from the Appropriations Committee—and we sit and operate together.

Mr. President, the application of the bill to the CIA and the National Security Agency is a serious and far-reaching matter. These Agencies present some of the most sensitive questions and problems that we have to deal with, and they are difficult to operate.

In 1947, Congress passed the National Security Act. It provided for our entering a field that most of us wished we did not have to go into. Intelligence gathering had aspects and activities which our Government had never been in before, and our people still do not like.

Events of the past 20 years have certainly proved the wisdom of the enactment of this act in 1947, since which time we have had this worldwide activity, contending with revolutions, the changes, the unrest, and uncertainties all over the world, of systematized, organized, smart, diligent, effective intelligence organization on the other side pitted against us in the free West. As a whole, being novices in that field, we have made our share of mistakes, but we have also accomplished some very effective and far-reaching work, much of which will not be known.

The National Security Act provided that the Director of the CIA should have unrestricted authority to terminate the employment of any officer or employee of the Agency, whenever he determined that such termination was necessary or advisable in the interests of the United States. That power was thought to be necessary and it was far reaching as language could make it.

I speak with all deference to the author of this bill and the members of the committee who reported it, but the pending bill would make serious impingements on and would throw handicaps upon the Director of the CIA. With one sweep of the pen, so to speak, it would limit the main thrust of the power which in 1947 was considered necessary for the Director of the CIA to have—and time has proved that that power was necessary.

Mr. ERVIN. Mr. President, will the Senator from Mississippi yield at that point?

Mr. STENNIS. I should like to complete my brief remarks first. I do not have a prepared text. I have not made a special study in this particular field; if it is agreeable to the Senator from North Carolina, I should like to complete my statement first, before yielding to him.

Mr. President, this is no inconsequential matter. We are dealing with many thousands of employees all over the world, working under all kinds of conditions. We are dealing with activities of the CIA and the National Security Agency—my remarks apply to both—with many thousands of employees and an annual cost of many millions of dollars. Those exact figures are all classified. The budget is known by Congress but is not public knowledge.

I emphasize that now in stating that we are dealing with no small matter in just dollars and cents. Yet the bill, in an indirect way, would partly handicap and make ineffective the operation of these agencies.

I am convinced in my mind that these agencies should be totally excepted from the operations of the pending bill, that there is far more good on the side of their exclusion than there is on the other, and that this partial exception which the bill would provide, in making it possible for the Director to make a personal finding, and thereby limit the application of some restrictions, would be impractical and burdensome. It would require the Director to devote disproportionate time to one aspect of his responsibility. Just as every Senator cannot personally answer every letter, compose every paragraph, or read every line of every report placed before him, as a pracitcal matter, this would be an impossible chore to place upon the Director.

I would rather this provision be in the bill than to leave it out entirely. I am not critical of the amendment so far as it goes, but, nevertheless, it would leave the Director of the CIA in a position where it would be difficult for him to operate.

In order to justify such changes at this bill makes in these basic laws, they deserve and should have the utmost consideration and the most minute examination by men who are highly versed in the field. I think they should be brought here and this question should be considered only in executive session, and explained to every Member of this body.

I warn now that if this bill becomes a law, it is going to be cited as an instance where the legislative branch of the Government stepped in and said, "We will assume full responsibility; we take it away from the executive agency, where it properly belongs. We assume the responsibility for the subject matter of this bill, so far as the employment of people is concerned."

We know that, if there is any kind of flaw in a person's character, the secret, highly organized, and effective agencies of the other side move in on it, whether it be financial distress, homosexuality, something about a relative, or anything else. That is why it is necessary to have the most exhaustive screening.

Mr. President, I am authorized to speak for the chairman of the CIA Subcommittee and the chairman of the Armed Services Committee [Mr. RUSSELL]. I am authorized to say that from the beginning he has thought, and still thinks, there ought to be a total exemption from this bill for the CIA and the NSA. He has thought that from the first, and he thinks it now; and if he can be present for the vote, he is going to vote against this bill on that account. That shows how serious this matter is—that from a man who I think knows more about the operation of the CIA than any man in the Congress, and I speak with all deference to others.

The Senator from North Carolina [Mr. ERVIN] asked that I yield to him. I yield to the Senator from North Carolina.

Mr. ERVIN. I would like the Senator from Mississippi to point out any provision in the bill which affects in any way the right of the CIA to discharge any of its employees, with or without any reason at all. There is not a thing in this bill in conflict with that right.

Mr. STENNIS. The main thing I am concerned about, frankly, is not about somebody being discharged. It is about getting the wrong kind of person in to begin with, who is a security risk, and, before anyone knows anything about it, the dirty work has already been done. To just discharge him then would be an act of futility, almost. That is where the rub is, the sore spot—the bringing in of these people. This was the problem. That is where the issue is.

Mr. ERVIN. With all due regard to the Senator's views, certainly the Senator from Mississippi could not say that the CIA should be exempted from the provisions of the bill which prevent employees from being forced to lobby open housing ordinances, engage in political activities, or join the NAACP.

Mr. STENNIS. One could make an argument like that about those provisions, but that does not go to the very gist of our concern. I do not think anybody on this particular committee supports everything the CIA has to do. I know almost none of the employees except some of those now carrying on some of the major responsibilities. The real problem is getting the wrong man or woman to start with so the devilment can be done and the security of this Nation imperiled.

Mr. ERVIN. I do not see how any provision of this bill would prevent the CIA from asking any question whatever.

Mr. STENNIS. Well, I have already covered the point. The limited exemption could be invoked only by the personal certification of the Director. That is just an impractical, inadequate authority for him to have. Even for a discharge—and I do not think that is so important—get a hearing. I stand on the danger of getting the wrong man in to start with.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. JACKSON. I should like to associate myself with the able remarks of the ranking member of the Armed Services Committee and the CIA watchdog subcommittee, on which I also have the honor to serve.

I also wish to associate myself with the able remarks of the Senator from Indiana. I think there are provisions of the bill in which the CIA should be included, namely, those stipulating that employees do not necessarily have to attend certain meetings and participate in bond drives, and so on. But I think the able Senator from Mississippi has pointed out one of the key problems, which is related to preventing people from getting in the CIA who should not, in the first instance, be in.

Last year over 100 security risks were stopped by the polygraph tests. All other means of security inquiry, all other means of testing failed. The polygraph does not necessarily establish truth or untruth. I have real questions about the polygraph as a general proposition, but it can be a valuable aid in providing investigative leads. I want to point out that last year the CIA was able to stop over 100 people who would have been definite security risks had it not been for the investigative leads given through the polygraph.

Some of us who have been in the Senate and the House over a period of many years remember that period not too long ago when the executive branch of Government was charged with being lax in personnel matters. There were charges about all kinds of security risks in the Government.

I think it would be most unwise to turn around now and unduly tie the hands of the Central Intelligence Agency and the National Security Agency, dealing as they do with the most sensitive matters in the Government.

I mention this because Congress, month in and month out, year in and year out, is taking after the executive branch for failing to do the job of rooting out security risks who should have been rooted out, and to stop security risks from getting in who should have been stopped from getting into the Federal Government.

What we are doing here, as I read the bill, is that if we are going to maintain the authority that the Director of the CIA or the Director of the National Security Agency has had heretofore, he would have to personally certify that these questions of a sensitive nature and of a highly personal nature must be asked. He could not even delegate that authority under the present provisions of this bill.

If the Director has to personally certify, when thousands of people are interviewed each year for jobs, what kind of certification will that be? It seems to me it is completely unrealistic.

As I have pointed out, 100 security risks have been stopped in 1 year because of investigative leads provided by the polygraph.

I can see what the Senate and the House would be doing if these risks had gotten into Government. Congress would be jumping down the throat of the Central Intelligence Agency and asking, "Why did you not do something about that? Why did you permit this person to get in?" Some of the most notorious defectors, people who have walked away with secrets vital to our country, have been sexual deviates.

I think the Senate should understand what it is doing in connection with the pending proposal. I say that every Member of the Senate has a solemn obligation to understand what is really involved as far as the Central Intelligence Agency and the National Security Agency are concerned, with the provisions of the bill as they now stand.

Mr. STENNIS. I thank the Senator very much for his timely remarks.

I yield now to the Senator from North Dakota [Mr. YOUNG], who is a very valuable member of the Appropriations Committee and of the subcommittee concerned.

Mr. YOUNG of North Dakota. I thank the Senator from Mississippi. I wish to associate myself with his comments.

All three of the Republican members of the Appropriations Committee dealing with the CIA take the same position, that the CIA should be exempted. There certainly is far more reason for the CIA to be exempted from the provisions of this bill than for the FBI. It deals with highly sensitive information from all over the world. Even the smallest countries now have intelligence agencies.

To cite one example, the CIA would have to know at all times what contact one of its agents might have with foreigners, one of whom might be, for example, a member of the Russian KGB. Therefore, they must have more authority over their employees than the Government has over the average employee. The information it would be necessary to have concerning a CIA agent is a far cry from that required on a postal clerk in my hometown.

He can make any kind of speech he wants to. His private life might be thoroughly reprehensible, and may not hurt the Government.

