CONGRESSIONAL RECORD

PROCEEDINGS AND DEBATES OF THE 93RD CONGRESS
SECOND SESSION

VOLUME 120—PART 27

OCTOBER 16, 1974 TO NOVEMBER 21, 1974
(PAGES 35707 TO 37038)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1974
Mr. President, at the outset, I ask unanimous consent that the following persons, who are members of staffs of affected committees in connection with this measure, be permitted the privilege of the floor: Bert Wise, James Davidson, Al From, Jan Alberghini, and Mr. Sussman.

Mr. Hruska. Mr. President, will the Senator yield for the purpose of adding the following, and a member of the staff of the Committee on the Judiciary?

Mr. Kennedy. I add that name, Mr. President. I ask unanimous consent that those persons have the privilege of the floor during our discussion of this matter and the vote.

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

Mr. Kennedy. Mr. President, I yield myself such time as I may take.

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Mr. Byrd. The PRESIDING OFFICER. Under the previous unanimous consent agreement, the hour of 1 o'clock having arrived, the Senate will now proceed to the consideration of the veto message on H.R. 12471.

The PRESIDING OFFICER. (Mr. Talmadge) laid before the Senate a message from the House of Representatives, which was read, as follows:

The House of Representatives having proceeded to reconsider the bill (H.R. 12471) entitled "An Act to amend section 552 of title 5, United States Code, known as the Freedom of Information Act," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

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signs to avoid — more secrecy, more footdragging, and ultimately more Government impotence. Let me discuss each of the administration objections and suggested changes in turn.

First, the administration wants to tie the hands of Federal judges in reviewing executive classification decisions. This, we agree, is unnecessary. It is not necessary to protect our national security.

This national security argument should be placed in its proper perspective. John Ehrlichman gave us a clue to how the executive branch views national security when he told President Nixon, during a discussion of the Ellsberg break-in, “I would put the national security tent over this whole operation.” National security improvements to the San Clemente swimming pool; national security wiretaps on journalists; national security burglaries. The White House taped conversation of April 17, 1973, has the President summing up the Watergate cover-up this way:

It serves the security — national security area — and that is a national security problem.

What about the operation of the formal classification system, carried out under Executive Order 10566? Who are the specially delegated officials for this purpose? The former President shed some light on this system too, when he said:

The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administration.

We know too well how the classification system has been overused and misused. We know too well that of the millions of documents marked “secret,” most should rightfully be open to scholars, journalists, and the interested public.

Yet the administration proposes to limit review of classification decisions, allowing courts to require disclosure only if the Government had no reasonable basis whatsoever to classify them. This would give the agency a stamp again practically determinative.

The President writes the classification rules in his Executive order. If those rules are inadequate to protect important information vital to our national defense, then let the President change the rules. But make the Government abide by them. Judicial review means executive accountability. Judicial review will be effective only if a Federal judge is allowed to review classification decisions objectively, without any presumption in favor of secrecy. That is what our system of checks and balances is all about.

I think Senator Eagleton best presented the whole of judicial review standards to the Senate during our debate on the original legislation:

The ground ought to be not whether a man has reached a wrong decision reasonably or unreasonably. It ought to be whether he had reached a wrong decision.

This bill is not going to endanger military secrets or defense information. It will not require disclosure of sensitive international negotiations or confidential military weapons research.

Our research of managers makes clear that we expect an agency head’s affidavit to be given considerable weight in judicial determinations on classified material. But if the agency cannot produce enough evidence of classification, then keeping a document secret, then that document should be released. If the agency can show that it has properly classified the document in the interest of national defense or foreign policy, then that document should be withheld, no the courts will so rule.

I therefore reject out of hand the President’s argument against this bill’s provisions for de novo judicial review of classified material, and I reject along with it his proposed changes.

Seven working days is a too short time limit. Our bill provides an agency 10 working days to respond initially to a request for information, 20 working days on appeal, and an additional 10 working days where unusual circumstances are present. This is 40 working days, or two or three months — more than enough time for any agency to complete the process of finding and reviewing requested documents.

If a person sues the agency after that time, and the agency is still diligently trying to complete review of the materials under exceptional circumstances, then we have another escape valve in the bill. If the agency has not responded in 40 working days, or almost two calendar months — more than enough time for any agency to review this process — the courts may require disclosure, and I reject along with it his proposed changes.

The President has asked Congress to add a new, 10-days limitation. This is far too late. Our bill provides an agency 10 working days to respond initially to a request for information, 20 working days on appeal, and an additional 10 working days where unusual circumstances are present. This is 40 working days, or two or three months — more than enough time for any agency to complete the process of finding and reviewing requested documents.

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President Ford's veto last week of amendments to the Freedom of Information Act is an indefensible effort to preserve this massive loophole.

The U.S. Supreme Court ruled in 1973 that the courts could question the validity of the secrecy stamps placed on government documents.

The high court agreed that the purpose of the Freedom of Information Act is to provide a greater public right to government information, but it said the legislative history presented the courts with the task of reviewing the classifications given to documents. The court was unanimous that Congress can change the law and authorize judicial review.

The judicial review provision is one of several amendments to the Freedom of Information Act. It is not a mere matter of policy, but it affects the public's right to learn about government actions.

In vetoing the measure, President Ford was critical of the court review provision. He declared that it would have an adverse impact on national security by permitting courts to pass on matters in which they lack expertise.

A major function of the courts is to hear arguments on disputed issues and rule on the validity of the arguments. The courts would have to decide in a vacuum on crucial issues.

Judges are no less capable of ruling on the validity of security classification decisions than on other decisions by government agencies.

It is essential that government officials not be deterred from releasing information to the public.

The government has not demonstrated that the requested documents, which are couched in broad generalities, relate to any ongoing investigation and that disclosure would impair any future law enforcement proceedings.

No doubt this is just the kind of document—revealing a program that earlier this week the Justice Department itself characterized as involving "practices that can only be considered abhorrent." In a free society—there the FBI would find impractical to review and unlikely to be available for release. Yet this is also precisely the kind of Government activity which the public has the greatest interest in knowing about.

Then there is the case of Congressman Koch and two of his colleagues who requested access to their own FBI files. The FBI first denied it had such files. Only after suit was filed did the Bureau turn over correspondence and newspaper clippings from those so-called "investigatory files." Only court action in this instance forced the FBI to even admit that it had the requested files.

As a result, not even the FBI should be placed beyond the law, the Freedom of Information Act. It was enacted to make it easier for the public to learn about government actions. The law and authorize judicial review.

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The Watergate scandal revealed how government officials used "national security" to justify illegal wiretaps and a host of other illegal activities. It is interesting to find President Ford ignoring this recent history and invoking "national security" to defend the same old secrecy practices which enabled the White House "horrors" to occur.

He is the man who promised open government when he took over in the wake of the Nixon secrecy and distortion of facts about government.

Congress has an obligation to override the veto and declare in unmistakable terms that it has had enough of cover-up by secrecy stamps.


President Ford's veto of a good bill to strengthen the Freedom of Information Act of 1966 is puzzling. Two congressmen that they got some bad advice from the executive agencies for which most routine disclosures of business would be inconvenient or embarrassing or both.

Congressional amendments to the 1966 act were entirely in order, and language was changed in the conference committee a few days ago to take account of the President's
reservations. Nevertheless the veto has fallen, and it has wiped out a lot of good work. If the veto stands or unless Congress can come back with a good measure, the whole effort will continue to remain in the dark concerning a lot of subjects they need to know more about.

The essential purpose of the law and its refinements was to prevent federal agencies, their political overseers and vested bureaucrats from hoodwinking the public under the guise of "national security" or classifications with even less to recommend them. A 1973 Supreme Court decision had said, in effect, that the very information that was conveniently stamped "classified," a citizen can do little but accept the label. The document is exempt from the law.

That gets to the heart of the question. Proponents of a more open policy are not trying to pry top secret material from the Pentagon or the Department of State. If they were, they hardly would pursue such a public route to covert knowledge. They are, instead, to find examples of the bureaucratic waste and political excess that abound in both the military and civilian sectors of the great Washington scene. They are, in fact, trying to go to the very information place, conveniently stamped "classified" and hidden away from the public.

It is difficult to imagine that Mr. Ford really was cognizant of the bill or what was involved beyond bureaucratic discomfiture. The language in the message does not sound like him. This is not the new "federal district judge" being able to "turn over a determination by the secretary of defense that disclosure of the information would result in a national security." Of course this is nonsense. The proposal would allow a judge to examine contested materials privately (in camera) to determine if they were properly exempted under any legal category. It ought to be assumed that our federal judges can be trusted not to betray the security of the country.

And if, indeed, any document is sheltered by the secretary of defense, it is hard to believe that a federal judge would not be reasonable. The act is not intended to put the secretary of defense in an untenable position regarding state secrets. It is intended to nail the petty (and sometimes not so petty) brass that may be trying to hide behind the authority of the secretary of defense.

But it is in the civil sector that the act could take on its greatest significance. The nation has just gone through a tumultuous era in which we were shown how, because information was hidden and lied about, there was a concerted effort to pass off the Watergate break-in as an operation of the Central Intelligence Agency and thereby forestall investigation by the Federal Bureau of Investigation. If this was not a matter that would have been uncovered by the Freedom of Information Act, at least the direction of malfeasance was in the same spirit.

