a good procedure to clear up the misunderstanding on part A of title II. There is broad support for all of the rest of the bill. I wish that it were possible to retain that and to pass it on over to the House of Representatives; nevertheless, I think that we can do this very adequately and still come back in 10 days.

I ask the chairman of the Committee on Interior and Insular Affairs, if I may get his attention, am I correct in understanding that it automatically returns to the Senate floor in 10 days?

Mr. JACKSON. The Senator is correct. I will make the motion, or make a unanimous-consent request either way to that effect.

In order to handle the matter properly, I am advised that we should have the specific date. If we exclude the recess dates, the time it is to be reported back would be Monday, March 25. I will make the request that way, and then there will be no dispute that it automatically comes back.

Mr. President, I ask unanimous consent that S. 1017 be rereferred at this time to the Committee on Interior and Insular Affairs, with instructions to report the bill back, as amended or otherwise, on March 25, 1974.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 702, S. 265, and Calendar Order No. 701, S. 1688, in that order.

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

SALE OF MINERAL RIGHTS IN CERTAIN LANDS IN UTAH

The Senate proceeded to consider the bill (S. 265) to authorize the Secretary of the Interior to sell certain mineral rights in certain lands located in Utah to the record owner thereof which had been reported from the Committee on Interior and Insular Affairs with an amendment on page 3, line 6, after the word "interest", insert "to"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized and directed to convey, sell, and quitclaim all mineral interests now owned by the United States to the record owner of the surface and a one-half undivided interest in the minerals in and to the following described land in Utah County, Utah:

Beginning at a point south 151.8 feet and west 0.27 feet from the north quarter corner of section 17, township 5 south, range 2 east, Salt Lake base and meridian, and running thence south 89 degrees, 54 minutes east 62.0 feet; thence north 0 degrees 06 minutes east 152.1 feet; thence north 89 degrees 29 minutes 44 seconds east 70 feet; thence south 0 degrees 06 minutes west 165.62 feet; thence south 89 degrees 54 minutes east 164.97 feet; thence north 0 degrees 06 minutes east 137 feet; thence north 89 degrees 51 minutes east 16.5 feet; thence south 0 degrees 06 minutes west 137 feet; thence south 39 degrees 20 minutes west 135 feet; thence south 51 degrees 07 minutes east 660 feet; thence north 88 degrees 40 minutes west 268.8 feet; thence south 0 degrees 28 minutes 30 seconds west 1,262.9 feet along a fence line; thence north 89 degrees 46 minutes west 364.2 feet; thence south 89 degrees 06 minutes 30 seconds west 133.2 feet; thence north 1 degree 17 minutes 30 seconds east 1,323.2 feet thence east 4.34 feet; thence north 0 degrees 06 minutes east 466.7 feet, more or less to the point of beginning.

SEC. 2. The Secretary shall require the deposit of a sum of money which he deems sufficient to cover estimated administrative costs of this Act. If a conveyance is not made pursuant to this Act, and the administrative costs exceed the deposit, the Secretary shall bill the applicant for the outstanding amount, but if the amount of the deposit exceeds the actual administrative costs, the Secretary shall refund the excess.

SEC. 3. No conveyance shall be made unless application for conveyance is filed with the Secretary within six months of the date of approval of this Act and unless within the time specified by him payment is made to the Secretary of (1) administrative costs of the conveyance and (2) the fair market value of the interest to be conveyed. The amount of the payment required shall be the difference between the amount deposited and the full amount required to be paid under this section. If the amount deposited exceeds the full amount required to be paid, the applicant shall be given a credit or refund for the excess.

SEC. 4. The term "administrative costs" as used in this Act includes, but is not limited to, all costs of (1) conducting an exploratory program to determine the character of the mineral deposits in the land, (2) evaluating the data obtained under the exploratory program to determine the fair market value of the mineral rights to be conveyed, and (3) preparing and issuing the instrument of conveyance.

SEC. 5. Moneys paid to the Secretary for administrative costs shall be paid to the agency which rendered the service, and deposited to the appropriation then current. Moneys paid for the minerals or mineral interests conveyed shall be deposited into the general fund of the Treasury as miscellaneous receipts.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PROTECTION OF PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 701, S. 1688.

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

The assistant legislative clerk read as follows:

A bill (S. 1688) to protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. ERVIN. Mr. President, this bill, or rather bills in the form of the present bill, have passed the Senate on five separate occasions in the 90th, 91st, and 92d Congresses.