But the CIA does have to know as much as it possibly can about its agents, because they deal with highly sensitive information gathered all over the world, and not only on the main streets, but they have to go into the back alleys along with all the other intelligence agents of the world.

I think it would be a serious mistake if the CIA, the National Security Agency, and the Defense Intelligence Agency were not exempted from the provisions of the bill. As one of its cosponsors, I am very proud of its other provisions; but if those agencies are not exempted from the provisions of the bill, I shall be compelled to vote against it, although I am a cosponsor.

Mr. STENNIS. I thank the Senator.

Mrs. SMITH. Mr. President, will the Senator yield?

Mr. STENNIS. I yield to the Senator from Maine, who is also a member of the subcommittee.

Mrs. SMITH. Mr. President, I share the concern of my able and distinguished colleagues, the Senator from Mississippi and the Senator from Indiana. I want Government employees to be protected but our national security must not be impaired. I find there is a potential conflict between national security and some individual employees employed by the CIA and the FBI.

I feel obliged to vote for the bill but I would hope that the conflict would be resolved in the House committee or in conference.

Mr. STENNIS. Mr. President, to reiterate a point I have already made: I am convinced, from what I know about the problems involved in getting the right kind of recruits from among so many different types of people in so many different circumstances, that this bill, as now written, puts too many far-reaching restrictions upon the CIA, and that we would thereby greatly impair our capacity to protect our security.

I think further that this matter about the possibility of some employee being unjustly discharged is purely a secondary matter. It is serious and important to the person involved, I do not discount that. But certainly it is secondary to the security of the Nation.

To have to go through a hearing in a regular court, and have a proceeding there that could be used to harass the agency and its director with endless litigation, would in itself impair our national security. Certainly there would be exposure. If we act here without having a chance to make a full study of the bill, I venture to say that once it becomes the law and these restrictions do apply, we are going to have a different reaction, a different attitude toward the CIA as an entity; and the same applies to the National Security Agency.

This organization being so vital and necessary, its activities should not be restricted, and certainly should not be restricted without the most minute inquiry and weighing of the language, and the points involved, and also submission of this matter to the Senate in executive session, where so many more of the actual facts that pertain to the problem could be fully aired, and thereby fully weighed by each Senator. Every Member of this body, before passing on these important matters, should have before him all the facts involved, and that is simply impossible to achieve in an open session, and at the same time protect the security of our country.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. YOUNG of North Dakota. Would not the CIA find themselves in much the same position we are in today, if they wound up in court over firing an employee? They are charged by Congress with protecting their sources of intelligence, no matter where they get them. We are charged with the same responsibility.

If we could have an executive session, and explain all the reasons why these agencies should be exempt, it would be a different matter. But we cannot do so publicly without divulging matters which should be kept secret.

Mr. STENNIS. That is a good point. I wish to point out again a point made by the Senator from Indiana: We exempt from the provisions of this bill the FBI, and very properly so. The FBI is an organization nearly all of the employees of

which, I assume, are of the very highest character. They always seek to employ people of a high order of character and intelligence.

The CIA, without going into detail, has to employ for some missions persons who are not of the very top quality, and not the very finest characters. In producing intelligence information, we must at times use persons that would not be suitable as regular, full-time employees. But these agencies must go into every conceivable possibility or circumstance under which the man may operate, and what his reaction under given circumstances might be.

Furthermore—and I say this with emphasis—those with whom they have to deal, the agencies representing the Soviets and any others that are against us are always trying to pick and find flaws in the people we have, not only in the key spots but in the lower spots as well; and it is nearly always through that avenue that they are attempting to penetrate, achieve a sell-out, lead us down a blind alley, and get our secrets.

So we are dealing here with two of the most sensitive and important agencies of our Government; and with all due deference, I submit that we are going into it without sufficient knowledge and information.

The PRESIDING OFFICER (Mr. MONTOYA in the chair). The bill is open to amendment.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the House had passed the bill (S. 1862) to amend the authorizing legislation of the Small Business Administration, and for other purposes, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House insisted upon its amendment to the bill (S. 1872) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MORGAN, Mr. ZABLOCKI, Mrs. KELLY, Mr. HAYS, Mr. ADAIR, Mr. MAILLIARD, and Mr. FRELINGHUYSEN were appointed managers on the part of the House at the conference.

Mr. BYRD of West Virginia. Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 1862, with the amendment of the House thereto.

AMENDMENT OF LEGISLATION AUTHORIZING THE SMALL BUSINESS ADMINISTRATION

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1862) to amend the authorizing legislation of the Small Business Administration, and for other purposes which was, to strike out all after the enacting clause and insert:

TITLE I

SEC. 101. This title may be cited as the "Small Business Act Amendments of 1967".

SEC. 102. Paragraph (4) of section 4(c) of the Small Business Act is amended—

(1) by striking out "$1,400,000,000" and inserting in lieu thereof "$1,900,000,000";

(2) by striking out "$400,000,000" and inserting in lieu therof "$450,000,000";

(3) by striking out "$200,000,000" and inserting in lieu thereof "$300,000,000"; and

(4) by striking out "$100,000,000" and inserting in lieu thereof "$200,000,000".

SEC. 103. Paragraph (4) of section 7(a) is amended by striking out "except that a loan made for the purpose of constructing facilities may have a maturity of ten years" and inserting in lieu thereof "except that such portion of a loan made for the purpose of constructing facilities may have a maturity of fifteen years".

SEC. 104. The subsection added to section 7 of the Small Business Act by the Disaster Relief Act of 1966 (Public Law 89-769), and designated thereby as subsection (e), is redesignated as subsection (f).

SEC. 105. Subparagraph (B) of paragraph (1) of section 8(b) of the Small Business Act is amended to read as follows:

"(B) in the case of any individual or group of persons cooperating with it in furtherance of the purposes of subparagraph (A), (i) to allow such an individual or group such use of the Administration's office facilities and related materials and services as the Administration deems appropriate; and (ii) to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5, United States Code, to any such individual for travel and subsistence expenses incurred at the request of the Administration in connection with travel to a point more than fifty miles distant from the home of that individual in providing gratuitous services to small businessmen in furtherance of the purposes of subparagraph (A) or in connection with attendance at meetings sponsored by the Administration;".

SEC. 106. Paragraph (13) of section 8(b) of the Small Business Act is amended to read as follows:

"(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this Act and of the Small Business Investment Act of 1958; to call meetings of such boards and committees from time to time; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings; and".

SEC. 107. The subsection added to section 402 of the Economic Opportunity Act of 1964 by section 405 of the Economic Opportunity Amendments of 1966 (Public Law 89-794), and designated thereby as subsection (b), is redesignated as subsection (c).

TITLE II

SEC. 201. This title may be cited as the "Small Business Investment Act Amendments of 1967".

SEC. 202. (a) Title III of the Small Business Investment Act of 1958 is amended by inserting immediately after section 306 the following new section:

"REAL ESTATE DEVELOPMENT

"SEC. 306A. (a) In the case of any small business investment company licensed prior to October 1, 1966, under the provisions of this Act, which has received the approval of the Administration prior to that date of its articles of incorporation or investment policy, and which by the terms and provisions of the approved articles of incorporation or investment policy is empowered to invest in (whether through loans or equity securities) real estate development oriented enterprises and activities, the Administration shall not impose any limitation, formally or informally by regulation, order, advice, or otherwise, in respect of the company's investments in real estate oriented enterprises and activities which is more restrictive than, or otherwise at variance with, the company's articles of incorporation or approved investment policy.

"(b) No application to the Administration from any licensee referred to in subsection (a) of this section for participation in any of the programs, benefits, activities, or services available to licensees under the provisions of this Act shall be denied, or participation in any program limited or withheld by the Administration for the sole reason that the investments of the applicant in real estate development oriented enterprises and activities exceed a percentage of the applicant's total investment portfolio, unless such investments exceed the percentage allowable under the applicant's articles of incorporation or approved investment policy."

(b) The table of contents at the beginning of that Act is amended by inserting

"Sec. 306A. Real estate development."

immediately after

"Sec. 306. Aggregate limitations."

SEC. 203. Section 301(c) of the Small Business Investment Act of 1958 is amended to read as follows:

"(c) The articles of incorporation and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles of incorporation and permit it to operate under the provisions of this Act, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles of incorporation, the Administration may in its discretion approve the company to operate under the provisions of this Act and issue the company a license for such operation."

SEC. 204. The second sentence of section 302(a) of the Small Business Investment Act of 1958 is amended by changing "$700,000" to read "$4,000,000".

SEC. 205. Section 302(b) of the Small Business Investment Act of 1958 is amended by striking "except that in no event shall any such bank hold shares in small business investment companies in an amount aggregating more than 2 percent of its capital and surplus." and inserting "except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition,

"(1) the aggregate amount of shares in small business investment companies then held by the bank would exceed

"(A) 5 percent of its capital and surplus, or

"(B) $1,000,000

whichever is less, or

"(2) the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights."

SEC. 206. Section 303(b)(1) of the Small Business Investment Act of 1958 is amended by changing "$4,000,000" to read "$6,000,000".

SEC. 207. Section 103 of the Small Business Investment Act of 1958 is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by changing the period at the end of paragraph (7) to read "; and"; and

(3) by adding the following new paragraph at the end:

"(8) the term 'venture capital' means capital supplied by the purchase of common or preferred stock or subordinated debentures as to which there is no amortization or sinking fund requirement for at least five years after issuance."