This is hardly the time for the executive branch to make it even more difficult to use as usual in secret what ought to be public information.

The Freedom of Information Act is useful in the economic, commercial, cultural and custodial uses he is able to spend a fortune on lawyers.

President Ford has vetoed a good bill and has not given good reasons for his most disappointing action.

[From the Louisville (Ky.) Times, Oct. 24, 1974]

A Ford Veto That Congress Should Overturn

By the time they return to Washington after the election, even the most congressmen will surely have heard enough about the widespread distrust of government to confirm them of the importance of overriding President Ford's veto of important amendments to the Freedom of Information Act.

The bill, which would strengthen the basic law passed in 1966, was passed by majorities of more than two thirds in both houses of the Senate and House. Conflicts of both houses should stick to their guns when they act on the veto during the lame-duck session in November.

It was to combat the federal bureaucracy's inclination toward secrecy that Congress passed the original act. The purpose of the law was to permit federal judges to determine if they were properly classified. Nine categories of material are exempt, including national security information, trade secrets and law enforcement investigations.

Because civil servants have an unfortunate instinct for delay and concealment, reenforced no doubt by similar tendencies in the Nixon White House, the law has turned out to be less effective than Congress intended. Requests for information sometimes end up in bureaucratic snarls or are stymied by refusals. Nine categories of material are exempt, including national security information, trade secrets and law enforcement investigations.

Because civil servants have an unfortunate instinct for delay and concealment, reenforced no doubt by similar tendencies in the Nixon White House, the law has turned out to be less effective than Congress intended. Requests for information sometimes end up in bureaucratic snarls or are stymied by refusals. Nine categories of material are exempt, including national security information, trade secrets and law enforcement investigations.

The new amendments to the act were designed to eliminate some of the key loopholes that have allowed insensitive federal agencies to continue the aura of secrecy. Many of these loopholes have allowed insensitive federal agencies to continue the aura of secrecy, which for far too long has permeated government.

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The amendments would put a time limit of 10 working days on a federal agency to decide whether it will hoard hold access to secret information public, and 20 working days to decide appeals when access to information is denied. These are not unreasonable limits, and many cases have already gripped with the public's right to know, instead of indulging in bureaucratic foot-dragging.

Another amendment called for judicial review of classified national security information, if its release is sought, before it could be withheld.

Within the government, opposition to the amendments has come mainly from officials connected with foreign policy and national defense. One member of Congress has charged that President Ford apparently acted in announcing his veto.

The president said he would submit proposals to Congress that would give "high court" status to federal judges to "give them the expertise to make such decisions. But it is obvious that President Ford and senators from both parties are united in their fear that Congress should not override the veto. It is quite possible that the new amendments will be lost.

Over the last decade, we have seen the fruits of government secrecy—in the conduct of the war in Vietnam, in the Watergate scandals. What all of these events have shown is that government governs worst when it does not trust the people, and is unwilling to tell the people what it is doing. That is why the public should support efforts to strengthen the Freedom of Information Act, and why President Ford is wrong to veto such efforts.

[From the Charlotte (N.C.) Observer, Oct. 23, 1974]

Keep It Secret—Veto Does Just That

Take away Linus's blanket and this usually mild-mannered inhabitant of the Peanuts comic strip becomes a tiger. Bureaucrats sometimes react similarly when someone threatens to take away their precious "top secret" classification stamps. In their efforts to keep information from the people, they now have received a boost from President Ford.

Aware when he assumed office that people were tired and sick of secrecy, of being lied to, and of finding that Washington was a Byzantium on the Potomac, President Ford promised to make Washington's Ortiz touchstones of his Administration. But now he is buying the tried arguments that have been invoked so many times to defend secrecy.

In his veto of a bill to strengthen the Freedom of Information Act, he said it was a threat to America's "military intelligence, secrets and diplomatic relations." He also said it would give the courts power in an area they were unfamiliar with and complained that it would require the work of a "team of experts" through those mountains of classified documents in complying with requests for information.

The intent of the amendments was to strengthen the bill by putting the burden not on the citizen seeking infor-
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bureaucrat withholding it. When the act passed in 1966, it was hailed as a breakthrough for citizens and newsmen anxious to acquire government information. The act is being put up to. But the act has not lived up to its billing, and part of the reason is that bureaucrats are able to frustrate requests for information through administrative hurdles and the courts.

The bill would have changed this by cutting the time limit for agency responses to requests for information, setting administrative penalties for arbitrary refusal and permitting recovery of legal fees by successful plaintiffs. The bill would have allowed to review classified documents and classification procedures. And a bureaucrat would have been criminally liable if the court found that he withheld information. In short, the act would have some teeth.

For weeks now, we have been hearing about the "Lessons of Watergate," and we will undoubtedly hear more as moralists of every type look for Watergate lessons like shamans examining entrails for signs. But there is one lesson that should be obvious to all: Secrecy creates the environment for a Watergate, a Vietnam, a Bay of Pigs. The power of a bureaucrat or Administration official to cover up a wrong is inherently anti-democratic. President Ford could not see that. Congress should override his veto of the Freedom of Information bill when it returns in November.

One of Congress' first actions when it reconvenes should be to override President Ford's veto of the Freedom of Information Act. An override shouldn't be difficult in this case: The House passed the bill, and the Senate has approved it by voice vote without a roll-call.

The amendments were designed to make the Freedom of Information Act work. The reason the amendments are necessary is that government departments and agencies have never allowed it to work. Since its passage in 1966, over bureaucratic opposition, the wilderness of the 'classified' stamps has blocked access to public records at every turn. Congress worked long and hard to devise amendments to the Freedom of Information bill that get around the barriers, only to encounter the Ford veto.

There are some government documents and records, obviously, that ought to be held close to the vest. For example, General Accounting Office reports to foreign policy and national security in particular, a certain amount of secrecy over a period of time is doubtless in the best interests of the nation. But the law allows for such exceptions. It also recognizes that trade secrets filed with the government deserve protection, and such information is no less crucial than medical records ought not to be laid out for everyone to see.

Many kinds of records that should be public become secret because of being out of sight or out of reach, but there is no excuse or reason, and it was this super-secret. The bill sought to overcome. It is disappointing to find President Ford, who has long been an advocate of open administration, going along with the crowd that prefers to squirrel away the government records where no one can see them.

His principal objection, apparently, was to a provision that would allow courts to determine whether a "secret" or "top secret" classification was justified. The courts already have the power to deal with records that pertain to criminal trials, however, and the Supreme Court held last year that Congress could not delegate authority to cover other cases if it chose to do so.

The fact that Congress did so choose, and that President Ford chose to use a veto on a bill that would not have added anything less confrontation at a time when the legislative and executive branches should be striving to work in harmony. But since the President has posed the challenge, it is up to Congress to reply. Its response should be another overwhelming vote to pierce the veil of secrecy. The events of the past provide ample reason for doing so.

[From the Washington Post, Oct. 21, 1974]

A REJECTABLE VETO
President Ford's assurances of openness in government were dealt a serious blow by his decision Thursday night to veto the amendments to the Freedom of Information Act. The amendments, intended to make it easier for citizens and the press to learn what is going on within government, could have played an important role in bringing about the kind of openness that exists in: all the amendments passed both houses by substantial margins. But Mr. Ford chose instead to accept the counsel of the bureaucrats, to maintain theveal of government secrecy. The events of the past provide ample reason for doing so.

[From the Sacramento Bee, Oct. 30, 1974]

FREEDOM OF INFORMATION
President Gerald Ford missed an opportunity to strike a blow for openness in government by vetoing a bill which would open up the public files and documents pertinent to government actions.

Congress approved a number of amendments to the Freedom of Information Act which would have made it much easier for the citizens and representatives of the media to understand how the government is doing, both good and bad.

The Freedom of Information Act, although it embodies a sound idea, is too cumbersome to enforce. Congress has made it much easier to use through administrative hurdles and the courts. It charged a citizen $6.75 an hour for every hour a clerk had to spend checking the files for data the citizen would have been criminally liable for.

The TVA levied the $6.75-an-hour charge against reporter James Branscome of the Mountain Eagle, a weekly in Letcher County, Ky. It resulted from a legal action to obtain the tariff information for the TVA operation.

In addition to doing away with such protection as charging for government agency information, the new amendments would have required agencies to keep an index of the documents they generate so citizens, for the first time, would have an easy way of keeping track of what the government agency is doing.

A government agency then would have 30 days to respond to a suit claiming that valid information had been denied a citizen or a journalist.

Confidential sources and investigative information involving current prosecutions would be protected, but judges, not executive officials, would decide the legitimacy of the security claim.

Confidential sources and investigative information involving current prosecutions as well as judges, not executive officials, would decide the legitimacy of the security claim.

Congress expressed its clear intent that citizens should have relatively easy access to government information.

The President was wrong in vetoing the bill. It is hoped Congress will override the veto. President Ford has an opportunity to know more about their government.

Mr. Kennedy, Mr. President, I yield 5 minutes to the Senator from Maine.

Mr. MUSKIE. Mr. President, first, I express my appreciation to the distinguished Senator from Massachusetts for taking the leadership with respect to this issue and this piece of legislation. I wish to express the satisfaction I have had in working with him in advancing this measure and now defending it and urging the override of the President's veto.