This bill is cosponsored by more than 40 Senators, of all political philosophies, on both sides of the aisle. The bill passed the first time, in its original form, with only four dissenting votes. On all other occasions the bill has passed unanimously.

It is a bill of major importance designed to protect the rights of privacy and other fundamental rights of Federal employees. I would like to pay tribute to many Senators for their part in the formulation of this bill over the years, and particularly to the distinguished senior Senator from Nebraska (Mr. HRUSKA).

The bill, as I say, is of extreme importance. The development of the bill and the reasons for it are matters set forth in the report of the committee. In view of the importance of the measure, I ask unanimous consent that the committee report (No. 93–724) be printed in full in the RECORD at this point.

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

PROTECTING PRIVACY AND THE RIGHTS OF FEDERAL EMPLOYEES

The Subcommittee on Constitutional Rights to which was referred the bill S. 1688 to protect civilian employees of the executive branch of the U.S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy, having considered the same, reports favorably thereon without amendments and recommends that the bill do pass.

S. 1688 is identical to S. 1438 as unanimously reported by the committee and unanimously approved by the Senate in the last Congress. The report on S. 1438 is therefore reprinted below as approved by the committee.

PURPOSE

The purpose of the bill is to prohibit indiscriminate executive branch requirements that employees and, in certain instances, applicants for Government employment disclose their race, religion, or national origin; attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs; support political candidates or attend political meetings. The bill woud make it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits officials from requiring him to disclose his own personal assets, liabilities, or expenditures, or those of any member of his family unless, in the case of certain specified employees, such items would tend to show a conflict of interest. It would provide a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings. It would accord the right to a civil action in a Federal court for violation or threatened violation of the act, and it would establish a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act and to determine and administer remedies and penalties.

STATEMENT

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

Second, the bill meets the Federal Government's need to attract the best qualified employees and to retain them. As the former Chairman of the Civil Service Commission, Robert Ramspeck, testified:

"Today, the Federal Government affects the lives of every human being in the United States. Therefore, we need better people today, better qualified people, more dedicated people, in Federal service than we ever needed before. And we cannot get them if you are going to deal with them on the basis of suspicion, and delve into their private lives, because if there is anything the average American cherishes, it is his right of freedom of action, and his right to privacy. So I think this bill is hitting at an evil that has grown up, maybe not intended, but which is hurting the ability of the Federal Government to acquire the type of personnel that we must have in the career service."

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

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

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

Passage of the bill will signify congressional recognition of the threats to individual privacy posed by an advanced technology and by increasingly more complex organizations. Illustrating these trends is the greatly expanded use of computers and governmental and private development of vast systems for the efficient gathering of information and for data storage and retrieval. While Government enjoys the benefit of these developments, there is at the same time an urgent need for defining the areas of individual liberty and privacy which should be exempt from the unwarranted intrusions facilitated by scientific techniques.

As Prof. Charles Reich of Yale Law School has stated, this bill "would be a significant step forward in defining the right of privacy today."

"One of the most important tasks which faces the Congress and State legislatures in the next decade is the protection of the citizen against invasion of privacy," states Prof. Stanley Anderson of the University of California, Santa Barbara. "No citizens," in his opinion, "are in more immediate danger of incursion into private affairs than Government employees. When enacted the bill will provide a bulwark of protection against such incursions."

The bill is based on several premises which the subcommittee investigation has proved valid for purposes of enacting this legislation. The first is that civil servants do not surrender the basic rights and liberties which are their due as citizens under the Constitution of the United States by their action in accepting Government employment. Chief among these constitutional protections is the first amendment, which protects the employee to privacy in his thoughts, beliefs and attitudes, to silence in his action and participation or his inaction and nonparticipation in community life and civic affairs. This principle is the essence of constitutional liberty in a free society.

The constitutional focus of the bill was emphasized by Senator Ervin in the following terms when he introduced S. 1688 on February 21, 1967:

"If this bill is to have any meaning for those it affects, or serve as a precedent for those who seek guidance in these matters, its purpose must be phrased in constitutional terms. Otherwise its goals will be lost.

"We must have as our point of reference the constitutional principles which guide every official act of our Federal Government. I believe that the Constitution, as it was drafted and as it has been implemented, embodies a view of the citizen as possessed of an inherent dignity and as enjoying certain basic liberties. Many current practices of Government affecting employees are unconstitutional; they violate not only the letter but the very spirit of the Constitution.