SEC. 208. Section 310(b) of the Small Business Investment Act of 1958 is amended by adding after the first sentence thereof the following new sentence: "Each such company shall be examined at least once each year."

SEC. 209. The first sentence of section 401 (a) of the Small Business Investment Act of 1958 is amended by striking out "that are (1) eligible for loans under section 7(b)(3) of the Small Business Act, or (2) eligible for loans under title IV of the Economic Opportunity Act of 1964,".

SEC. 210. Section 308(g) of the Small Business Investment Act of 1958 is amended (1) by inserting the paragraph designation "(1)" after "(g)", and (2) by adding the following new subparagraph:

"(2) In its annual report for the fiscal year ended June 30, 1967, and in each succeeding annual report, the Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act, full and detailed accounts relative to the following matters:

"(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

"(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

"(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

"(D) An accounting by the Bureau of the Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

"(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

"(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

"(G) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

"(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

"(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

"(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of the Internal Revenue Code of 1954."

SEC. 211. The effective date of this title shall be ninety days after enactment.

TITLE III

SEC. 301. This title may be cited as the "Small Business Protection Act of 1967".

SEC. 302. The Administrator of the Small Business Administration shall conduct a special study of the impact on small business concerns of robbery, burglary, shoplifting, vandalism, and other criminal activities, with a view to determining ways in which such concerns may best protect themselves against such activities.

SEC. 303. The Administrator shall report to the President and to the Congress the results of the study conducted pursuant to this title, including such recommendations as he may deem appropriate for administrative and legislative action, within one year after the date of enactment of this title.

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Alabama [Mr. SPARKMAN] I move that the Senate disagree with the amendment of the House and request a conference with the House thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. SPARKMAN, Mr. MCINTYRE, Mr. PROXMIRE, Mr. PERCY, and Mr. TOWER conferees on the part of the Senate.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

The motion was agreed to; and (at 3 o'clock and 1 minute p.m.) the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 3:05 p.m., when called to order by the Presiding Officer (Mr. MONTOYA in the chair).

PROTECTING PRIVACY AND RIGHTS OF FEDERAL EMPLOYEES

The Senate resumed the consideration of the bill (S. 1035) to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HOLLINGS in the chair). Without objection, it is so ordered.

Mr. STENNIS obtained the floor.

Mr. STENNIS. Does the Senator from North Carolina desire that I yield to him?

Mr. ERVIN. Mr. President, will the Senator yield to me briefly?

Mr. STENNIS. Mr. President, I ask unanimous consent that I may yield to the Senator from North Carolina without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Carolina is recognized.

Mr. ERVIN. Mr. President, I cannot modify the bill without unanimous consent, because the yeas and nays have been ordered. Therefore I ask unanimous consent that I may modify the bill on page 19 in the following respects:

On line 16, page 19 between the word "Agency" and the word "or" I would modify the bill so as to insert these three words "or his designee", and on line 17, page 19 between the word "Agency" and the word "makes" I would modify the bill by unanimous consent by inserting the words "or his designee", so that the bill would provide that the Central Intelligence Agency and the National Security Agency could ask the three forbidden types of questions if the Director of the Central Intelligence Agency or his designee, or the Director of the National Security Agency or his designee "makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security."

Mr. President, I ask unanimous consent that I may modify the bill by those amendments.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STENNIS. Mr. President, may I say to the Senator from North Carolina and to the Senate that in our opinion that meets, in part, some of the objections that several of us have felt to the bill.

If I may ask the Senator now, I raise the point with him about the court procedure that the bill before the Senate now contemplates on the part of an employee, particularly with reference to employees discharged from either one of the agencies.

Let me extend my question further not only to the matter of the discharge of an employee but also to the violation of any provisions of the National Security Act or the national security law. If the Senator would express himself on that, so far as security is concerned, because questions might arise in open court, I shall appreciate it.

Mr. ERVIN. In my judgment, this bill does not undertake to regulate in any way the tenure of a person's employment. It does not undertake to change any law relating to the tenure of any employment. It merely attempts to regulate the relationship between a department or agency and its employees as long as the employment relationship exists.

The statute relating to the CIA is found in title 50, section 403, subsection 3 of the United States Code, which provides that "notwithstanding the provisions of section 652 of title 5, on the provisions of any other law, the Director of the CIA may, in his discretion, terminate employment of any officer or employee of an agency whenever he shall deem such termination necessary or advisable in the interest of the United States."

There is a similar statute applicable to the National Security Agency.

There is not a thing in the bill which would alter those statutes, because the bill does not affect what summary dismissal powers they have.

The only question, as I see it, that could possibly come up before a court or the Board of Employees' Rights created by this bill would be whether the CIA or the National Security Agency had violated provisions of this act and had attempted to make an employee do something which the act forbids them to make him do. I cannot imagine any controversy arising pursuant to the bill in which any secret matter would be relevant in a hearing before a court or before the Board. I think that there is no danger there.

Mr. STENNIS. Let me interrupt the Senator there. I believe, as I understood it, he used the words "secret matter." The Senator was referring, was he not, to secret matters concerning the security of the country?

Mr. ERVIN. That is right. In other words, the sole question that would be relevant in any proceeding, either before a court or a board, under this act, would be whether the agency had violated the rights of employees as spelled out in the act.

Thus, I cannot imagine any circumstances under which any matter of national security would ever become germane or relevant to the suit. Besides, in my judgment, we have the rule of evidence which forbids disclosure of State secrets in litigation. I think that would exclude security information, if it were offered. That is my judgment.

Mr. STENNIS. On that last point, the Senator does not contend and does not believe that this proposed law we are passing on now changes that rule; is that correct?

Mr. ERVIN. That is correct.

Mr. STENNIS. I am happy to yield to the Senator from Indiana. Does he not want me to yield to him at this point?

Mr. BAYH. Yes. I thank my colleague. I should like to restate a point which the Senator touched upon earlier. That the Senator from North Carolina would not desire to take away any rights dealing with the protection of Government employees, or to remove the common law executive privilege of refusing to disclose information in the interest of national security of the country. This is an age-old tradition which we have had for a number of years. I think that the Senator from North Carolina, if I understood him correctly, comes out four square that that is not the intention of this act.

Mr. ERVIN. I do not think the statute would be relevant.

Mr. STENNIS. Would the Senator speak a little louder, please.

Mr. ERVIN. I said that I do not think any decision concerning disclosure of matters relating to national security would have any relevance to a case brought pursuant to the provisions of this bill.

Mr. STENNIS. It would not be admissible if deemed relevant.

Mr. ERVIN. There are a number of statutes dealing with this subject. I have here a letter from Mr. Lawrence Speiser, director of the Washington office of the American Civil Liberties Union, under date of August 29, 1967. He represents an organization very much concerned with the rights of individuals. He suggests that we should go further and change the statutes which give these organizations the right to discharge their employees without cause.

Frankly, I sometimes think that myself; but I am not attempting that now.

Mr. BAYH. If I might ask just one question——

Mr. ERVIN. Since CIA officials have leaked so much material to the press in recent days, I should think it would be all right for me to do a little leaking, too. They would like to be exempted from all responsibility and accountability to law, and everything else on earth, in the heavens above, and the waters beneath them. I think that is asking a little too much. The CIA——

Mr. STENNIS. The Senator might be surprised to know how little the CIA has talked to me about this matter—virtually none. I certainly do not represent them, as the Senator knows.

Mr. ERVIN. I have suggested that perhaps the CIA could be brought into court for violating the statute which forbids lobbying at public expense, but I do not propose to ask for a prosecution at this time.

Mr. STENNIS. Mr. President, I yield further to the Senator from Indiana.

Mr. BAYH. I must say that I have indeed talked to both members of the CIA and the National Security Agency in an effort to try to secure more information about the impact of this legislation. The way the National Security Agency is structured, those who are serving on the committee to which it is directly responsible, are the only ones who really can tell us the impact of this particular legislation. Those who are on the Judiciary Committee have been forced to try to find out as best we could by talking to members of the agency involved—the Director and his staff.

Let me make this one last statement because my position on the Judiciary Committee has put me at least on the committee that is discharging this measure. As I see it, the Senator from North Carolina, by accepting the modification of the bill which he himself has proposed, and by the colloquy which we are proceeding with here, is dealing with two points that are the most sensitive.

First, which the Senator from Mississippi brought into the colloquy here, that the agencies are concerned about being brought into court and being compelled to disclose secrets of vital interest to the national defense and the security of this country. From the statement just made by the Senator from North Carolina, that is not his intention, nor the intention of the Senate.

The second point we discussed would require the Directors of these two agencies to assume a tremendous burden of personally validating the authenticity or the necessity of using these two particular kinds of tests, or asking the three kinds of questions.

By permitting the Directors to appoint a designee, the modification would shift the burden from their shoulders to the shoulders of a subordinate who would serve as a watchdog to prevent the practices which we are trying to prohibit. This would allow the maximum degree of protection insofar as security risks in these agencies are concerned. This would be going a long way toward correcting the weaknesses.