Mr. President, the vote before us this afternoon is, in my opinion, one of the most important we will consider during this postelection session.

Throughout the campaign period this fall, there was evidence of widespread voter frustration with government and politics as usual. Among many signals transmitted by the voting public on November 5 was that government has become too big, too unresponsive, and too closed to the people it is supposed to serve.

Candidates across the Nation were confronted with demands for openness and candor to a degree unparalleled in
My amendment was a response to the increased reliance by former administrators to use national security to shield errors in judgment or controversial decisions. It was a response as well to the mounting evidence, more recently confirmed in tapes of Presidential conversations, that national security reasons were deliberately used to block investigations of White House Watergate.

That amendment was incorporated in the legislation sent to the President for his signature. And it is primarily that amendment which caused the President to veto the legislation.

The President does not seem to object to the concept of judicial review of classified documents. The changes he proposed in returning the bill to Congress adopted the same mechanism in camera review. What the President does object to is the standard to be used in reviewing such documents. And on this point his proposals would deal another setback to the public's right to know.

Red tape and delay generated in response to a request for information tested both the patience and endurance of the citizen making the request. And, as demonstrated in the case of Environmental Protection Agency records on the distinction of Patsy Mink, there was no mechanism for challenging the propriety of classifications under the national defense and foreign policy exemptions of the 1966 act. Thus, the mere rubberstamping of a designation as 'confidential' could forever immunize it from disclosure.

The legislation before us today is designed to close up the loopholes which have led to such abuse of both the spirit and the letter of the law. It will enable courts to award costs and attorneys' fees to plaintiffs who successfully contest agency withholding of information. It will require agencies to respond promptly to requests for information and thereby help bar the stalling tactics which too many agencies have used to frustrate requests for information. And most importantly, the legislation will establish a mechanism for checking abuses by providing for review of classifications by an impartial outside party.

These amendments are not just a hastily, patchwork effort. On the contrary, they represent many months of careful study by three subcommittees in the Senate, and the Subcommittee on Foreign Operations and Government Operations in the House. And they were sent to the President with the overwhelming support of both Houses of Congress.

Unfortunately, the same President who began his administration with a promise of openness, sided with the secret-makers on the first big test of that promise.

The President's claim to have several proposals with the legislation we sent to him, but his major problem goes to the heart of what these amendments are all about.

When the Freedom of Information Act amendments were first considered by the Senate, I offered a change which would authorize the courts to conduct in camera a review of documents classified by the Government to determine if the public interest would be better served by keeping the information in question secret or making it available to the public.

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long conference, they insisted that the safeguards were inadequate to protect against the identification of an informant. In his conference report to insure against that possibility. Now the objection with respect to the investigative files is that there is an administrative burden too great to be imposed.

Mr. President, I suggest that the burden is substantially less than we would be led to believe by the President's message, but I conclude on the point, Mr. President, that the price of some administrative inconvenience is not too much to pay to increase public confidence in and the accountability of government. That is precisely the issue that confronts us.

Mr. President, in September, when President Ford made his forthright assurance of openness in Government, I welcomed them as another sign that a fresh wind was blowing through the White House. I did not expect that 2 months later, I would be asking my colleagues to vote on Freedom of Information Act amendments.

One of the reasons given by the President for his veto is that the investigatory files amendment which I offered would hamper criminal law enforcement agencies in their efforts to protect confidential files. We made major changes in the conference to accommodate this concern.

My amendment to the Freedom of Information Act permits the disclosure of investigatory files only after elaborate safeguards are in effect—safeguards that are necessary to protect confidentiality and public safety. Any information that is exempt under this amendment will be subject to litigation.

The veto was even more of a surprise because of the major efforts to accommodate the President's views which were made by the conferences of the House and Senate.

After lengthy negotiations during the conference on the bill, the Justice Department apparently agreed that these safeguards are adequate. The major change in conference was the provision which permits law enforcement agencies to withhold “confidential information furnished by a confidential source” and to rely upon other records to release that portion of the record in which the confidential information is contained. This change in conference was the product of a faith effort to comply with the President's objections to the Freedom of Information Act amendments.

The President's objection to the Hart amendment, as was the objection to the time limits, is in any degree. In light of the fact that “The FOIA was not designed to increase administrative efficiency, but to guarantee the public's right to know how the government is performing its duties to protect the public's interest.” 444 F. 2d 21, 34 (1971) disclosure of severable portions of investigatory documents does not appear to create an unreasonable burden.

In conclusion, the agencies will not be overburdened for the following reasons:

First, the agencies will be able to charge search and copying fees—up to $5 an hour, 10 cents per page—which will, in most cases, be more than enough to discourage frivolous requests;

Second, the Justice Department has six pigeonholes into which the agencies can place information that they do not want to release. It is reasonable to expect that they will find plenty of scope in these ex-icuses for nondisclosure to keep them from being overburdened by public requests for access to their files;

Third, the fact that the agencies can withhold information furnished by a confidential source relieves it of the burden of showing that disclosure would actually reveal the identity of a confidential source.

Fourth, the clauses providing for “segregation of records” and “search fees” are ambiguous and doubtlessly will be subject to litigation. If the requests prove unnecessarily burdensome, I sus-
at Cornell University, is preparing a biography of the German playwright and poet. By the end of December 14, 1973, the FBI responded to Gilman's request for access to Brecht materials by informing him that it had "approximately 1,000 pages" in its files on Brecht, and stating initially that if Gilman paid $40, which he did, "the heirs granting their approval" to his research, the FBI would provide him with the materials at a "processing" cost of $160.

On January 16, 1974, Professor Gilman sent the Bureau a letter and a letter to him from Brecht's only son, dated a week earlier, stating that the son had "no objection to your use of FBI files on my father." Two months later the FBI provided Gilman with 30 heavily deleted pages from its Brecht files as the "final disposition" of his request. It refused to produce the bulk of the files on the ground that Gilman had not provided the Bureau with written authorization from the Brecht heirs to release those materials—many of them public figures, such as Thomas Mann—whose names appear in the files. Included within the 30 pages—3 percent of the entire file, for which Gilman paid $40, were 8-10 magazine and newspaper clippings on Brecht's well-publicized travels in the United States.

Mr. President, I urge that the Senate override the veto.

The PRESIDING OFFICER. Who yields the floor?

Mr. HRUSKA. Mr. President, I yield myself 4 minutes.

Mr. President, I supported the freedom of information bill as it was reported out of the Senate Judiciary Committee. It was—and is—my belief that amendments to the Freedom of Information Act are necessary to remove the obstacles to full and faithful compliance with the mandate of the act to grant citizens the fullest access to records of Federal agencies that the right of privacy and effective Government will permit.

The bill was amended on the floor, however, in a way that could open confidential files to any person who requested them at the expense of our Nation's interest in foreign relations and defense and every individual's interest in law enforcement, the right of privacy and of personal security. Because of these amendments, the President was compelled to veto this bill.

I. DEFENSE AND FOREIGN RELATIONS

INFORMATION

The first objectionable feature of the bill concerns the review of classified documents. It is important to stress just what is and what is not the issue here. The issue is not whether a judge should be authorized to review classified documents. As reported by an unanimous Judiciary Committee, the bill contained a provision which enabled the courts to inspect classified documents and to order their declassification if the President so directs. And the President, in his veto message, stated that he was prepared to accept such a provision.

No, the issue is not whether a court should be able to question an agency's decision to affix a classification stamp to a document. Nor does the President contend that this judicial scrutiny should be unchecked. It is one thing to empower a court to review a document to determine whether the executive's decision to classify was arbitrary or clearly unreasonable. It is another to require the court to determine in the first instance whether a document should be classified or released to the public. The courts have the facilities and expertise to review executive determinations but they do not have the power to make executive determinations. That is the sole province of the executive branch.

The vetoed bill does not check judicial authority. There are no standards, such as guarding against the arbitrary and capricious, or requiring a reasonable basis, to guide the judge's decision. The judge can disclose a document even where he finds the classification to be reasonable. That is the rationale of the tiff's case for disclosure is equally reasonable. This is not the general rule in cases of court review of any regulatory body or executive agency.

It is clear that the President has a "constitutional" power to withhold information the disclosure of which could impair the President's conduct of our foreign relations or maintenance of our national defense. As Justice Stewart observed in New York Times v. United States, 403 U.S. 713, 729-30 (1971):

"It is clear to me that it is the constitutional duty of the Executive—as a matter of sovereign prerogative and not as a matter of law as the courts know law—through the promulgation and enforcement of executive regulations, to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and defense."

In C. & S. Air Lines v. Waterman Corp., 333 U.S. 103, (1948), the Supreme Court stated that the President... possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs.

Acting in these capacities, the Supreme Court added:

"The President has available intelligence services whose reports are not and ought not to be published to the world."

Just this past summer, in a unanimous decision in the United States v. Nixon, 418 U.S. 683 (1974), this Court expressly recognized that the President has a "constitutionally based" power to withhold information the disclosure of which could impair the effective discharge of a President's responsibility. As the Court stated,:

"As to these areas of Art. II duties (military or diplomatic secrets) the President possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs."

As to these areas of Art. II duties (military or diplomatic secrets) the courts have traditionally shrunken the utmost deference to the President. In Burnet v. United States, 285 U.S. 21 (1932), the Supreme Court added:

"It is the sole province of the executive branch to determine, as that branch shall from time to time determine, which disclosure may reasonably be thought to be inconsistent with the national interest... (Emphasis supplied.) 466 F.2d at 1315.