"I introduced this bill originally because I believe that, to the extent it has permitted or authorized unwarranted invasion of employee privacy and unreasonable restrictions on their liberty, the Federal Government has neglected its constitutional duty where its own employees are concerned, and it has failed in its role as the model employer for the Nation.

"Second, although it is a question of some dispute, I hold that Congress has a duty under the Constitution not only to consider the constitutionality of the laws it enacts, but to assure as far as possible that those in the executive branch responsible for administering the laws adhere to constitutional standards in their programs, policies, and administrative techniques."

The committee believes that it is time for Congress to forsake its reluctance to tell the executive branch how to treat its employees. When so many American citizens are subject to unfair treatment, to being unreasonably coerced or required without warrant to surrender their liberty, their privacy, or their freedom to act or not to act, to reveal or not to reveal information about themselves and their private thoughts and actions, then Congress has a duty to call a statutory halt to such practices. It has a duty to remind the executive branch that even though it might have to expend a little more time and effort to obtain some favored policy goal, the techniques and tools must be reasonable and fair.

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

Each section of the bill reflects a balancing of the interests involved: The interest of the Government in attracting the best qualified individuals to its service; and its interest in pursuing laudable goals such as protecting the national security, promoting equal employment opportunities, assuring mental health, or conducting successful bond-selling campaigns. There is, however, also the interest of the individual in protection of his rights and liberties as a private citizen. When he becomes an employee of his Government, he has a right to expect that the policies and practices applicable to him will reflect the best values of his society.

The balance of interests achieved assures him this right. While it places no absolute prohibition on Government inquiries, the bill does assure that restrictions on his rights and liberties as a Government employee are reasonable ones.

A Senator Bible stated:

"There is a line between what is Federal business and what is personal business, and Congress must draw that line. The right of privacy must be spelled out."

The weight of evidence, as Senator Fong has said: "points to the fact that the invasions of privacy under threats and coercion and economic intimidation are rampant in our Federal civil service system today. The degree of privacy in the lives of our civil servants is small enough as it is, and it is still shrinking with further advances in technical know-how. That these citizens are being forced by economic coercion to surrender this precious liberty in order to obtain and hold jobs is an invasion of privacy which should disturb every American. I, therefore, strongly believe that congressional action to protect our civil servants is long overdue."

The national president of the National Association of Internal Revenue Employees, Vincent Connery, told the Subcommittee of this proposal in the 89th Congress:

"Senate bill 3779 is soundly conceived and perfectly timed. It appears on the legislative scene during a season of public employee unrest, and a period of rapidly accelerating demand among Federal employees for truly first-class citizenship. For the first time within my memory, at least, a proposed bill holds out the serious hope of attaining such a citizenship. S. 3779, therefore, amply deserves the fullest support of all employee organizations, both public and private, federation affiliated, and independent alike."

Similar statements endorsing the broad purpose of the bill were made by many others, including the following witnesses:

John F. Griner, national president, American Federation of Government Employees.

E. C. Hallbeck, national president, United Federation of Postal Clerks.

Jerome Keating, president, National Association of Letter Carriers.

Kenneth T. Lyons, national president, National Association of Government Employees.

John A. McCart, operations director, Government Employees Council of AFL-CIO.

Hon. Robert Ramspeck, former Chairman, Civil Service Commission.

Vincent Jay, executive vice president, Federal Professional Association.

Francis J. Speh, president, 14th District Department, American Federation of Government Employees.

Lawrence Speiser, director, Washington office, American Civil Liberties Union.

Nathan Wolkomir, national president, National Federation of Federal Employees.

LEGISLATIVE HISTORY

Following is a chronological account of committee action on this legislation to date.

S. 1688 was preceded by S. 1438 of the 92d Congress, S. 782 of the 91st Congress, by S. 1035 of the 90th Congress, and by S. 3079 and S. 3703 of the 89th Congress.

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

In addition to investigation of individual cases, the Subcommittee on Constitutional Rights has conducted annual surveys of agency policies on numerous aspects of Government personnel practices. In 1965, pursuant to Senate Resolution 43, hearings were

conducted on due process and improper use of information acquired through psychological testing, psychiatric examinations, and security and personnel interviews.

