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the like are not subject to strict evidentiary controls and often do become "fishing expeditions."

Secondly, trial courts depend upon cumulative evidence, with each bit of evidence tied to the next bit until a cogent case has been made. It is not unusual for a single person—quite possibly a newsman—to have the precise bit of evidence necessary to make the case for the prosecution or the defense. In the other forums, however, cumulative evidence is not essential to their functioning.

In none of these forums may a newsman be compelled to testify as to privileged (that is, confidential) information; that privilege is absolute. However, a newsman may be compelled to testify as to nonconfidential information gathered in the course of his work at an actual criminal or civil trial where the information is material to the inquiry and equivalent information is not available from another source. (I concede that my "equivalent information" test is debatable.)

Thus, where a newsman is on the beat and happens to see a criminal act being committed, he may be compelled to testify or produce photographs at the trial of the accused, if he is the only source of that information. However, if he witnessed the crime in the context of a confidential relationship with his source—as did Caldwell and Branzburg—he could not be compelled to testify. By way of contrast, the Cranston bill precludes compelled testimony as to all information gathered in the course of the newsman's work; under that bill, he could not be compelled to testify as an eyewitness in either case.

Where the information is sought by grand juries, congressional committees, or other forums with a high potential for "fishing expeditions," the bill imposes a stricter rule. These forums may compel testimony from a newsman only when it does not relate to his work. The mere appearance of a newsman behind the closed door of a grand jury session is enough to chill sources. And it is important to keep opportunities for "fishing" in the newsman's minds and files to an absolute minimum.

Thus, Mr. Chairman, my bill has a double cutting edge. The first edge is the distinction between the kinds of information gathered by a newsman in the course of his work—confidential and nonconfidential—and between information gathered as a newsman and that coming to the newsman in his private capacity. The greatest protection is afforded confidential information; no protection is afforded information which is not related to the newsman's work.

With respect to the middle ground of information, that gathered in the course of a newsman's work but not in a confidential setting, a second cutting edge applies. Here, a distinction is drawn among the forums which may try to get this information. My bill makes it available to the forum which is most likely to have a real need for it and is least likely to harass the press by fishing for extraneous materials—the courts.

While this particular formulation may not be precisely the one the subcommittee prefers, I do think it contains procedural safeguards which should be considered for purposes of discussion and debate.

If you will permit me, Mr. Chairman, I would like to touch briefly on a few additional points.

First, I know that you are not inclined to pre-empt the states in the area of source protection. However, I want to add my voice to those who have already expressed the view that under both the Commerce Clause and the Fourteenth Amendment, Congress does have the authority to pass such a law. News flow knows no state boundaries; stories now travel by almost instant transmission from the smallest town to cities across the country. Many newspapers and broadcast outlets have interstate circulation. I have no doubt that the Commerce Clause would give us the necessary authority to legislate for the states in this area.

With respect to the Fourteenth Amendment, I believe it would be within the authority of Congress to find that the privilege is an essential part of newsgathering activity, a finding which the Supreme Court did not make in its decision last year. Newsgathering is protected under the First Amendment, and if the newsman's privilege is an essential element of that function, it, too, could come under the umbrella of the First Amendment—and be applied to the states through the Fourteenth Amendment and its enacting clause. Thus, it is my view that Congress can make a finding of fact that the protection of confidential news sources is necessary to enhance the First Amendment and to make such finding binding on the states through the Fourteenth Amendment.

I now direct attention to the question of libel as it would relate to the possible required disclosure of confidential sources. Sec. 6(a) of my bill deals with this question, but I must say it deals with it inadequately and must be redrafted.

It is my belief that a libel or slander action should not be available as a vehicle to pry open confidential sources. On the introduction of my bill, I was asked by a reporter, "Well, if your bill immunizes confidential sources in a libel action, won't this run the risk that a journalist might greatly harm an individual by writing a bogus article based on spurious confidential sources?" The blunt answer is that, yes, an innocent person may be harmed. Human reporters writing about human beings will commit human errors. This simply is a price which has to be paid in order to see that the First Amendment guarantee of a free press is not compromised.