It is clear then that the Constitution vests in the Chief Executive the authority to maintain our national defense and to conduct our foreign relations. It is clear, then, that in order to discharge these responsibilities effectively, the President must take measures to ensure that information the disclosure of which would jeopardize the maintenance of our national or the conduct of our foreign relations is not obtained by the world.

From these two points, it should also be clear that an attempt to empower a judge to determine, on his own, whether this same type of information should be disclosed to the Courts is to disregard the constitutional power of the President to maintain our national defense and conduct our foreign relations. To authorize a court to make its own decision whether a document should be classified is to emasculate the President's decision for that of the agency and, in certain cases, the President.

Attempt to grant courts unfettered powers of judicial scrutiny of classified documents have been criticized in several recent law reviews. The 1974 Duke Law Journal, in an article on "Developments Under the Freedom of Information Act—1973," states that the amendment of the Senate from Maine (Seno­ rator McGee) "would infringe upon the privilege of the Executive to protect national secrets."

In this regard, Senator Muskie recently proposed an amendment to the FOIA which would provide for the judicial review. Pursuant to the proposed amendment a court would be empowered to question the Executive's claim of secrecy by examining the classified records in camera in order to determine whether "disclosure would be harmful to the national defense or foreign policy of the United States." This proposal, however, extends judicial authority too far into the political decision-making process, a field not appropriately within the province of the courts. A more satisfactory legislative solution would be a judicial procedure which would not unduly restrict the Executive's prerogatives to determine what should remain secret but which would simultaneously provide a limited judicial check on arbitrary and capricious executive determinations. An acceptable compromise would be, as the Legislative Committee was prepared to accept, to classify executive records in sub-
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A "Developments in the Law—Note on National Security" by the Harvard Law Review reaches the same conclusion. In discussing the role of the courts in reviewing classification decisions, it states that:

There are limits to the scope of review that the courts are competent to exercise.

And concludes that—

A court would have difficulty determining when the public interest in disclosure was sufficient to require the Government to reveal documents that contain information of national security interest in secrecy. 

Mr. President, every practitioner in administrative law knows that judicial review of agency decisions is not unlimited. The courts review agency decisions to determine whether they are reasonably based or whether they are arbitrary or capricious. This enrolled bill would establish a different type of review, however. A court would empower a court to substitute its own decision for that of the agency. This is not review of agency decisions but the making of the decision itself.

I simply cannot understand why a different standard should be applied to agency decisions to classify certain documents.

By conferring on the courts unchecked powers to declassify documents, the enrolled bill is not only unwise but dramatically alters the balance of power between the branches of government. The Constitution, and yet in a fashion that will not result in interrupting orderly and effective conduct of the Nation's business. It will protect the privacy and personal security of those who cooperate with the Government in its Departments by furnishing necessary, vitally needed information. It will enable law enforcement to proceed without impairment in that it will install in the courts the necessary confidence that they will not be endangered by disclosure. S. 4172 should be enacted.

The veto should be sustained.

The PRESIDING OFFICER. Who yields time?

Mr. TAPT. Mr. President, I yield 4 minutes to the Senator from Ohio.

Mr. TAFT. Mr. President, I appreciate the Senator's yielding, and I appreciate also the, I think, good sense and reasonableness of his approach in his remarks.

Mr. President, I intend to vote to sustain the veto of the President. In casting this vote, I want to make it clear that I am not less committed to the right of the public to know the actions of their Government than that of any advocate of a democratic government. In this regard, I voted for final passage of the bill during Senate floor consideration although I urged my colleagues to approve it without amendment in accordance with the Judiciary Committee's recommendations.

Freedom of information is the hallmark of a democratic society. It is elementary that the people cannot govern themselves—that this cannot be a Government of the people if the people cannot know the actions of those in whom they trust to discharge the functions of Government.

But, Mr. President, the right to know, like any other right, cannot be exercised at the expense of other rights that are also fundamental. Some information in the possession of the Government must be held in the strictest confidence. For example, the individual's right of privacy requires that certain information collected by the Government in the Census reports or law enforcement investigations must be protected from disclosure. Information bearing on our Nation's endeavors to pursue peace through negotiations with foreign nations must also be held in confidence if the discussions are to be frank and complete. And, of course, our military secrets must be safeguarded.

In this respect, the President objects to the veto and I, of course, respect that. The House amendment offered by Senator Muskie on May 30, 1974, which granted a court the authority to disclose a classified document even where there is a reasonable basis for the classification. Most courts are not knowledgeable in sensitive foreign policy and national defense consid-

mation of the highest order of privacy is jeopardized by this bill. At stake here is not simply the issue of effective law enforcement but the individual’s right to privacy, assurance of personal security, and to be secure in the knowledge that information he furnishes to a law enforcement agency will not be disclosed to anyone who requests it.

The enrolled bill requires the FBI and other law enforcement agencies to respond to any person's request for investigative information by sitting through pages and pages of files within strict limits. If the agency believes that information must be withheld from the public, it is required to file an affidavit that disclosure would disclose the identity of a source of confidential information furnished by him, who could then seek the investiga-

tion. The FBI, by the way, would have difficulty determining if information is basic. "Cognizant Law View's Jemez/A.

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By Senator Muskie from Pennsylvania (Mr. scoTT) and now pending.

Its provisions will improve the present statutory making Government-held information available to the public, thereby violating the Constitution, and yet in a fashion that will not result in interrupting orderly and effective conduct of the Nation's business. It will protect the privacy and personal security of those who cooperate with the Government in its Depart-

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I am sure those of us in the Senate who take a part in the naming and selection of the judges in the federal courts, who serve in judicial capacities in the courts around the country do not select those men for their knowledge of military matters and national security, or even foreign affairs. We choose them for their legal expertise to judge in accordance with standards established by law, as to just what the application of the law ought to be to situations; but not to give judgment themselves, to make the decisions, in areas properly reserved by the Constitution to the other branches of the Government.

Notwithstanding this fact, the bill, as passed, calls for a de novo weighing of all these factors by the court which creates confusion and vagueness and, in my view, will not serve the interests of clear legislation or assist in the process of making available sensitive classified material.

I preferred the Judiciary Committee's approach to this problem which compelled a court to determine if there is a reasonable basis for the agency classification. If there is a reasonable basis, then the document would not be disclosed. Certainly the standard "reasonable basis" is not vague, it having been applied in our judicial system for centuries. This standard and procedure correctly accord foreign policy and national defense considerations special recognition and are consistent with the executive branch with sufficient flexibility in dealing with these sensitive matters.

Mr. President, we must recognize the competing interests in disclosure and confidentiality. While a judge should be able to review classified documents to determine whether there is a reasonable basis for the classification, he should not be empowered to second-guess foreign policy and national defense experts. The standard generally should not be authorized to hide all types of information. It should be given the tools to protect the disclosure of which could likely invade a person's privacy, or impair the investigation.

I believe that the competing interests in disclosure and confidentiality are accommodated only if the enrolled bill is amended with the changes proposed by the President.

The Senate and the House of Representatives should have no trouble in doing that. It is, therefore, my hope that the veto of the enrolled bill is sustained so that we can reconstitute this legislation with necessary amendments.

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

Mr. KENNEDY. Mr. President, the Senator from Michigan has correctly stated the situation which occurred with respect to the legislation to which he referred, which was adopted on the floor. His amendment initially protected against the disclosure of the identity of an informer. We decided in conference, however, as a result of a specific request from the President, to change that to protect confidential sources, which broadened it and provided a wider degree of protection.

Then we also provided that the bill no requirement to reveal not only the identity of a confidential source, but also any information obtained from him in a criminal investigation. The only source information that would be available would be that compiled in civil investigative information and carrying out that particular issue today sounded like arguments directed more toward the initial amendment of the distinguished Senator from Michigan rather than actually to the resulting language that emerged from the conference.

I might add parenthetically, Mr. President, that this was actually language suggested by the distinguished Senator from Nebraska in behalf of the administration. So it really could not be all that bad.

On the second question, Mr. President, which the Senator from Ohio mentioned, and which has been discussed here with respect to the examination in conference, the Senator from Maine, I think, has provided a rather complete response in his statement which makes the record complete. But it is important to note that today judges are examining extremely sensitive and confidential information and carrying out that judicial review responsibility very well. We can think of recent cases—the Pentagon Papers case, the Ellsberg case, the Watergate case, the Keith case, and the CIA case, which were cases of national security or even foreign affairs. We can think of recent cases—the Pentagon Papers case, the Ellsberg case, the Watergate case, the Keith case where the government involved national security wiretaps, the Knopf case involving CIA material in a book written by a former CIA official—where courts have met these responsibilities, and have been extremely sensitive to the whole question of national defense and national security.

I mention at this point here what the Supreme Court said in the Keith case. The Court said:

We cannot accept the government's argument that national security matters are too subtle and complex for judicial evaluation. Courts regularly deal with the most difficult issues of our society. There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases.

This is important:

If the threat is too subtle or complex for our senior law enforcement officers to comprehend, its significance, its signal, I do not believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases.