In a letter to the Chief Executive on August 3, 1966, the subcommittee chairman stated:

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

"The misuse of privacy-invading personality tests for personnel purposes has already been the subject of hearings by the subcommittee. Other matters, such as improper and insulting questioning during background investigations and due process guarantees in denial of security clearances have also been the subject of study. Other employee complaints, fast becoming too numerous to catalog, concern such diverse matters as psychiatric interviews; lie detectors; race questionnaires; restrictions on communicating with Congress; pressure to support political parties yet restrictions on political activities; coercion to buy savings bonds; extensive limitations on outside activities yet administrative influence to participate in agency-approved functions; rules for writing, speaking and even thinking; and requirements to disclose personal information concerning finances, property and creditors of employees and members of their families."

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

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

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

* * * * *

Following this letter and others addressed to the Chairman of the Civil Service Commission and the Secretaries of other departments, legislation to protect employee rights was introduced in the Senate. This proposal, S. 3703 was introduced by the chairman on August 9, 1966, and referred to the Judiciary Committee. On August 25, 1966, the chairman received unanimous consent to a request to add the names of 33 cosponsors to the bill. On August 26, 1966, he introduced a bill similar to S. 3703, containing an amendment reducing the criminal penalties provided in section 2. This bill, S. 3779, was also referred to the Judiciary Committee, and both S. 3703 and S. 3779 were then referred to the Subcommittee on Constitutional Rights.

Comments on the bill and on problems related to it were made by the chairman in the Senate on July 18, August 9, August 25, August 26, September 29, October 17 and 18, 1966, and on February 21, 1967.[1]

[1] See also, *Cong. Rec.* Comments.

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

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

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

"Case after case was cited of privacy invasion and denial of due process in connection with the new financial disclosure requirements. A typical case is the attorney threatened with disciplinary action or loss of his job because he is both unable and unwilling to list all gifts, including Christmas presents from his family, which he had received in the past year. He felt this had nothing to do with his job. There was the supervisory engineer who was told by the personnel officer that he would have to take disciplinary action against the 25 professional employees in his division who resented being forced to disclose the creditors and financial interests of themselves and members of their families. Yet there are no procedures for appealing the decisions of supervisors and personnel officers who are acting under the Commission's directive. These are not isolated instances; rather, they represent a pattern of privacy invasion reported from almost every State.

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

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

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

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

The Chairman of the Civil Service Commission informed the subcommittee that there is no need for a law to protect employee rights. He believes the answer is—

"to permit executive branch management and executive branch employees as individuals and through their unions, to work together to resolve these issues as part of their normal discourse."

It is quite clear from the fearful tenor of the letters and telephone calls received by the subcommittee and Members of Congress that there is no discourse and is not likely to be any discourse on these matters between the Commission and employees. Furthermore, there are many who do not even fall within the Commission's jurisdiction. For them, there is no appeal but to Congress.

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

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

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

S. 1035, 90th Congress

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

This amended version of S. 3779 was introduced in the Senate by the chairman on February 21, 1967, as S. 1035 with 54 cosponsors. It was considered by the Constitutional Rights Subcommittee and unanimously reported with amendments by the Judiciary Committee on August 21, 1967. [S. Rept. No. 534, 90th Cong. 1st Sess.] The proposal was considered by the Senate on

September 13, 1967, and approved, with floor amendments, by a 79 to 4 vote. After absentee approvals were recorded, the record showed a total of 90 Members supported passage of the bill. The amendments adopted on the Senate floor deleted a complete exemption which the committee bill provided for the Federal Bureau of Investigation; instead, it was provided that the Federal Bureau of Investigation should be accorded the same limited exemptions provided for the Central Intelligence Agency and the National Security Agency. A provision was added to allow the three Directors to delegate the power to make certain personal findings required by section 6 of the bill.

Committee amendments to S. 1035, 90th Congress

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

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

2. Amendment to section 1(b), page 2, line 25 strike "to" (technical amendment.)

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

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

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

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

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

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

8. Amendment to section 2(b), page 9, at line 6 and 9, change "phychiatrist" to "physician".

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

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

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

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

11. Amendment to section 6(l), page 16, at line 24, strike "sign charges and specifications under section 830 (art. 30)" and insert in lieu thereof "convene general courts-martial under section 222 (art. 22)" (technical amendment).

12. Amendment to section 6(m), page 17, line 14, change subsection (j) to (k) (technical amendment).

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

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

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

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

Comparison of S. 1035, 90th Congress, as introduced, and S. 3779, 89th Congress

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

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

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

3. A new section providing for administrative remedies and penalties establishes a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties. There is judicial review of the decision under the Administrative Procedure Act.