I thank the Senator from North Carolina for his contribution.

Mr. STENNIS. I thank the Senator. I think he has made a contribution in the debate as well as in the committee.

I yield now to the Senator from Nebraska.

Mr. HRUSKA. I thank the Senator for his courtesy.

Concern has been expressed that there are serious impingements on the authority of CIA inherent in this bill and that they would particularly bear on the right of the CIA to separate employees from their staffs.

Is it not a fact that in any appearance in court which would be entered by an employee or an applicant for employment with the CIA, they would have very limited recourse and the court would have its jurisdiction limited very highly in any such proceeding? At page 12 of the bill, starting with line 17, we have the language:

> Such United States district court shall have jurisdiction—
>
> Skipping to line 22—
>
> to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation.

Mr. ERVIN. Yes.

Mr. HRUSKA. I ask the Senator if it is not true that the only questions involved in such a lawsuit would be whether there had been a violation of the prohibitions of psychological tests and polygraphs and questionings, and that only the mechanics of those violations would be raised in the lawsuit,

to the exclusion of any substance with regard to the disclosure of material which would be harmful to the national security.

Mr. ERVIN. That is true, because the controversies which would arise under the bill would relate only to the question of whether or not the agency was violating this act. This act has nothing to do with the collection of security information.

Mr. HRUSKA. Violation of the act with reference to the procedures used in employment practices, but not its substance?

Mr. ERVIN. Only as related to the rights enumerated in the bill.

Mr. HRUSKA. But only the procedural matter, the fashion in which it was done, not as to substance?

Mr. ERVIN. The right to discharge employees would remain unhampered, except the agency could not discharge an employee because he refused to comply with a request or requirement which is illegal under the act.

Mr. HRUSKA. So there would not be any serious impingement on the statutory power of the CIA to discharge if it saw fit, and this act would have no effect on that authority?

Mr. ERVIN. Except in the situation where the employee refused to agree to a violation of the act.

Mr. HRUSKA. That is what the act is for. It provides that the agency shall not use such procedures.

Mr. ERVIN. It would not affect the right of the agency to discharge employees on any other ground at all.

Mr. HRUSKA. That is my understanding. I am grateful to the Senator for his explanation.

The Senator from North Carolina and I have had long discussions on this subject. If there were any intimation, if there were any suggestion, that there would be an adverse effect upon the national security by this bill, I would not be for it and would not be urging the Senate to enact the bill into law.

Mr. ERVIN. As a matter of fact, I think the bill would promote the national security and would increase the value of the personnel of the CIA and NSA if the agencies would abandon this 20th century witchcraft, and ascertain information about their employees from other sources.

Mr. HRUSKA. I thank the Senator.

Mr. ERVIN. I think they are driving away from employment some of the best brains in this country—people who do not like to be humiliated by the questions put to them under the polygraph procedures.

Mr. STENNIS. Mr. President, I am going to yield to the Senator from Maryland [Mr. TYDINGS], but may I make this statement. Several Senators have inquired about this. As far as the Senator from Mississippi knows, there will be no further amendment offered to the bill.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. STENNIS. I yield.

Mr. YOUNG of North Dakota. I may offer an amendment to strike out lines 20 and 21, on page 19, which exempt the FBI. I do not know why the FBI should not be included.

Mr. STENNIS. I beg the Senator's pardon. I had not been informed about that.

I yield now to the Senator from Maryland [Mr. TYDINGS].

Mr. TYDINGS. Mr. President, I wish to take this opportunity to commend the Senator from North Carolina on the splendid public services he has performed in the draftsmanship of this legislation for the protection of civil service employees. As he knows, I have worked with him in committee and worked on the language of one of the amendments which was adopted.

For the purpose of the legislative record of this debate, I would like to make clear what I already understand to be the Senator's position and the meaning of certain parts of the legislation. I am particularly concerned with those sections which have to do with the right of counsel by the employee and the right to judicial review. It is my understanding that the rights intended here are not intended to be used in such a way as to violate the national security.

The issue which I can see arising is on the discharge of an employee on the grounds of national security, with reference to the section on the right of counsel in taking the case into court or the right of judicial review, and in court the Government having the option of either trying to prove that it is a national security case and disclosing matters which might be vital to the national security or dismissing the prosecution. The situation arose in 1964 in the Buturko case in New Jersey. The Government had the option of disclosing the nature of the evidence and going ahead with the dismissal proceeding—I think it was an espionage case—or dropping the proceedings and not disclosing the evidence.

I wanted to get the Senator's view on this particular problem as it could possibly or theoretically arise.

Mr. ERVIN. Under the statute I read a moment ago, the CIA has absolute authority to discharge an employee for any reason or no reason whatever, and there is no remedy for the employee.

Then, under Public Law 88-290, similar authority is given the Secretary of Defense to fire any employee of the National Security Agency. The only due process given the employee is the arbitrary decision that his dismissal is in the interest of the United States.

The only issue under S. 1035 that could ever be raised in court concerning a discharge of an employee would be whether he was discharged because he refused to violate the act or refused to accede to an action made illegal by the act. I repeat, that is the only limitation. I do not see how other matters could ever get into court under the act. The employee could be fired for any other reason on the face of the earth, or for no reason, and there could be no recourse. The only point that could be relevant would be whether the agency had violated the act.

Mr. TYDINGS. So the provisions of subsection (k), which have to do with the right to counsel, and also the provisions which the distinguished Senator from North Carolina read having to do with judicial review, would not be intended to circumscribe the right or the power of either of the intelligence agencies to discharge an employee without the disclosure of national security data.

Mr. ERVIN. That is true.

Mr. TYDINGS. I thank the Senator.

Mr. ERVIN. I believe that under the statutes any matters sought to be admitted but affecting national security would be held to be incompetent, even if they were relevant; and I do not see how they could be relevant.

I wish to thank the Senator from Maryland for his gracious remarks and to say that he has been instrumental in bringing the bill to its present state. As a member of the Committee on the Judiciary, he made a number of helpful suggestions.

Mr. TYDINGS. I thank the distinguished Senator.

Mr. STENNIS. Mr. President, I do not expect to continue to hold the floor for more than a few minutes. I should like to ask a question of the distinguished Senator from Nebraska, who is an eminent lawyer and devoted much time and work to the bill.

Do I correctly assume that the Senator from Nebraska heard the responses of the Senator from North Carolina [Mr. ERVIN] about the point that was raised concerning court proceedings, especially the response that any matter concerning the security of the Nation or the States would not be admissible in evidence?

Mr. HRUSKA. I am sure that is true.

Mr. STENNIS. Could I get the Senator's opinion on that point?

Mr. HRUSKA. Mr. President, I did hear the colloquy between the Senator from Mississippi and the Senator from North Carolina, and I fully subscribe to the interpretation that was placed upon this entire situation by the Senator from North Carolina.

The bill as drafted would not be the basis for permission to get into the substance in any manner whatsoever. If procedural matters which are prohibited in this bill have been violated, and the prohibitions have not been abided by, then a court action would lie. I have already read into the RECORD the language as to the jurisdiction of the district court in the matter; but I shall do so again, for purposes of emphasis. The jurisdiction of the court, after the evidence is in, would be "to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation."

So there would be no room under this bill, if it became law, to get into the substance of any of the records of the CIA or the NSA.

Mr. STENNIS. I thank the Senator. I value his opinion.

Mr. President, I propose to conclude my remarks, now, with this thought: I think the modification made by the Senator from North Carolina, adding at the proper place the words "or his designee," has met, in part at least, the objection to that provision of the proposed act.

In the second place, our colloquy with reference to the courts, while I do not suggest that Senators in debate can change the law or control the courts, as far as they go, with the Senators' statements of their ideas about the subject matter I think are a contribution to the debate and to the record of the legislative history.

Mr. President, under all the circumstances controlling here, I still have some very serious questions and very strong doubts in my mind about the applicability of this proposed act to the CIA and to the NSA; and for that reason I shall not vote for the bill, but will oppose it.

However, under all the circumstances, as far as I am concerned, I shall not offer any amendment; but I do wish to reserve the right, if the bill comes back, after it goes to the House of Representatives, with provisions in it that I think are seriously objectionable, to be free to oppose it at that time.

Mr. President, I yield the floor.

Mr. ERVIN. Mr. President, I should like to make just one comment. This bill would make only one limitation on firing employees. They can still be fired for any cause, or without any cause, except for the cause that they refused to violate the act or give up any of their rights under the act. That would be the only thing relevant to the inquiry.

Mr. STENNIS. I thank the Senator.

Mr. YOUNG of North Dakota. Mr. President, I send to the desk an amendment, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from North Dakota [Mr. YOUNG] proposes an amendment, as follows:

On page 19, strike out sections 6 and 7, lines 6 through 21, and insert:

"SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency or of the FBI from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee, or the Director of the National Security Agency or his designee, makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security."

Mr. YOUNG of North Dakota. Mr. President, all this amendment would do would be to put the FBI in exactly the same category as the CIA and the NSA. I do not know why that should not be done. To single out these two Agencies—the CIA and NSA—would certainly give them a bad name throughout the world. All three are intelligence-gathering agencies, and why one should be expected and not the others, I cannot understand.