Mr. President, on both of these matters I want the record to be extremely clear that, in our Administrative Practice Subcommittee, the full Judiciary Committee, and on the Senate floor, they were considered in great detail. They were the principal matters discussed in the course of the conference.

We have been extremely sensitive to those objections raised by the administration and, it seems to me, the bill we are considering is a reasonable accommodation of the views of the administration. However, it also carries forward the central thrust of the legislation passed by the Senate. I hope those arguments which have been made in opposition to those provisions would be rejected.

If I may, I would like to yield 3 minutes to the Senator from Tennessee and then to the Senator from North Carolina.

Mr. BAKER. Mr. President, I thank the distinguished senior Senator from Massachusetts for yielding.

Mr. President, events of the past 3 years have dealt harshly with the concept of "secrecy" in Government. We have witnessed two national tragedies—Watergate and the Vietnam war—which might not have occurred, and surely would have suffered an earlier demise had not the President and his advisers been able to mask their actions in secrecy.

This experience, coupled with my belief in the axiom that "sunshine is the most effective disinfectant," prompted my support for H.R. 12471, the Freedom of Information Act Amendments of 1974. I regret that President Ford returned this legislation to the Congress without acting on it, and I shall vote to override his veto. While I believe that the President's action was taken in good faith, I particularly disagree with his proposal that judicial review of classified documents should uphold the classification if there is a reasonable basis to support it.

During my tenure as a member of the Senate Select Committee on Presidential Campaign Activities, I reviewed literally hundreds of Watergate-related documents that had been classified "secret" or "top secret" or the like. It is my opinion that at least 95 percent of these documents should not have been classified in the first place and that the Nation's security and foreign policy would not be damaged in any way by public disclosure of these documents. Yet, despite several formal requests by the Senate Watergate Committee, the Central Intelligence Agency, in particular, has not declassified these documents and evinces no intent of so doing.

In short, recent experience indicates that the Federal Government exhibits a proclivity for overclassification of information, especially that which is embarrassing or incriminating; and I believe that this trend would continue if judicial review of classified documents applied a presumption of validity to the classification as recommended by the President. De novo judicial determination based on in camera inspection of classified documents—as provided by the Freedom of Information Act amendments passed by the Congress—insures confidentiality for genuine military,
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intelligence, and foreign policy information while allowing citizens, scholars, and perhaps even Congress access to information which should be in the public domain.

By pronouncing the minimal risks that a Federal judge might disclose legitimate national security information against the potential for mischief and criminal activity under the cloak of secrecy, I must conclude that a fully informed citizenry provides the most secure protection for democracy.

Consequently, I urge that the veto of H.R. 12471 be overridden.

The PRESIDING OFFICER. Who yields the floor?

Mr. KENNEDY. I yield 3 minutes to the Senator from North Carolina.

Mr. ERVIN. Mr. President, the executive agencies of the U.S. Government remind me of a young lawyer in Charlotte, N.C. Years ago he brought suit for damages against Western Union Telegraph Co. Mr. C. W. Tillotson, a very eminent lawyer, represented the telegraph company, and he filed a motion to require the plaintiff to make his complaint more specific.

The judge who had to pass on the motion happened to see this young lawyer and suggested to him that he go ahead and make his complaint more specific in the respects that had been asked for. The young lawyer told the judge he would not do it.

He said:

If Mr. Tillotson is going to want me to tell him what this lawsuit is all about he is just a dumb fool.

Every time Congress or the American people or the American press seek information from the executive branch of Government they have an equivalent reply in most cases from the executive branch of the Government.

For some reason that begs understanding, the executive branch of the Government thinks that the American people ought not to know what the Government is doing.

In his book, a believer in the right of the people to know what the truth is about the activities of their Government. For that reason I supported the original Freedom of Information Act of 1966. We had a good bill when we started out. But, as a result of the limitations and exemptions that were inserted in the bill and, as a result of the reluctance of the executive branch of the Government to observe that part of the bill which survived, the existing law is totally ineffective for the purpose that was sought to be accomplished.

Now, the distinguished Senator from Massachusetts just stated what I think is the truth about this matter. Every one of the objections which were set forth by the President during his message was considered at length by the Senate committee during the original hearings on the bill. They were considered minutely and carefully by the conference committee. Every one of those legislators who, after all, are the people who are stakeholders in this law and are not a majority of them came up with, the conclusions that these objections did not merit the defeat of the bill or the alteration of the bill.

I ask unanimous consent that a copy of the letter written on October 31, 1974, by the distinguished Senator from Maryland (Mr. Bayh), the distinguished Senator from New Jersey (Mr. Case), the distinguished Senator from New York (Mr. Javits), the distinguished Senator from Tennessee (Mr. Barkley), the distinguished Senator from Massachusetts (Mr. Kennedy), the distinguished Senator from Maine (Mr. Muskie), the distinguished Senator from Michigan (Mr. Hart), and myself be inserted in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

WASHINGTON, D.C., October 31, 1974.

DEAR COLLEAGUE: We are enlisting your support to override President Ford's veto of the Freedom of Information Act Amendments (H.R. 12471) when the Congress returns from the current recess. We believe that this bill has been diluted and believe the legislation be enacted as previously approved by Congress.

The 1966 Freedom of Information Act has worked well, but not effectively. There are loopholes in the statute. Agencies have engaged in delaying and obstructionist tactics in responding to requests for information. The Freedom of Information Act Amendments will facilitate public access to information, while preserving confidentiality where required.

The President has proposed numerous specific changes to this legislation. Similar proposals were made by government agencies who appear before the committees. The President is not in the habit of changing his mind; the White House has an equivalent right to change its mind. This makes the President's position more specific.

The President has proposed that the Freedom of Information Act Amendments pose a threat to our national security because they do not sufficiently restrict federal court review of executive classification decisions. As an alternative, the President has proposed that courts be allowed to require a justification for each exemption; only if the agency had no reasonable basis whatsoever to classify them. We do not believe a secrecy stamp should be that determinative.

We strongly believe that the Amendments in the correct one. Federal courts should have the authority to review any refusal to disclose information that makes their findings on the weight of the evidence.

The Executive writes the classification rules, since documents are classified under an Executive order, not a statute. A federal judge should be empowered to review classification decisions as an objective umpire, and he should determine whether Executive order regulations are followed properly if the agency had no reasonable basis whatsoever to classify them. We do not believe a secrecy stamp should be that determinative.

We strongly believe that the Amendments in the correct one. Federal courts should have the authority to review any refusal to disclose information that makes their findings on the weight of the evidence.

The President has also decried the possibility that placed on law enforcement and other agencies by the new amendments, although we are pleased to note that he did not object to the public's right to record events to the public. We believe, however, that the additional delays, charges, and exclusions requested by the President do more than what they would effectively bar access to some records by the press, the nonofficial, and the scholar. The new amendment guarantees to the right to be sacrificed to false economy. Like due process, it may carry some cost; but that is a cost to be borne by all Americans who would keep our government open and accountable and responsible.

Government agencies universally opposed original enactment of the Freedom of Information Act in 1966, and they likewise opposed the new amendments this year. As a practical matter, with our heavy workload for the remainder of this session and continuing agency hostility to any diminution of their power, failure to override the President's veto next month will result in postponement of any improvements to the Act for a substantial period of time.

We have too recently seen the insidious effects of government secrecy run rampant. Following the Watergate scandal, we opened the public's business to public scrutiny, while providing appropriate safeguards for materials that should remain secret. We therefore urge you to join us when Congress returns in voting to enact the Freedom of Information Act Amendments over the President's veto.

Sincerely,

Charles McC. Mathias, Jr., Clifford P. Case, Jacob J. Javits, Howard H. Baker, Jr., Sam N. Ervin, Jr., Edmund S. Muskie, Philip H. Hart, Sam J. Ervin, Jr.

Mr. ERVIN. Mr. President, I ask unanimous consent that an editorial from the Washington Post dated November 20, 1974, and the speech I made on the bill be printed in the Record. I thank the Senator from Massachusetts.

There being no objection, the editorial and speech were ordered to be printed in the Record, as follows:

FEDERAL FILES: FREEDOM OF INFORMATION

JOSEPH L. RUSSENBERG

WASHINGTON, D.C.

This year, after long hearings, Congress and the Senate recommendation that the veto of President Ford be used his power of veto and sent back to the Congress a piece of very important legislation, the 1974 amendments to the Freedom of Information Act. These amendments were important because they strengthened an act that was fine in principle and purpose but poor in practical terms. The Freedom of Information Act had been enacted in 1966 in the hope of making it possible for the press and the public to obtain documents from the executive branch of the Government that might shed light on two recent disclosures made possible by the Freedom of Information Act. The President has even cast a slur on the whistleblower. He has stated that those who come forward with the information that has been swapped must be protected, for if you do, we're going to put them in the White House.

There are two important issues here. One is the effectiveness of the amendments, and the other is the public interest. The amendments were enacted in 1974 as a result of a long, protracted battle between the press, the public, and the Government.

In the battle of the wits, the press and the public outwitted the Government, and the Constitution was made stronger. The press and the public are entitled to assert their rights even if some Government agencies do not agree with the need for protecting the quality of human life. The press and the public have a right to know what the Government is doing.