Mr. Chairman, I know of the deep reverence you have for the Constitution. I too share that reverence.

I have a particular reverence for the First and Fourteenth Amendments. I feel that even if other portions of the Constitution were altered if we protected the sanctity of the First and Fourteenth Amendments the basic structure of American liberty would be preserved. Therefore, some individuals may well have to pay the price of being the target of erroneous journalism. I repeat, this is a price which simply must be paid in order not to jeopardize the free flow of news.

On the question of libel, I cite for the record the cases of New York Times v. Sullivan, 376 U.S. 254 (1964); St. Amant v. Thompson, 390 U.S. 727 (1968); and Cervantes v. Time Inc., 464 F2d 987 (1972), cert. den. —— U.S. —— (1973).

The Cervantes case is interesting in that the plaintiff in a libel action sought to discover the names of *Life's* confidential sources and the Court of Appeals ruled that *Life* was not required to divulge them.

Again, Mr. Chairman, I commend you and the members of the subcommittee for your efforts in this area. I am hopeful that we can pass a reasonable, effective privilege bill in this session.

A WRECKING CREW AT WORK

Mr. MONDALE. Mr. President, the need for congressional action to help the Office of Economic Opportunity—and in particular its legal services program—has been pointed out on numerous occasions in the past few weeks. A recent article by Austin Wehrwein in the Minneapolis Star has very effectively given us the reasons why this type of action cannot wait. The activities of Howard Phillips will not allow the legal services program to survive much longer. We need action within weeks, not months, if disaster in this program is to be averted.

Mr. President, I ask unanimous consent that the column from the Minneapolis Star be printed at the conclusion of my remarks.

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

A WRECKING CREW AT WORK

(By Austin C. Wehrwein)

When the movie called "The Candidate," starring Robert Redford, begins he is cast as a bright, attractive, tough-minded and yet idealistic California "poverty lawyer."

The film was made for the youth market, and, in fact, no concepts have excited and inspired young people more than "public-interest law."

This is due, to a large extent, to Ralph Nader's personally directed legal crusades.

But just as much it is due to the Legal Services program for the poor.

At the very heart of this office of economic opportunity program is the principle that lawyers, above all, work within the system. But to make the system work the poor need access to it. Conceptually, it could not be more moderate, and the leaders of the American Bar Association (ABA) and various local bar associations have given Legal Services stout support.

The ABA has been but one of many organizations backing the program. But even the active support of some of the most powerful figures in the conservative legal establishment doesn't appear to be enough against the ridiculously arrogant declaration by Howard J. Phillips that "Legal Services is rotten and it will be destroyed."

Phillips is the 32-year-old arch-conservative President Nixon put in charge of the Office of Economic Opportunity (OEO) to destroy it, the admitted strategy being to do so before Congress can come to the rescue.

A prize example of the wrecking crew strategy involves the ABA. At its recent convention in Cleveland the ABA reaffirmed its support of the program and urged that it be insulated by means of a public corporation from political meddling, which is the purpose of legislation sponsored by Sen. Mondale.

The ABA action came in the wake of a Phillips attack. Earlier he had fired an ABA advisory committee on Legal Services, whose membership included ABA President Robert W. Meserve of Boston.

"It is like a nightmare . . . the grossest kind of injustice to the poor," Dean E. Clinton Bamberger of Catholic University Law School, who is also president of the National Legal Aid and Defender Association, said of the Phillips strategy.

All around the country Phillips is creating what one lawyer in the neighborhood program called a "reign of terror." He has fired Theodore Tetzlaf, the program director, and the director of the San Francisco office and his deputy.

Funds are being cut off, travel is restricted, at least six programs are being closed down, 14 legal backup or resource centers are expected to be sabotaged if not closed and records are being reviewed preparatory to what is feared will be mass firings. But a "short ration" policy alone could goad many demoralized people to quit ahead of dismissal.