I hope that the author of the bill will accept the amendment.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. YOUNG of North Dakota. I yield.

Mr. ALLOTT. Is the Senator aware that in the reading of the amendment, in that portion which is now at lines 16 and 17, the Director of the FBI or his designee is omitted?

Mr. YOUNG of North Dakota. No; I am not.

Mr. ALLOTT. It was omitted.

Mr. YOUNG of North Dakota. Mr. President, I ask to modify my amendment to include it.

THE PRESIDING OFFICER. The Senator may modify his amendment.

Mr. ALLOTT. Mr. President——

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. ALLOTT. Will the Senator yield?

Mr. YOUNG of North Dakota. I yield.

Mr. ALLOTT. I see that in the amendment, as sent to the desk, the FBI is included at that point, although it was omitted when the amendment was read.

I thank the Senator for yielding.

The LEGISLATIVE CLERK. The amendment as proposed by Mr. YOUNG of North Dakota was as follows:

On page 19, strike out sections 6 and 7, lines 6 through 21, and insert:

"SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency or of the FBI from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee or the Director of the FBI or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security."

Mr. YOUNG of North Dakota. Mr. President, I would hope that the Senator from North Carolina, who is handling this bill, would be able to accept this amendment. If not, I shall ask for the yeas and nays.

Mr. ERVIN. Mr. President, I feel I cannot accept the amendment, because my committee, having voted on the question of whether the FBI should be included in the bill, voted to exempt it.

I can answer my good friend from North Dakota as to the reason for the exemption. If all of the departments and agencies of the Government had conducted their relationships with their employees in the same manner in which the FBI has conducted its relationships with its employees, this bill would not have been introduced. There would have been no occasion whatever for it.

I do not see much use in putting restrictions on use by the FBI of polygraph tests or psychological tests, because it does not use either of them. The other two security agencies to which the restriction has been applied use them all the time. They use them daily, and they are driving away from Government employment some of the best brains that come to them, because of the insults they heap on their applicants in these polygraph tests. That is the distinction.

Mr. YOUNG of North Dakota. In effect, what we are doing then is legislating to exonerate one official and condemn another.

The Director of the Central Intelligence Agency has been changed three times since I have been a member of that committee. I do not know which particular Director the legislation is directed at. If it is not directed at any particular one, why should we not put them all in the same category?

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. MONTOYA in the chair). The question is on agreeing to the amendment of the Senator from North Dakota.

The Senator from New Hampshire is recognized.

Mr. COTTON. Mr. President, in view of the fact that the yeas and nays have been ordered on the amendment of the distinguished Senator from North Dakota [Mr. YOUNG], the Senator from New Hampshire wants to make it plain before the roll is called that he is perfectly willing to vote for, and will vote for, the amendment. He sees no reason why the very meritorious bill of the distinguished Senator from North Carolina should not be universally applied. However, in voting for the amendment, the Senator from New Hampshire wants it distinctly understood he recognizes the fact that insofar as he knows and has ever heard in the years he has been here, the FBI has not been guilty of any conduct that would require this legislation, and that this amndment is to be agreed to merely in the interest of uniformity.

Mr. President, the Senator from New Hampshire recognizes the undoubted service that the CIA has rendered in the interest of national security. It is very rare that the Senator from New Hampshire finds himself somewhat in disagreement with some of the distinguished Senators who have so seriously defended the CIA. He certainly wants its functions in preserving national security to be unhampered and thoroughly preserved.

However, although he is perhaps regarded as a conservative and not too popular with many of the organizations who hold themselves out as being the champions of individual rights, the Senator from New Hampshire wants to say that from his experience in the Senate, he is reluctantly compelled to observe that the CIA has been in many instances a very arrogant and very powerful agency of our Government.

The Senator from New Hampshire does not question the motives of patriotism or the diligence of any of the executives of that Agency, but all of the enemies of our country are not necessarily foreign enemies. I do not imply that we have any enemies in the CIA as individuals. However, the Senator from New Hampshire for a number of years has

viewed with some degree of apprehension the growth of power and secrecy of this particular organization, as he views with apprehension any department of the Government that can operate with such secrecy and so much power, because there is always danger of the invasion of our country's liberties when we create within the Government any kind of a Frankenstein monster that enjoys particular privileges of secrecy and exercises those privileges to such degree.

Certainly, no one wants any of our agents endangered by the disclosure of information. It has been the experience of this Senator, however, that even as a member of the Appropriations Committee, he has not only found it impossible to get certain information about the expenditures of money and about the general policies of the CIA, but he has also actually had the experience of going to his colleagues in the Senate who serve on committees and who are possessed of that information, and those colleagues have been compelled to tell him that they cannot even disclose the information to him because the nature of the information is so secret that it can be known only to a few Members of Congress who serve on certain committees.

Mr. YOUNG of North Dakota. Mr. President, will the Senator yield?

Mr. COTTON. I yield.

Mr. YOUNG of North Dakota. Does this same situation not apply to other classified information? We get highly classified information on military affairs and oftentimes I do not feel that I should tell a colleague what I was told in committee.

The same thing applies with regard to the Atomic Energy Commission. I have never been able to get much information there.

Mr. COTTON. The Senator from New Hampshire specifically referred to the expenditure of money. I do not have and do not want military secrets, but at the same time I have no difficulty in determining how our military appropriations are being spent. I do not want to know secrets of the Atomic Energy Commission, but again I have had no trouble in finding out how its money is being spent. This is not true of expenditures made by CIA.

I think, however, that every Member of the U.S. Senate is entitled to a reasonable amount of information, particularly if he serves on the Appropriations Committee, as to how money is being expended. And I doubt if it is necessary to divulge dangerous secrets to do so.

This is not said with hostility toward the CIA. It may sound so. It is said merely because I did not want the debate to close without indicating the apprehension at least one Senator feels about the creation of this or any other blue-ribbon agency within the structure of the U.S. Government.

I think the Senator from North Carolina is to be commended for his bill.

I, of course, refrained from impeding the progress of the Senate by objecting to his request for unanimous consent to revise and accept an amendment. I will be honest and say that I regretted the acceptance of that amendment. I felt that it unnecessarily weakened his bill and that it practically meant that the Director of the CIA could delegate to anybody, or to a different person every day, the authority to do the acts that the bill was intended to curb.

I shall vote for the amendment offered by the distinguished Senator from North Dakota. That vote, however, is not to be construed as a reflection on the FBI, an agency for which I have the greatest respect. It merely reflects the belief of this Senator that every department and agency should be subject to the provisions of the very meritorious bill presented by the Senator from North Carolina and his colleagues.

I yield the floor.

Mr. HOLLAND. Mr. President, I shall vote for the amendment of the distinguished Senator from North Dakota, but for a different reason from any that have been suggested.

If Senators will note the title of the bill, they will note that it reads:

> To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

I would not like to see the Senate take action which would make it appear that we are less interested in protecting the employees of the FBI than we are in protecting the employees of any other Government agency from any action of the type that is protected against.

My own feeling is that there is no real justification for the section that excludes the FBI—that is section 7—and that unless there is some justification about which I have not yet heard, we shall all desire to give similar treatment and similar protection to all employees of the executive agencies, which I surely believe we should give. For that reason, I shall support the amendment.

Mr. YOUNG of North Dakota. Mr. President, if the Senate is ready to vote, I ask unanimous consent to rescind the order for the yeas and nays.

The PRESIDING OFFICER (Mr. BYRD of Virginia in the chair). Is there objection to the request of the Senator from North Dakota? The Chair hears none, and the order for the yeas and nays is rescinded.

The question is on agreeing to the amendment of the Senator from North Dakota.

The amendment was agreed to.

Mr. COTTON. Mr. President, in view of the fact that the remarks just made by the Senator from New Hampshire were made simply because of the yeas and nays having been ordered, the Senator from New Hampshire now asks unanimous consent that his remarks be stricken from the RECORD, although he meant every word. But there was no need for his remarks unless there was to be a roll-call vote on including the FBI.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New Hampshire? The Chair hears none, and it is so ordered.

Mr. ERVIN. Mr. President, the Senator from New Hampshire was so eloquent that I am inclined to object to his request. I am inclined to object, especially since he paid me a nice compliment in his remarks. In order that I not be put in the position of making such objection, I ask the Senator from New Hampshire to withdraw his request that his remarks be stricken from the RECORD. [Laughter.]

Mr. COTTON. Mr. President, I am willing to yield to the Senator's request. I now ask unanimous consent that my remarks remain in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FONG. Mr. President, every American is aware of the fact that under our republican form of government, the will of the people is accorded primacy. Our Government is responsive to this will, for it is a government of laws—administered by men whose decisions reflect the value judgments of the governed.

Whenever administrative decisions have not reflected those values, the electorate usually responded by electing to office men whose views are in tune with public sentiment.

By statute, the representatives of the people have implemented many of the protections guaranteed under our Constitution. These laws have provided extensive protection for the rights of citizens against arbitrary administration.

In recent years, Federal activities have expanded at a breathtaking rate. With this expansion and with the rapid escalation of technological developments, departures from constitutional liberties once deeply cherished have become increasingly evident.

This has been particularly true in the case of one large and vitally important segment of our population—the thousands of employees and private citizen-advisers who serve the Government.