There are contingencies in the legislation, a series of amendments that would require Congress or the American people to have an equivalent right to know what the Government is doing. There are loopholes in the statute. The press and the public are entitled to assert their rights even if some Government agencies do not agree with the need for protecting the quality of human life. The press and the public have a right to know what the Government is doing.
The question involved ought to be whether an agency reached a correct or incorrect decision when it classified a matter as affecting national security. It ought not to be whether the agency acted reasonably or unreasonably in reaching the wrong decision. That is the point that the bill provides, in effect. To require a judge to inquire as to what the agency was thinking, not searching for the reason for the question as to whether someone reasonably did not adhere to the truth in classifying the document as affecting national security.

Mr. HUSKIA. The bill presently provides that a judge has to classify a document if he finds a reasonable basis for the classification. What would the Senator from North Carolina say in response to the following question: Should a judge be able to go ahead and order the disclosure of a document even if he finds a reasonable basis for the classification?

Mr. ERVIN. I think he ought to require the document to be disclosed. I do not think that a judge should have to inquire as to whether a man acted reasonably or unreasonably, or whether an agency or department did the wrong thing and acted reasonably or unreasonably.

Mr. THURMOND. Mr. President, the question as to whether the classification of the document as affecting national security was a correct or an incorrect decision, ought to be whether the document was classified in a reasonable manner in coming to a wrong conclusion ought not to require that the wrongful conclusion be sustained.

Mr. HUSKIA. Mr. President, I am grateful to the Senator for his confirmation that such a decision would be appealable.

However, on the second part of his answer, I cannot get my cut of the language of the Supreme Court. This is the particular language that the Court has used: Decisions of public officials by which the judiciary has neither aptitude, facilities, nor responsibility and which has long been held to belong in the domain of political power, not of judicial power, are not appealable.


That is not their field; that is not their policy.

Mr. ERVIN. Pardon me. A court is composed of human beings. Sometimes they are mistaken. And the question would be on a determination as to whether the conclusion of the agency was reasonable or unreasonable.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. HUSKIA. Mr. President, I yield 3 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, the Freedom of Information Act, H.R. 12471, was vetoed by President Ford on October 17, 1974. I rise to ask that the President's veto decision and ask that my colleagues join me in this effort.

My decision to support the President on this veto is based upon several key objections which the President expressed regarding this legislation.

If this bill is allowed to become law, classified documents relating to our national defense and foreign relations would be subjected to an in camera judicial review.

In a recent message, the President stated that he was willing to accept the provision which would enable courts to inspect classified documents and review the justification for their classification.

However, the issue is not whether a judge should be authorized to review in camera classified documents relating to
the national defense and foreign relations. Instead, the issue is whether a standard should be established to guide the judge in making a decision as to whether a document is properly classified. In its present form, there are no guidelines for a judge to determine if a document is classified in a proper manner.

Mr. President, a judge should be authorized to disclose a classified document only if the Government could prove that the release would cause harm to certain public or private interests. The President objected to this portion of H.R. 12471, stating that it would be both impossible for the Government to establish in every instance that harm would result from a release of information.

Instead, the President suggested that investigatory records of the Federal Bureau of Investigation and other law enforcement agencies should be exempt from the act if there is a "substantial possibility" of harm to any public or private interest. These are areas in which the rights of privacy and personal security are hanging in the balance, and no measures should be enacted to erode these basic and fundamental rights.

Due to these objections which have been raised, I agree with the President's decision to veto this bill, and I call upon my colleagues in the Senate to vote to sustain this veto.

The PRESIDING OFFICER. Who yields the floor?

Mr. KENNEDY. I yield 4 minutes to the Senator from California.

Mr. CRANSTON. Mr. President, I thank the Senator for yielding and for the great work in committee that has led to this very important legislation which is before us.

I support the Freedom of Information Act amendments because I believe in the freest possible flow of information to the people, in order that our Government is doing, and why. The people must have access to the truth if they are to govern themselves intelligently and to prevent people in power from abusing the power.

Under the amendments in the vetoed bill, our courts, not our bureaucrats, will have the final say as to what information can legitimately be kept secret without violating the basic right of a democratic people to know what is going on in their Government.

What are some of the objections raised?

First. That a judge is not sufficiently knowledgeable to determine whether a document should be kept secret or not.

- I maintain that a judge is at least as competent as some Pfc or some low echelon civilian bureaucrat who classified the document in the first place.

- Presently, and this is incredible, presently in tens of thousands of cases, there is often no review by anyone higher of a case involving a release of a classified document by a low echelon bureaucrat, and these classifications remain in effect for a minimum of 10 years.

- Second. Some people object to giving so much discretion to a single judge. There is little reasonable ground for fear.

- If the judge ruled against the Government in a particular case and the Government felt strongly that the decision to disclose was unwise, the Government, of course, appeal. Thus in actual practice, many of the top minds of our country—at the various appellate levels of our courts—would in fact be passing on the decision of a judge.

- If we can not trust their wisdom and good judgment, whose can we trust?

- Third. Some people say the time limits imposed by the amendments are too brief, that agencies need more time to determine whether a document being sought should be made public.

- I say that reasonable speed is of the essence where public information is concerned. Speed of disclosure is the enemy to the truth. Delay is its ally.

- Concern over too much speed is hardly a compelling matter when you consider that under present procedures, for example, it took 13 months—yes, 13 months—before the Tax Reform Research Group was able to get released to the public the earlier this week 41 documents showing how the Internal Revenue Service's special services staff investigated dissident groups.

- Fourth. Finally, some people fear that increased emphasis on openness in government and less emphasis on government secrecy.

- I, myself, believe the national interest demands more emphasis on openness in government and less emphasis on government secrecy.

- Nothing is more important in a democratic society—nothing is more vital to the strength of a democratic society—than for the people to be told by their government what that government is doing. And why.

- Of course, we must have proper safeguards to protect our legitimate secrets. Our amendments provide such safeguards.

- But we have too many governmental secrets; too many governmental decisions are being made behind closed doors by people with closed minds.

- Our amendments provide a sensible, workable solution to the problem of how to protect legitimate secrets in an open society.

- Turning to the courts as a disinterested third party to resolve disputes between individuals or between individuals and the government is in keeping with centuries of American tradition.

- The courts have served us well. I have full confidence in their continued competence, integrity, and patriotism.

- I strongly urge that we vote to override the President's injudicious veto of this legislation.

The PRESIDING OFFICER. The Senator from Nebraska has 13 minutes remaining under his control.

Mr. HRUSKA. Mr. President, at this time I have no further requests for time. There is one other possibility. I would be willing to call for a brief quorum call on equal time, if that is agreeable with the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts has used all of his time on the bill. There are 13 minutes remaining.

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CRANSTON. Mr. President, I yield 4 minutes to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I thank the able Senator for yielding.

When H.R. 12471, the Freedom of Information Act, was passed by the Senate on May 16, 1974, I voted against the bill because I was concerned that passage of the bill would severely hamper law enforcement agencies in the gathering of information from confidential sources in the course of a criminal investigation.

The Senate-passed version of the bill contained an amendment which would have required disclosure of information to law enforcement agencies unless certain information was specifically exempted by the act. What particularly disturbed me was that while the identity of an informer would be protected, the confidential information which he had given the agency would not have been protected from disclosure. Another matter that disturbed me was the use of the word "informer", since that could be construed to mean that only the identity of a paid "informer" was to be protected, the identity of an unpaid confidential source. I was deeply concerned that without such protection, law enforcement agencies would be faced with a "drying-up" of their sources of information and their criminal investigative work would be seriously impaired.

The bill in the form now presented to the Senate has been significantly changed by the conference on these critical issues. The language of section 522(b) (7) has been changed from protecting from disclosure the identity of an "informer" to protecting the identity of a "confidential source" to assure that the identity of a person other than a paid in-
former may be protected. The language has also been broadened substantially to protect from disclosure all of the information furnished by a confidential source. The general law enforcement agency if the information was compiled in the course of a criminal investigation. This, not only is the identity of a confidential source protected but also protected from disclosure by law enforcement furnished by that source to a law enforcement agency in the course of a criminal investigation.

There are two other substantive changes in the bill now before the Senate and the House. The bill as finally passed by the Senate contains no such exemption.

Second, the original bill included an exemption from disclosure for investigatory records which constituted an "unwarranted invasion of personal privacy." Thus, the agency could withhold investigatory records which constitute an "unwarranted invasion of personal privacy." The bill as originally passed by the Senate strikes the word "clearly" and exempts from disclosure investigatory records which constitute an "unwarranted invasion of personal privacy." The bill as it is now before the Senate was amended by the House to strike the word "clearly." Thus, the agency could withhold investigatory records which constitute an "unwarranted invasion of personal privacy." The language of the original bill satisfied my objections to the bill, as have overcame the substantive objections I had to the bill in its original form, and I shall now support the bill and vote to override the Presidential veto.

I again thank the Senator for yielding. Mr. BAYH. Mr. President, the American system is built on the principle of the openness of public debate and the accountability of the Government to the people. To have the President and his Cabinet and their agencies by requiring them to disclose the documents in question. This exemption was made for the reasons of the national defense or foreign policy. It would have unconstitutionally compromised our military or intelligence secrets and diplomatic relations by allowing a U.S. district court to review classified documents. Second, that the Secretary of State acted unreasonably, and that the Secretary of State acted reasonably in classifying the document and therefore it remains secret. In other words, for a document to be released a judge must find that the Secretary of State acted unreasonably. There is no constitutional basis to support this result, and it is contrary to the spirit of the Freedom of Information Act.