In Minneapolis, the program is handled by the Legal Aid Society, which has an exemplary record. About two-thirds of the society's budget is currently OEO money. Ostensibly the program is funded through next November. Therefore, it should be in a safer position than programs subject to refunding soon.

But there's been harassment. Recently checks were three months late, and it was necessary to "borrow" money from elsewhere in the OEO. This is government by payroll crisis.

In St. Paul, the vehicle is Legal Assistance of Ramsey County, which will face a moment of truth and consequences when its funding runs out April 30. The third program is a small one for Indians at Cass Lake handled by a separate "desk" in Washington.

Reports, some rumors, some fact, are rife. One with a factual basis is that Phillips will create continual "payroll crises" by funding local projects on 30-day schedules, an impossible way to practice any kind of law because of normal delays in the legal process.

Behind the attack-and-destroy method is a hard-line ideology that happens to fit some practical politics played by Vice-President Agnew and California Gov. Reagan. The official in-house doctrine at OEO is that the neighborhood law offices are out to "promote sweeping social and political change."

There are about 2,500 government poverty lawyers in 900 offices in 300 communities, and in point of fact the bulk of their work is routine law-office business: rent cases, debtor-creditor and family-relationship situations, and so on.

It should be stressed that the program doesn't get into criminal law.

This kind of routine isn't as exciting as idealistic law-school students with a yen for "poverty law" might think. On the other hand there have been some major suits against state and local government agencies, welfare officials and other politicians in their official capacities.

And yet all the lawyers could possibly do was to ask for the enforcement of rights already guaranteed by law. Not withstanding, Agnew, a lawyer himself, found this galling, specifically in a Camden, N.J., case. He injected himself into it, contrary to a cardinal principle that the program creates a lawyer-client relationship just as real as those that exist for paying clients of a conventional law firm. Indeed, it could not be otherwise. In California, Gov. Reagan has objected to cases involving both government agencies and those for chicanos.

Phillips' contention is this:

"Much of their (the lawyers') effort has been aimed at criticizing or embarrassing the government. I don't think this is the proper use of federal funds."

Phillips, no lawyer but a government major at Harvard (class of 1962), was a founder of Young Americans for Freedom. A critic called him a "dormitory debater" who has been given great power to press buttons in an "ideological war."

The only hope now for a continued effective and professional program depends on creation by Congress of a public corporation whose operations and trustees would be insulated from political pressure. The wrecking gang at OEO has demonstrated the need as never before, but whether legislation in response to demonstrated need can pass and whether an operating program can be protected thereafter by Capitol Hill goes to the crux of the larger Capitol-White House power struggle.

A BRAZEN SEIZURE OF POWER

Mr. WILLIAMS. Mr. President, as all of us know, and virtually all of America, we are currently witnessing a struggle which will determine if our Constitution truly will survive as it intended to set up three coequal branches of Government. Our distinguished colleague, and constitutional lawyer, the Honorable SAM J. ERVIN, JR., brought all of his expertise to bear in a piece he wrote for the Washington Post. Because it is such a clear exposition of the crisis our Nation faces, I ask that it be inserted in the RECORD at this point.

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

A BRAZEN SEIZURE OF POWER . . .

(By SAM J. ERVIN, JR.)

The Judiciary subcommittee on Separation of Powers and an ad hoc Subcommittee of the Government Operations Committee have completed five days of hearings on a subject that relates directly to a constitutional crisis in our nation—the question whether the Congress will remain viable, or whether the current trend toward executive usurpation of legislative power will continue unabated until we have a presidential form of government.

Executive impoundment of legally-appropriated funds is only one in a long line of executive usurpations of legislative power which the Congress has condoned by its acquiescence. Indeed, the Separation of Powers Subcommittee has investigated several of the most serious instances, including abuse of the pocket veto power, use of executive agreements to circumvent the constitutional role of the Senate in treaty-making, exercise of lawmaking power through the issuance of executive orders, and the refusal to provide information and testimony to the Congress under the guise of "executive privilege."