It seems to me rather ironic that Government employees, so necessary in the carrying on of the functions of Government, do not themselves reap the harvest of liberty, but rather are more and more subject to harassment and intrusions into their private lives.

For some time now, the Judiciary Subcommittee on Constitutional Rights, of which I am a member, has received disturbing reports from responsible sources concerning violations of the rights of Federal employees. The invasions of privacy have apparently reached such alarming proportions and are assuming such varied forms, that the matter now demands immediate corrective measures.

The misuse of privacy-invading personality tests for personnel purposes has been the subject of extensive subcommittee hearings. Other matters, such as improper and insulting questioning during background investigations and abridgment of due process guarantees in denial of security clearances have also been the subject of study.

Other employees complaints, fast becoming too numerous to catalog, concern such diverse matters as psychiatric interviews; lie detectors; restrictions on communicating with Members of Congress; pressure to support political parties, and yet, restrictions on political activities; coercion to buy savings bonds; extensive limitations on outside activi-

ties, and yet, administrative influence to participate in agency-approved functions; rules for writing, speaking, and even thinking; and requirements to disclose personal information concerning finances, property and creditors of employees and members of their families.

Many of the practices now in extensive use have little or nothing to do with an individual's ability or qualification to perform a job.

The subcommittee has sought by hearings and investigation to remedy these problems on a case-by-case, agency-by-agency basis. Although response has been uniformly courteous, it has brought no satisfaction. Corrective legislation is clearly required.

The bill now before the Senate, S. 1035, introduced by the distinguished Senator from North Carolina and chairman of the subcommittee [Mr. ERVIN], is designed to halt many of the practices of which Federal employees have complained and to protect them from further incursions into their privacy.

This measure is intended to be a bill of rights for government employees. The bill contains provisions for administrative remedies and penalties, to be administered through an independent Board of Employees' Rights, which the proposal would create.

Creation of this Board will assure that employees have a place to lodge their complaints of violations of the act without fear of reprisal and with the knowledge that the issues will be considered free of administrative and executive interference.

The bill would make it unlawful for an officer of any department or agency to require or request, or attempt to require or request, any employee or applicant for employment to disclose his race, religion, or national origin. It should be noted that the bill would not bar head counts of employee racial extractions, for statistical purposes, by supervisors.

However, Mr. President, the Congress has authorized a merit system for the Federal service—and the race, national origin, or religion of an individual or his forebears should have nothing to do with his ability or qualification to do a job.

An inquiry as to citizenship, where it is a statutory condition of employment, would be allowed.

The bill prohibits requiring or requesting employees to participate in any function or activity not within the scope of official activities.

Reports have come to the subcommittee, for instance, that some agencies have either prohibited flatly or required employees to report all contacts, social or otherwise, with Members of Congress or congressional staff members.

The prohibitions of the bill regarding attendance at outside meetings, reports on personal activities, and participation in outside activities do not apply to the performance of official duties or to the development of skill, knowledge, and abilities which qualify the person for his duties, or to participation in professional groups or associations.

Under the bill, officers may not forbid or attempt to forbid any employee of the department or agency to patronize any business establishment offering goods and services to the public. This provision is designed to meet complaints that some agencies tell the employees where they can eat, shop, or do business.

The bill would forbid the Government to submit its employees or any applicant for employment to any interrogation, examination, or psychological or polygraph test which is designed to elicit from him information concerning his relationship to any person related to him by blood or marriage, or concerning his religious beliefs and practices, or his attitude or experience in sexual matters.

Testimony received by the subcommittee, as well as other committees of Congress, show that the instruments testing response to questions about such personal areas of an individual's life, habits, and private thoughts are of questionable validity.

The invasion of personal privacy by use of such techniques has no place in the Government's relationship with its employees or applicants for employment. Nor do interview techniques used on job applicants in some agencies.

Scandalous cases have been reported to the subcommittee involving high school graduates, college students, and professional people seeking Government employment who have been subjected to harrowing sessions with security investigators or psychologists. They probe the relationships of the applicant with friends and members of their families regarding religious and sexual experiences. Surely, these practices can only seriously damage the image of our Federal civil service, increase the turnover in good people, and jeopardize recruitment.

Exceptions to these privacy-invading practices are provided upon psychiatric determination that the information is necessary in the diagnosis and treatment of mental illness in individual cases. Such personal questions, however, may not be a part of a general practice or regulation governing the examination of employees or applicants on the basis of grade, job, or agency.

Under the bill employees may not be required or requested to support any candidate, program, or policy of any political party or to support any political party by personal effort or contribution of money or other thing of value. These activities are prohibited, whether they are designed to support the election or the nomination of persons to public office.

A major area of complaint received by the subcommittee has related to outright coercion and intimidation of employees to buy everything from savings bonds to electric light bulbs for playgrounds.

While the bill would prevent coercion to invest in Government bonds or other securities, or make donations for any cause, it would not prevent calling meetings or taking any action appropriate to afford employees the opportunity to invest or donate voluntarily.

This bill, with a few limited exceptions, would prohibit requiring disclosure of an employee's assets or liabilities, or his personal or domestic expenditures or those of any member of his family.

Only persons with final authority in certain areas may be subject to disclosure requirements.

The massive disclosure requirements issued by many Federal agencies pursuant to Executive Order No. 11222 go far beyond the proper concern with the prevention of conflict of interest and corruption in Government. At the time of the issuance of the Presidential directive, White House and civil service spokesmen said that it would affect but 2,000 political appointees. Now, as agency after agency issues regulations to implement the order—with the imprimatur of the Civil Service Commission—not only has a big brother counseling system been established in each agency, but thousands of regular employees and private sector advisers and consultants are being required without option to fill out such questionnaires periodically.

Aside from the invasion of privacy, and the fact that the Federal Government is made to look foolish, the expense of these programs to the taxpayers is simply so much money poured down the drain.

Moreover, it has become evident that the cost in terms of civil service morale is already being reflected in frustration and indignation by many of our civil servants.

An individual's economic liberty and his right to privacy are so important, that an employee suspected of misconduct should not be required to submit to interrogation which could lead to disciplinary action, without the presence of counsel or other person of his choice. The bill would give him this right.

The Subcommittee on Constitutional Rights has been studying this matter for some time, investigating numerous serious complaints. It found that there were widely divergent practices among the regulations of agencies involving this fundamental right.

Our system of justice affords every accused facing criminal charges the right to counsel, even in preliminary interrogations. Certainly, we can do no less for civil servants facing severe economic penalties in the loss of jobs or loss of clearance for sensitive positions in Government and private defense industry.

The bill would make it unlawful to discharge, discipline, or deny promotion to an employee who refuses or fails to submit to any of the requirements, requests or actions described in the bill. Penalties are established for any officer who willfully violates the act.

The bill would thus enable the employee or applicant to look to the Federal district could at any point in the administrative process to halt privacy invasions. He may ask for an order, injunction or other judgment, and for complete relief against the consequences of the violation.

The bill rightly takes into account national security considerations. Specifically exempted from all provisions of the bill is the Federal Bureau of Investigation. In addition, nothing in the bill would prohibit an official of the Central Intelligence Agency and the National Security Agency from requesting any employee or applicant to take a polygraph test or a psychological test, or to provide

a personal financial statement designed to elicit the personal information protected under other provisions of the bill. In these cases, the Director of the Agency must make a personal finding with regard to each individual to be tested or examined that such test or information is required to protect the national security.

Mr. President, when this bill was initially scheduled for Senate debate more than 2 weeks ago, consideration of the proposal was postponed because of objections raised by the Central Intelligence Agency and the National Security Agency. These Agencies felt that they should be completely exempted from the requirements of the bill.

I do not believe they should be exempted.

The subcommittee has been giving this matter our most careful study and analysis during the past 3 years, when we first started investigation of the broader aspects of the problem.

The distinguished chairman of the subcommittee [Mr. ERVIN], who has been in the forefront of efforts to protect the constitutional rights of Federal employees, has been in almost constant touch with all the agencies of our Government having to do with national security questions.

After a most exhaustive analysis of the whole picture, the subcommittee adopted amendments to the bill exempting the FBI, and granting a partial exemption to the CIA and NSA, as I explained earlier.

I strongly agree with my good friend, the distinguished senior Senator from North Carolina [Mr. ERVIN], that all Federal employees should be accorded the protection of their privacy and basic rights, regardless of the mission of the agency for which they happen to work.

The CIA and NSA have had ample opportunity to present their views and discuss their problems with the subcommittee over these last 3 years. By raising objections to the bill at the 11th hour is to me only an attempt to kill the legislation.

Mr. President, the invasions of privacy under threats and coercion and economic intimidation are widespread in our Federal civil service system today. They represent tyranny of the worst kind. In their effect on individuals and in their impact on society as a whole, they surpass any privacy invasions and illegal searches and seizures to which arbitrary rulers and administrators attempted to subject our forefathers.

They constitute an admission by the Civil Service Commission and the agencies that they are having great difficulty in operating the merit system, despite all the tests and rules for determining the qualifications of applicants and employees, and making a selection on the basis of merit.

The degree of privacy in the lives of our civil servants is small enough as it is, and is still shrinking with further advances in technical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is a form of tyranny which should greatly disturb every American.