Second, President Ford objects to the time limits provided for by the bill. He objects to the time limits on the basis that they are too short and would allow more time to review it. The time limits would allow 10 working days, 2 weeks, for an initial response and 20 working days, 4 weeks, to respond to administrative appeals. In addition, an agency can extend the time for 10 working days, 2 weeks. This adds up to 2 months time in which an agency has to respond to a request for information. Moreover, the bill permits a court in exceptional circumstances to delay its review of a case until an agency has had sufficient time to review its records. In other words, after the 2 months of administrative deadlines have lapsed and after a complaint has been filed with the court, the court still has the discretion to grant the agency extensions of time if the circumstances warrant. These provisions more than adequately satisfy the President's concern for flexibility.

In short, Mr. President, a close examination of the administration's objections to this bill reveal their in substance. In the past 2 years, it should be that openness and accountability in Government are crucial to the preservation of our democracy. Yesterday, for example, the Senate once again adjourned after a number of us had risen to reassert this principle by overruling this ill-averse veto. I urge my colleagues to do likewise.

Mr. METCALF. Mr. President, the...
leaders of the free and responsible press have joined the drive to make the freedom of information law a more workable tool to dig out Government information, not because it means money in their pockets but because they believe in the ideals of a democratic society. They know that democracy can survive only if the public has access to the facts of government. Stories about Government problems do not sell newspapers, do not capture the public's attention. It is the Government's desire to conceal that sells newspapers, do not capture the public's attention. It is the Government's desire to conceal that.

Mr. FORD got four out of the five changes he requested. He not only did Mr. FORD veto the final bill, but he added a new demand to his original proposal.

In his veto message, President Ford contended for the first time that lengthy investigatory records should not be disclosed on the ground that law enforcement agencies do not have competent officers to study the records. He also restated his earlier demand that Congress should not give the Justice Department's Office of Justice information to provide to decide on whether documents should be withheld for reasons of national security.

Mr. Ford's veto also prevented other improvements in the FOI law ranging from the setting of reasonable time limits for federal agencies to answer requests for public records to requiring agencies to file annual reports on compliance of the law.

The amendments to strengthen the FOI law represent a true consensus of Congress: H.R. 12471 passed the House with only two dissenting votes and there was no opposition in the Senate.

If Mr. Ford does not follow through on his open administration pledge, then Congress ought to do it for him by overriding his veto.

Mr. MONDALE. Mr. President, over a century ago, one of the greatest leaders our Nation ever produced, Abraham Lincoln, expressed his faith in the American people. Lincoln said:

I am a firm believer in the people, if given the truth, they can be depended upon to meet any necessity. The great point is to bring them the real facts.

Eight years ago, the Congress passed and President Lyndon Johnson signed the Freedom of Information Act, which was intended to aid the people in their search for the truth. The act was a recognition of the sad fact that all too often our Government's desire to cover up the truth from public view took precedence over the need to bring this truth to the people. The Freedom of Information Act held out great promise for the American citizen to gain the information they needed from the Federal Government, information which is often vital to their livelihood, their welfare, and even their freedoms. The act sought to place into law one more concrete manifestation of our society's respect for the truth and our willingness, if need be, to sacrifice convenience in order to uncover the facts.

Sadly, the years since 1966 have not produced the increase in Government responsiveness which we had hoped would follow enactment of the Freedom of Information Act. Indeed, secrecy has become even more of a hallmark of Government actions in recent years than ever before. For the first time in 200 years, a President was forced to resign because he refused to give the Nation the facts we deserved about Government wrongdoing at the highest level.

Every day, at lower levels of Government, Federal agencies have regrettably undertaken coverups which have also undermined the confidence of the American people in their Government. While

The substantive provisions of the Freedom of Information Act have stood the test of time, the agencies whose job it is to comply with requests for information under the act have demonstrated their ability to frustrate the legislative provisions of the act to frustrate the legislature's intent. Former Attorney General Elliot Richardson, testifying before the Senate Administrative Practice and Procedure Subcommittee, noted that—

The problem in affording the public more access to executive branch information is statutory but administrative. The real need is to revise the act extensively but to improve compliance.

The Freedom of Information Act amendments of 1974 are an attempt to improve compliance with the act, which is needed to make it a better vehicle for learning the truth. Under the outstanding leadership of the distinguished Senator from Massachusetts (Mr. KENNEDY), the Senate Foreign Relations Committee has drafted legislation which will remove the procedural loopholes through which Federal agencies avoided compliance in the past, while at the same time affording adequate protection for vital national security.

I believe that the Congress has done this job well, and I was, therefore, distressed and disappointed that President Ford saw fit to veto this bill. Only 3 months ago, President Ford came into office on the heels of the most secretive and repressive administration in our history. His pledge was to open up Government and make it more responsive to the people. And yet the President, while responding the rhetoric of openness has chosen to implement the policy of secrecy through his veto of this legislation. His principal objections—to those sections of the bill dealing with in camera inspection of classified documents and the disclosure of investigative files—are, I believe, without justification. In fact, the Congress has made every attempt to overcome any legitimate objections based on national security or law enforcement grounds, and has accepted many modifications in language designed to accomplish these ends. The legislation on which we will shortly be voting is a balanced compromise, which safeguards the legitimate interests of the Government while expediting the ability of citizens to obtain the information they need to maintain a vital and free society.

I am hopeful that the Senate will override this most unfortunate veto, and in so doing will reaffirm our commitment to the principle that American people are tired of the politics of secrecy. They are demanding a politics of honesty and openness. And enactment of the Freedom of Information Act amendment of 1974 will be an important step toward restoring the faith of a free people in their Government.

Mr. President, I ask unanimous consent that an excellent editorial from the Minneapolis Tribune, outlining some of the principal issues involved in this vote to override, be inserted in the Record at the conclusion of my remarks.
November 21, 1974

Mr. FORD and the "Right To Know"

In 1966, when the first Freedom of Information Act was signed into law, I voted in favor of the bill as a congressman, with 368 other House members, despite the opposition of many federal agencies. Passage put legislation on the books, but I took the heat and signed the bill.

Now President Ford is on a similar spot. Early this month Congress passed a bill to close major loopholes in the 1966 "right to know" act and make it a sharper tool for citizens to dig government secrets. As in 1966, the bill was opposed by virtually all government agencies, but had the support of many House Representatives, including Minnesota Reps. Quie and Franzel (Nelson and Zwick did not vote). On Thursday, Mr. Ford vetoed the bill as "unconstitutional and unworkable."

The recent proviso empowers federal courts to go behind a government secrecy stamp and examine contested material in camera to see if it has been appropriately classified. The bill exemped nine categories of material ranging from secret national-security information to trade secrets and law-enforcement investigatory records. Of those nine, only one, law-enforcement Investigatory records, would deserve the fact that federal judges already have the right to review classified information in criminal cases—Mr. Ford objected. The provision would, he said, allow courts to make what amounted to "the initial classification decision in sensitive areas where we are not experts. It could adversely affect intelligence secrets and diplomatic relations. "Confidentiality would not be maintained if any information from FBI and other investigative law-enforcement files were not protected."

The veto, I believe, has met strong congressional criticism. Sen. Kennedy, one of the bill's major backers, called it "a distressing new example of the Watergate mentality that pervades the White House."

Mr. Ford, by signing the 1966 bill, said there was "no validity to the fears expressed by the president... He is buying the old line of the note of a protection stamp... that all information they have is sacrosanct."

Coming from a president who has promised "open" government, the veto surprised those who thought that Mr. Ford would sign the bill. I believe that it was a mistake, especially since Congress had already incorporated in the bill modifications that he suggested last summer. But, according to reports from Washington, Mr. Ford finally bent to the wishes of the National Security Council, which led the federal agencies' opposition. Mr. Ford says he will submit new proposals next session, but it is unlikely that they will do as much for the public's "right to know" as the vetoed bill.

That the veto of the bill will over-ride the veto. I think that the bill will be re-passed. I hope that it will be re-passed.

Mr. HUGH SCOTT. Mr. President, just prior to the recess, President Ford vetoed the Freedom of Information Act amendments. In his veto message, the President states that he objects to the amendments including adverse impact on military or intelligence secrets and diplomatic relations, loss of confidentiality in law enforcement matters, and inflexibility with regard to classified documents in which the courts have no particular expertise. The FOIA does not require the courts to render initial classification decisions, but as the President objects to the courts to inspect in camera classified records and review the classification to determine if the material sought is in fact properly classified. The bill empowers the courts to de-classify such records if they determine that an agency acted arbitrarily. The bill places a duty on the judiciary to promote both the national interest and the public's right to information, while also encouraging the Federal Courts in making de novo determinations. Is it clear that the President regards such a duty on the judiciary to promote both the national interest and the public's right to information, while also encouraging the Federal Courts in making de novo determinations. Is it clear that the President regards such a duty on the judiciary to promote both the national interest and the public's right to information, while also encouraging the Federal Courts in making de novo determinations. Is it clear that the President regards such a duty on the judiciary to promote both the national interest and the public's right to information, while also encouraging the Federal Courts in making de novo determinations.
targets for harassment. This information was obtained under the FOA 13 months after it was first requested. There is no doubt that this unnecessary bureaucratic delays when abuses as such are occurring in our government.