The executive branch has seized power brazenly because the Congress has lacked the courage and foresight to maintain its constitutional position. It has failed to equip itself physically to carry out its legislative duties independent of the executive branch, much less to perform its important function of overseeing the activities of the executive branch in administering the programs it has enacted. Moreover, as individuals, too many of us in the Congress have found it more comfortable to have someone else—the President—make the hard decisions and relieve us of responsibility.

Impoundment of appropriated funds is not a new concept. The Separation of Powers Subcommittee conducted hearings almost two years ago during which it revealed that over $12 billion was then being impounded. The practice has expanded since that time and is now being used to terminate or cripple certain programs enacted by the Congress, including the Rural Environmental Assistance Program (REAP); the water pollution control program which the Congress authorized over the President's veto; and the timely allocation of highway trust funds. It is clear that these impoundment actions were undertaken not to save money but to enable the President to make national legislative policy in contravention of the constitutional responsibility of the Congress to make law. In truth, he uses it to effect an item veto which clearly is not authorized by the Constitution.

The President has been quoted as saying that he has the constitutional right to duty to impound. The Constitution that I read has not a syllable giving the President any such authority. It is elementary that the Congress possesses all legislative power under the Constitution, and the President is not empowered to amend its legislative determinations by impoundment actions or otherwise.

However, administration witnesses appearing before the subcommittee have attempted to justify presidential impoundments by saying that the practice has occurred since the administration of President Thomas Jefferson and that such precedents have rendered it legal. Suffice it to say that the perpetration of illegal acts in the present cannot be justified by invoking as precedent the legal aberrations of the past.

The same witnesses also argue that the Anti-Deficiency Act sanctions presidential impoundments. That Act and its legislative history shows that it was specifically designed to prevent undue expenditures in one portion of the year, or in the carrying out of a project which would compel Congress to pass a deficiency bill. It was also intended to save money by making it unnecessary to expend all funds when a given project could be completed for fewer dollars than were appropriated. It cannot be argued that the Act contains any implied authority to impound funds to cancel or curtail a program merely because a President deems it undesirable and decides to give effect to his policy over that of the Congress. Indeed, the arguments advanced by the executive branch are self-serving statements sanctioned neither by the Constitution nor by the statutes enacted by the Congress.

The Impoundment Control Bill, S. 373 which is cosponsored by more than half of the Senate, requires the President to notify the Congress of impoundment actions, and requires him to cease such action unless the Congress has affirmatively approved it within 60 days. To my mind, the President should welcome the passage of this bill, because it would give him an opportunity to convince the Congress that it has over-funded specific programs and would give the Congress an opportunity to reassess its priorities and to rearrange them if such action seems desirable.

Let me emphasize that neither I nor my colleagues who are cosponsoring this bill desire that the executive branch expend the taxpayer's money foolishly. Indeed, I have always favored a balanced federal budget and have voted to uphold the President's veto of certain money bills when I felt the Congress had been extravagant. However, I do not believe that impoundment constitutes a cure for the nation's fiscal and economic woes, even as a practical matter.

In any event, even a lofty motive like the control of inflation, although proclaimed by the President himself, cannot render constitutional an action which inherently is unconstitutional.

Impoundment amounts to government by decree, and if the practice is permitted, the collective voice of 535 members of Congress could be overridden by one man. That would be government without law.

THE UPPSALA DECLARATION ON THE RIGHT TO LEAVE AND THE RIGHT TO RETURN

Mr. KENNEDY. Mr. President, this year marks the 25th anniversary of the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly on December 10, 1948. Although the "common standards of achievement" contained in the declaration are far from being universally implemented, or even recognized, the declaration nevertheless stands as a strong reminder of some international obligations professed by many governments, and of many goals that need our effort and concern as citizens of a democratic society.

Over the years, a growing number of private organizations have become involved in pursuing these goals, and their efforts deserve our tribute and support. A good example of current nongovernmental efforts in the field of human rights has resulted from the colloquium on the right to leave and the right to return, held in Uppsala, Sweden last June. This colloquium, on freedom of movement, was cosponsored by the Jacob