S. 1035 is a good, strong measure, which at the same time effectively balances the interests involved, first, on one hand, the interest of the Government in attracting the best qualified individuals to its service, in protecting the national security, promoting equal employment opportunities, assuring mental health, and conducting successful bond-selling campaigns; and, second, on the other hand, the interest of the individual in protecting his rights and liberties as a private citizen.

The balance of these interests achieved by S. 1035 assures our Government employees constitutional rights long considered minimal in our democracy.

Congressional action on this legislation to protect the constitutional rights of our citizens who are also employees of Government is long overdue. I urge the Senate to adopt the bill S. 1035.

Mr. MONTOYA. Mr. President, I rise to congratulate my distinguished colleague from North Carolina, Senator SAM ERVIN, for his initiative, foresightedness, and determination in making it possible for us to be considering here in the U.S. Senate today, a most essential measure designed to safeguard the right of privacy of Federal employees. I am indeed pleased to be one of the cosponsors of this measure.

S. 1035 is long overdue. The establishment and enforcement of minimum standards in this area is essential if our cherished American concept of personal freedom is to be vital and meaningful.

Safeguarding constitutional guarantees and civil liberties of our Federal employees must come high on our list of musts, without which there can be no individual freedom for any of us. Government and the people it serves suffer when such workers are not protected from the overzealous or overly curious investigator. Unwarranted snooping or coercion of any kind must stop now, not later.

The provisions of this bill are of special significance in this moment in history when science and technology are busy producing a multitude of new procedures and devices which, although they have great potential usefulness for mankind, might also, unless their use is carefully regulated and controlled, result in great personal damage or hardship to the individual, either in or out of Government service.

The provisions of S. 1035 have been spelled out for us here today. I believe that each of us are familiar with and know of the very practices which it is designed to protect against. The corridors of Government are being stalked by the specter of the lie detector test, the unwarranted psychological and so-called sanity test, enforced buying of bonds and probing questions asked on religious beliefs and sexual attitudes.

Too often do we hear of a Federal employee being, in effect, forced into attending Government-sponsored meetings and lectures out of fear of losing their jobs or not receiving that long-expected promotion. Too often do we hear of Federal employees being forced to participate in outside activities or undertakings unrelated to their work.

Government employees have had their constitutional guarantees eroded or abrogated outright, and have been inhibited in their behavior, if not outrightly coerced to a frightening extent. How can our Government function and serve our people with this type of repressive atmosphere anywhere within its confines?

We must put a stop to these practices now and S. 1035 will provide the necessary machinery.

I do not wish to leave the impression that these practices are the rule rather than the exception. I am confident the great majority of Federal supervisors do not resort to such practices. But it is important that the rights of the employee be protected from the unwise or prejudicial actions of the few who are less scrupulous or conscientious.

Rightly so, section 1 not only makes it unlawful to do any of the acts prohibited by the bill but it also makes it unlawful to persuade or attempt to persuade others to take such prohibited actions. Thus a supervisor cannot subject his subordinates to performing any of the acts or submit to any of the requirements made unlawful by this measure.

Significantly, the bill cannot be characterized as an exercise in wishful thinking. The bill before us has teeth in it.

Under section 4, the injured Federal employee or the applicant for Federal employment, may bring a civil action for violation. We can anticipate, however, that the more usual enforcement procedure will be through the Board of Employees' Rights which the bill establishes under section 5.

The Board of Employees' Rights shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this measure and to conduct a hearing on each such complaint. After a fair and impartial hearing if the Board determines that there has been a violation of this act, the act provides for appropriate remedies and punishment.

The Board in and of itself represents a significant advance. Many of the complaints that can be expected to be handled under this act will inevitably be of the kind that in the past were handled under the existing grievance procedures. Professional people have been complaining for a long time that these procedures were seriously inadequate, particularly in that the department or agency concerned acted simultaneously in inconsistent capacities.

So far as its own actions are concerned, the very actions about which the employee was complaining, the defendant department or agency acted as both judge and jury. The aggrieved employee was never able to present his case before an impartial tribunal, and the result has been that employees generally lost faith in the system and did so to such an extent that it has come to be used relatively little.

The establishment of this Board will surely represent a long step forward in correcting this situation. If the bill did nothing more than this—although it

does do much more—it would still be worth enacting.

Finally, if these procedures do not prove, in any given case, to be efficacious, the aggrieved employee is specifically authorized to file suit in the U.S. District Court.

This bill is a most essential one and it is a most timely one. In this period of extraordinary unrest and discontent, groups of all sorts are organizing and demanding rights which, in the past, they never realized they had. It seems to me that this proposed legislation reflects a degree of foresight and statesmanship on the part of the distinguished Senator from North Carolina, SAM ERVIN, and he should be greatly commended for his initiative.

By enacting this bill, the Congress will be recognizing at least by implication, what mistakes have been made in this area in the past; but by taking steps to prevent their repetition in the future, it will be reinforcing the procedures of law and order, and above all it will be protecting the rights of the individual.

I urge this body to give this measure prompt and final approval and I call upon our colleagues in the House of Representatives to join us in the immediate future in our action here today.

Once again, my congratulations to Senator SAM ERVIN for proposing this landmark bill and my thanks to him for permitting me the opportunity to become a cosponsor of the measure.

Mr. YARBOROUGH. Mr. President, there are certain individual rights which must be considered fundamental to our social and political framework, and as such, the protective mechanisms which we erect about them must always remain impregnable. Those imaginative and perceptive gentlemen who gathered in Philadelphia in the spring of 1787 were well versed on the subject of individual rights, and the fruit of their labors is above all an affirmation of the inherent dignity and inalienable liberty of the individual citizen.

Of all individual rights, that of personal privacy is most basic in our system. The very First Congress submitted and the requisite States subsequently ratified the first amendment to the Constitution, the spirit of which protects the citizen's private thoughts, beliefs, attitudes, and actions. This principle is the essence of constitutional liberty in our free society. It has long been affirmed and has been continually extended by the courts of the land.

Yet it is nonetheless a fact that there are today an intolerable number of cases involving Federal employees where even minimal bounds of privacy have been invaded. Much has been written of the progressiveness of the Federal Government as employer, but these blatant violations blight the record and cannot be ignored. Thus it is that I joined with scores of my colleagues in the Senate to cosponsor S. 1035, a bill to protect the civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy. I take this opportunity to commend especially the distinguished gentleman from North Carolina [Senator ERVIN] for his sponsorship of this urgently needed measure, and for the leadership that he has provided throughout its legislative history.

A civil servant relinquishes no constitutional rights by seeking a public career, and he cannot be considered less a citizen for having made this choice. The public employee remains a private man, and Congress has a moral and legal obligation to maintain a rigid separation between the restrictions of the former and the liberties of the latter.

In a society that includes a rampantly developing technology, a propensity for centralized organization, and an appetite for the mass produced, there is a vital need for leaders to look beyond efficiency and take care that individual liberty and privacy are protected from unwarranted intrusions. S. 1035 takes this long look. Mr. President, for the benefits that it would provide our Federal employees today and for the promises that it holds for tomorrow, I have cosponsored, will actively support, and recommend passage of this Federal employee rights bill.

Mr. SCOTT. Mr. President, I am pleased to support S. 1035, which I cosponsor. The bill is designed to protect the constitutional rights of Federal employees and prevents unwarranted invasion of their privacy.

This is one more step in the historical defense of American privilege, liberty, and of our inherited rights.

S. 1035 prohibits indiscriminate requirements that employees and applicants for Government employment disclose their race, religion, or national origin, prevents unwarranted invasion into or control over personal attitudes, opinion, and activities unrelated to their employment.

It makes it illegal to coerce an employee to buy bonds or make contributions; or to require him to disclose his personal assets, liabilities, or expenditures or those of any member of his family except where conflict of interest is possible.

Under S. 1035, an employee is given the right to have counsel present at any interview which could lead to disciplinary proceedings, accords the right to civil action in a Federal court for violation or threatened violation of the act, establishes a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties.

Mr. STENNIS. Mr. President, I ask for the third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Nevada [Mr. BIBLE], the Senator from Oklahoma [Mr. HARRIS], the Senator from Michigan [Mr. HART], the Senator from Montana [Mr. MANSFIELD], the Senator from Utah [Mr. MOSS], the Senator from Maine [Mr. MUSKIE], and the Senator from Missouri [Mr. SYMINGTON] are absent on official business.

I also announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Pennsylvania [Mr. CLARK], the Senator from North Carolina [Mr. JORDAN], the Senator from Louisiana [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Montana [Mr. METCALF], and the Senator from Florida [Mr. SMATHERS] are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada [Mr. BIBLE], the Senator from Pennsylvania [Mr. CLARK], the Senator from Oklahoma [Mr. HARRIS], the Senator from Michigan [Mr. HART], the Senator from North Carolina [Mr. JORDAN], the Senator from Louisiana [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], and the Senator from Utah [Mr. MOSS] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. DOMINICK] and the Senator from Arizona [Mr. FANNIN] are absent on official business.

The Senator from New York [Mr. JAVITS] is also necessarily absent.