I believe the President's veto of the Freedom of Information Act Amendments is unfortunate. Unfortunately at a time when our government has dramatically declined and the principles of openness and honesty are urgently needed. I will vote to override this veto.

Mr. MARK. Mr. President, the Senate is about to vote on one of the most important issues we have considered all year: the Freedom of Information Act Amendments. This bill corrects some of the deficiencies in the current law to insure that the public and the news media have access to the information the public is entitled to know. For example, it cuts down the length of time a citizen will have to wait for the Government to release a requested document. It also eliminates a number of the time-consuming restrictions on what information is available to the public. Finally, it rightfully provides for penalties against the people who withhold requested information which should be in the public domain.

As we consider this legislation, I am reminded of a remarkable definition of democracy which I once read. It originated within an agency of the U.S. Government and went as follows:

"Democracy is a government of the masses. Authority derived through mass meeting or any other form of direct expression. Results in mobocracy. Attitude toward property is communistic - negating property rights. Attitude toward law is that the will of the majority shall regulate, whether it is based on order or governed by passion, prejudice, and impulse, without restraint or regard to consequences. Result is demagogery, license, agitation, discontent, anarchy."

The definition is from a U.S. Army Training Manual No. 20005-28 in use from 1928-32. The manual was published 38 years before the Freedom of Information Act became law.

But it is interesting to note that the manual was withdrawn almost immediately after a newspaper story on the manual because of the public furor, and it is just this kind of public accountability that is the central purpose of the Freedom of Information Act.

Mr. President, the strength of a democracy is derived directly from the ability of the entire populace to make its own observations and judgments about the Government's policies. And we need agencies selected to make and implement them.

If those judgments are to be sound, it is essential that people have access to the information it takes to evaluate Government performance. Openness, candor, and access to information are not luxuries; they are vital to the democratic process.

Mr. President, the recognition of this essential principal led to the initial passage of the Freedom of Information Act. For too long, the Government had been publishing—and acting upon—questionable documents that the Army Training Manual I referred to earlier. For too long, Government has classified and reclassified reams of information, much of it needlessly and successfully in an effort to solve those problems.

Since its passage in 1966, many of these unnecessary barriers to gaining information have been eliminated. The act has played a vital role in protecting some fundamental rights. For example, it was the Freedom of Information Act which recently led to the disclosure of the Internal Revenue Service investigation of political and social groups in the country in direct violation of their constitutional rights. By the same token, the Freedom of Information also has been cited as the primary vehicle for revealing the improper counter-intelligence operations of the FBI. Finally, the act opened the door to a wide range of information that was previously closed to the public. Furthermore, agencies engaged in delaying tactics in response to legitimate requests for information by the public, placing an unfair financial burden on the individuals requesting the information which under the Freedom of Information Act, the national security exemption was unconstitutionally burdens on the courts to resolve the dispute. In addition, the Watergate scandal revealed numerous instances of the misuse of the law's various exemptions—such as the national security exemption—need for an independent review of such exemptions to prevent agencies from making unilateral and arbitrary classification to violate the intent of the law.

With these deficiencies in mind, Congress has attempted to improve the law. On March 14, the House approved the 1974 amendments by a resounding vote of 382 to 8. The Senate followed shortly thereafter and voted overwhelmingly in favor of the new amendments, 94 to 17. Given that congressional malaise, as well as President Ford's repeated assertions of his commitment to openness and candor, many people were stunned by the President's veto of this legislation. While this is unfortunate, it is clear that the new amendments are unconstitutional, it is clear that such a position is untenable in light of the facts, and that he has bowed to the wishes of the bureaucracy at the expense of the public.

The constitutional issue is no issue at all. As the eminent law professor, Philip Bobbitt, has recently observed in a letter to Senator Muskie:

"Although President Ford states that the provision to which he takes exception is unconstitutional, not surprisingly, he refers neither to provision of the Constitution nor to any judicial decision on which such a position could rest. It is not a position because there is no constitutional provision nor Supreme Court decision to support it.

My considered opinion is that the issues between the Congress and the President in this regard are really issues of policy and not constitutional issues of constitutionality. To be sure, it is clear that the bill does not offend the Constitution in any way.

Mr. President, we need the Freedom of Information Act back in 1928 when the Army Training Manual was first printed. It became even more imperative as the law was amended and became harder and harder to get as the bureaucracy grew. Certainly now, after the abuses of the past administration and the misuse of so many agencies at the expense of the public, it has become essential to the very future of democracy that we guarantee every citizen maximum access to information.

I urge my colleagues to follow the action of the House yesterday and override this dangerous veto.

Mr. DOLE. Mr. President, I would like to take this opportunity to express my concern that the President's veto of the Freedom of Information Act should be upheld.

I have consistently supported the intent of the Freedom of Information Act and have worked to achieve passage of the bill. However, amendments were added in the Senate which are objectionable. I voted against the amendment containing the restrictions which have been added when it came before the Senate and had hoped that this amendment would be dropped in the Joint Conference Committee. It was not, and because of the serious harm it could cause to the criminal fighting agencies, I am compelled to uphold the President's veto.

Reasonable Changes

I have read the President's veto message carefully and feel that his obligation is to consider suggested changes which are reasonable. This is why I have supported the substitute Freedom of Information Act introduced by the senior Senator from Pennsylvania (Mr. HUGH SCOTT).

The changes suggested by the President are relatively minor and would not derogue from the benefits provided by the act. I support the substitute bill which contains these amendments.

Considering that crime is rising in this country, it is important that we should not continue to subsidize the activities of other crime fighting organizations to control crime. The substitute bill would prevent a derogation of the FBI's ability to combat crime while not restricting the basic improvements in the freedom of information provided under the bill.

Similar questions have been raised about the detrimental impact this measure could have on our national security. Freedom of information is a basic right in this country; however, national defense and national security precautions. National security remains a vital national requirement in the tense and adversary-oriented environment existing in the world. The changes suggested by the President in this respect
would not decrease the basic improvements in freedom of information under this act but would prevent jeopardizing our national defense.

Mr. President, for these reasons, I believe the President's veto should be upheld and that the substitute bill which would include all the basic provisions and the President's in the freedom of information contained in this act should be passed, and I urge the Senate to adopt this substitute measure.

The PRESIDING OFFICER. Who yields time?

Mr. HURSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HELMS). Without objection, it is so ordered.

Under the previous order, the hour of 2 p.m. having arrived, the Senate will now proceed to vote on overriding the President's veto of H.R. 12471. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding.

The yeas and nays are required under the Constitution, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULLBRIGHT), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. HUMPHREY) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from South Dakota (Mr. MCGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent.

I also announce that the Senator from New York (Mr. BUCKLEY) and the Senator from Maryland (Mr. MATHIAS) are absent on official business.

I further announce that the Senator from Oregon (Mr. HATFIELD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Maryland (Mr. MATHIAS) would each vote "yea."

The yeas and nays resulted—yeas 96, nays 1, as follows:

[No. 495 Leg.]

YEAS—50

Abourezk
Allen
Baker
Bayh
Beall
Bennett
Bennett
Bayly
Beck
Brooke
Browder
Byrd
Byrd
H.

NAYS—27
Aiken
Allen
Belmont
Bell
Cooke
Cotton
Curtis
Dole
Dosanjh
Eastland
Fairbanks

YEAS—9

Bennett
Buckley
Fulbright

NAYS—1

Bennett
Byrd

The Senate continued with the reconsideration of the bill H.R. 14225, an Act to extend the authorities of appropriations in the Rehabilitation Act of 1973 for 1 year, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on overriding the veto of H.R. 12425. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding.

The yeas and nays are required under the Constitution, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Arkansas (Mr. FULLBRIGHT), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from Alabama (Mr. SPARKMAN) are necessarily absent.

I further announce that the Senator from Minnesota (Mr. HUMPHREY) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from South Dakota (Mr. MCGOVERN) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent.

I also announce that the Senator from New York (Mr. BUCKLEY) and the Senator from Maryland (Mr. MATHIAS) are absent on official business.

I further announce that the Senator from Oregon (Mr. HATFIELD) is absent due to illness in the family.

I further announce that, if present and voting, the Senator from Oregon (Mr. HATFIELD) and the Senator from Maryland (Mr. MATHIAS) would each vote "yea."

The yeas and nays resulted—yeas 96, nays 1, as follows:

No. 495 Leg.

YEAS—50

Abourezk
Allen
Baker
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Bennett
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NAYS—27
Aiken
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Curtis
Dole
Dosanjh
Eastland
Fairbanks

YEAS—9

Bennett
Buckley
Fulbright

NAYS—1

Bennett
Byrd

The Senate proceeded to consider the bill.

VISIT TO THE SENATE BY MEMBERS OF THE COMMITTEE ON FINANCE OF THE GERMAN BUNDESTAG

Mr. LONG. Mr. President, I wish Senators would remain present for a few moments while I address a message in which they are very much interested.

Mr. President, we have in our Chamber today some of the outstanding parliamentarians of the world. I refer to the members present in the Chamber of the Committee on Finance of the Bundestag of the Federal Republic of Germany.

I would like to ask our guests to stand so that Senators may see them.

[Applause.]

I would like to ask that those whom I introduced raise their hands as they are