If present and voting, the Senator from Colorado [Mr. DOMINICK], the Senator from Arizona Mr. [FANNIN], and the Senator from New York [Mr. JAVITS] would each vote "yea."

The result was announced—yeas 79, nays 4, as follows:

[No. 248 Leg.]

YEAS—79

Aiken	Gruening	Morton
Allott	Hansen	Mundt
Baker	Hartke	Murphy
Bartlett	Hatfield	Nelson
Bayh	Hayden	Pastore
Bennett	Hickenlooper	Pearson
Boggs	Hill	Pell
Brewster	Holland	Percy
Brooke	Hruska	Prouty
Burdick	Inouye	Proxmire
Byrd, Va.	Jackson	Randolph
Byrd, W. Va.	Jordan, Idaho	Ribicoff
Cannon	Kennedy, Mass.	Scott
Carlson	Kennedy, N.Y.	Smith
Case	Kuchel	Sparkman
Church	Lausche	Spong
Cooper	Long, Mo.	Talmadge
Cotton	McCarthy	Thurmond
Curtis	McClellan	Tower
Dirksen	McGee	Tydings
Dodd	McGovern	Williams, N.J.
Ellender	McIntyre	Williams, Del.
Ervin	Miller	Yarborough
Fong	Mondale	Young, N. Dak.
Fulbright	Monroney	Young, Ohio
Gore	Montoya	
Griffin	Morse	

NAYS—4

Eastland	Russell	Stennis
Hollings		

NOT VOTING—17

Anderson	Hart	Metcalf
Bible	Javits	Moss
Clark	Jordan, N.C.	Muskie
Dominick	Long, La.	Smathers
Fannin	Magnuson	Symington
Harris	Mansfield	

So the bill (S. 1035) was passed.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HOLLAND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make all necessary technical corrections in the engrossment of the bill which has just been passed by the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, even though I am a cosponsor, I voted against the bill because it weakens the security of our Nation by hamstringing the CIA, the NSA, and other intelligence agencies in their work.

LEGISLATIVE PROGRAM

Mr. DIRKSEN. Mr. President, I would like to ask the distinguished acting majority leader about the program for the remainder of the day, and also what he foresees for tomorrow and possibly the rest of the week.

Mr. BYRD of West Virginia. Mr. President, it is my understanding that the distinguished junior Senator from Mississippi [Mr. STENNIS] will proceed immediately to bring before the Senate the Defense appropriation conference report. In discussing this report with the Senator from Mississippi, I am led to believe there will be no rollcall vote on this conference report. That being the case, there will be no more votes today.

It is anticipated that the Senate will adjourn until 12 o'clock noon tomorrow when it completes its business today.

Before adjourning, in will be the intention of the leadership to lay before the Senate as the pending business for tomorrow, S. 1985, a bill to amend the Federal Flood Insurance Act of 1956.

Mr. STENNIS. Mr. President, will the Senator yield to me on that point?

Mr. BYRD of West Virginia. I yield.

Mr. STENNIS. The Senator mentioned the conference report. Even though I shall not ask for a rollcall vote, as I see it, there are matters of interest to many Senators that will doubtless come up for discussion and other Senators may ask for the yeas and nays.

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. BYRD of West Virginia. I yield.

Mr. TOWER. Will the matter of the House insistence on the denial of the opportunity for the British to bid on the seven minesweepers in the bill come up? Is this going to be a matter of controversy?

Mr. STENNIS. I would like to make a statement on that point in a few minutes, if the Senator will permit the leadership to finish the statement.

Mr. BYRD of West Virginia. Following action by the Senate on S. 1985, the Federal Flood Insurance Act of 1956, it is the intention of the leadership to bring before the Senate S. 798, a bill to provide compensation to survivors of local law enforcement officers killed while apprehending persons for committing Federal crimes, which is a bill by the Senator from Arkansas [Mr. MCCLELLAN] and the Senator from Pennsylvania [Mr. SCOTT].

That is all the leadership can foresee at the moment. If the Senate completes its business on those three measures this afternoon and tomorrow, it is anticipated that the Senate, on the completion of business tomorrow will go over until Monday next.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. BYRD of West Virginia. I yield.

Mr. MILLER. I was hoping to have a rollcall vote on the conference report, and I do not want to do anything to inconvenience my colleagues, but as I understand it, there will not be a long discussion on it.

Mr. BYRD of West Virginia. The Senator is not precluded by anything I have said from asking for a rollcall vote. I merely stated that it was the feeling of the Senator from Mississippi that he did not intend to ask for a rollcall vote and he did not foresee any.

Mr. STENNIS. Mr. President, I want to make it clear that the reason why we were not going to ask for a rollcall vote, so far as the conferees were concerned, was that the bill we bring back has somewhat less money than the Senate bill, and less than the House bill. It is under last year's budget appropriation. It is under the budget estimate by $1.6 billion.

There are two amendments in which we are interested, which I shall explain.

Mr. MILLER. Mr. President, I should like to ask for the yeas and nays on the conference report.

The PRESIDING OFFICER. The Chair informs the Senator that the conference report is not yet before the Senate.

DEPARTMENT OF DEFENSE APPROPRIATIONS, 1968—CONFERENCE REPORT

Mr. STENNIS. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10738) making appropriations for the Department of Defense for the fiscal year ending June 30, 1968, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of August 23, 1967, pp. H11092–H11093, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. MILLER. Mr. President, will the Senator from Mississippi yield?

Mr. STENNIS. Let me state that I do not object to the yeas and nays on the conference report, but since the bill is less than that voted on by the Senate previously, when we did have a rollcall vote, I thought it was agreeable to omit a rollcall. However, I have no objection to one.

Mr. MILLER. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, the committee of conference on this bill spent approximately 5 hours in considering the Senate amendments and have reached agreements on all of them with the exception of No. 18, pertaining to the construction of naval vessels in foreign shipyards. This matter is in actual disagreement, and I will discuss it in detail in a few minutes.

The conferees agreed on appropriations totaling $69,936,620,000, which is under the Senate bill, $195,700,000; under the House bill, $358,580,000; under the budget estimates, $1,647,380,000; and under appropriations for fiscal year 1967, $293,002,000.

As is usual in conferences on appropriation bills, there were compromises on most of the Senate increases and decreases, and I will be glad to respond to any questions with respect to any specific item that Members may have.

Mr. President, I invite the attention of the Senate to the fact that the amount agreed to is under the budget. In large measure, that is due to the very careful analysis and rewriting of the bill by the distinguished Senator from Georgia [Mr. RUSSELL], who makes us all very happy by being in the Chamber this afternoon.

He is the architect of the bill, together with the distinguished Senator from North Dakota [Mr. YOUNG]. They did their usual fine piece of work—in fact, it is an extraordinarily fine piece of work.

Mr. President, compromises were made, particularly with reference to the appropriation amounts, as is always true in a conference of this kind, for the House had also given the utmost study to the bill. It was a harmonious conference, even though there was one matter in complete disagreement.

The committee of conference devoted considerable time to the Navy's F–111B aircraft program and finally agreed on an appropriation of $147,900,000, which is an increase of $32,900,000 over the Senate allowance for this aircraft program. The program agreed upon by the conference committee differs in only one respect from the program approved by the Senate; namely, the Senate provided for the procurement of six aircraft to continue the Navy's research and development program, and the conference committee has agreed upon the procurement of eight aircraft for this purpose. The Senate program also included approximately $10 million for the advance procurement of P–12 aircraft engines to support a possible future buy of this aircraft. No funds were included in the Senate program for the advance procurement of long leadtime components other than these engines. The committee of conference did not change this advance procurement program. Thus, essentially, it was just an increase of two airplanes, and that was the essential difference.

Mr. President, I ask unanimous consent that the two paragraphs appearing on page 6 of the statement of the man-

90TH CONGRESS
1ST SESSION

S. 1035

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 1967

Referred to the Committee on Post Office and Civil Service

AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employ-

ment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin of any such employee when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or

the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its depart-

ments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the

Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the performance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests.

(l) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civil-

ian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit

from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying

for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the

United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent in-

junction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board

shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days

after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and

manner of conducting agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion; and (3) may—

(A) (i) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second

or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums nec-

essary, not in excess of $100,000, to carry out the provisions of this section.

SEC. 6. Nothing contained in this Act shall be construed to prohibit an officer of the Central Intelligence Agency or of the National Security Agency or of the Federal Bureau of Investigation from requesting any civilian employee or applicant to take a polygraph test, or to take a psychological test, designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters, or to provide a personal financial statement, if the Director of the Central Intelligence Agency or his designee or the Director of the National Security Agency or his designee or the Director of the Federal Bureau of Investigation or his designee makes a personal finding with regard to each individual to be so tested or examined that such test or information is required to protect the national security.

SEC. 7. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Pro-*

vided, however, That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States District Court or in proceedings before the Board on Employee Rights: *Provided further, however,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 8. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Passed the Senate September 13, 1967.

Attest: FRANCIS R. VALEO,

Secretary.

90TH CONGRESS
1ST SESSION

S. 1035

AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

SEPTEMBER 14, 1967
Referred to the Committee on Post Office and Civil Service

Approved For Release 2002/11/22 : CIA-RDP79-00632A000100080003-9