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

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

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

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

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

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

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

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

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

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

14. Other amendments of a technical nature.

S. 782, 91st Congress—Committee amendments

S. 782, as introduced by Senator Ervin with 54 cosponsors, was identical to S. 1035 of the 90th Congress as passed by the Senate. As amended in Committee, it was reported to the Senate on May 15, 1970, and passed by unanimous consent on May 19.

The Subcommittee met in executive session on July 22, 1969, to receive testimony from Richard Helms, Director of the Central Intelligence Agency and other agency representatives. On the basis of this testimony and after a number of meetings of subcommittee members with officials of the Central Intelligence Agency, the National Security Agency, and the Federal Bureau of Investigation, the language contained in the committee amendments was drafted and meets with the approval of the Directors of those agencies.

Amendments

1. Amendments to section 1(a), page 2, line 15 insert after the word "origin" the words "or citizenship" and after the word "employee", the words "or person, or his forebears".

2. Amendment to section 1(k), page 8, line 5 after the word "requests", strike the period and insert the following:

: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency, or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves or by counsel who has been approved by the agency for access to the information involved.

3. Amendment to section 6, page 18, lines 15 and 16 delete "or of the Federal Bureau of Investigation".

4. Amendment to section 6, page 18, line 25, and page 19, line 1 delete "or the Director of the Federal Bureau of Investigation or his designee".

5. On page 19, add a new section 7 as follows:

"SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted

to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under 50 U.S.C. 403(c), and any authorities available to the National Security Agency under 50 U.S.C. 833 to terminate the employment of any employee."

6. On page 19, add a new section 8 as follows:

SEC. 8. Nothing in this act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or execute order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

7. On page 19, add a new section 9 as follows:

SEC. 9. This act shall not be applicable to the Federal Bureau of Investigation.

8. On page 19, at line 5, renumber "SEC. 7" as "SEC. 10" and at line 20, renumber "SEC. 8" as "SEC. 11".

S. 1438, 92d Congress

As introduced by Senator Ervin with 53 cosponsors, S. 1438 was identical to S. 782 of the 91st Congress as unanimously reported by the Committee and unaimously approved by the Senate. S. 1438 was approved by the Committee without amendment on December 6, 1971, passed by the Senate by unanimous consent on December 8, 1971, and was referred to the House Post Office and Civil Service Committee. There a majority of the full committee voted to table the bill.

On August 1, 1972, upon a motion by Senator Ervin, the Committee added the text of S. 1438 as Title II of the House-passed bill H.R. 12652, extending the life of the Civil Rights Commission and expanding its jurisdiction to include a study of the rights of women. On August 4, 1972, the Senate unanimously passed H.R. 12652 as amended. This marked the fourth time in six years that the Senate had approved the provisions of the employee privacy bill.

The House rejected the Senate amendment and requested a conference. The Senate conferees stood by the Senate amendment until it became apparent that it might jeopardize passage of the entire legislation. When the Senate passed the Civil Rights Commission authorization, it accepted the conference committee's decision to delete Title II from the bill.

QUESTIONS ON RACE, RELIGION, AND NATIONAL ORIGIN

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

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

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

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

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

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

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

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

Former Civil Service Commission Chairman Robert Ramspeck told the subcommittee:

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

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

Mr. Macy informed the subcommittee:

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

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

As Senator Fong stated:

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

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

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

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

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

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

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

"The excuses that are made vary tremendously, either that the form can only be signed

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

"Also, in connection with the giving of oaths, I have had one case in which an investigator asked a young man this question: "For the purposes of administering the oath, do you believe in God?"

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

"This issue comes up sometimes when clerks will ask, "Why do you want to affirm? Do you belong to a religious group that requires an affirmation rather than taking an oath?" And unless the individual gives the right answer, the clerks won't let him affirm. It is clear under the *Torcaso* case that religious beliefs and lack of religious beliefs are equally entitled to the protection of the first amendment.[1]

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

CONTROL OF EMPLOYEE OPINIONS, OUTSIDE ACTIVITIES

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

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

In the view of the United Federation of Postal Clerks:

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

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

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

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

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

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

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

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

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

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

Mr. GRINER. No, sir.

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

speech in a democracy as if the opportunities were actually cut off.

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

In the southwest a division chief dispatched a buck slip to his group supervisors demanding: "the names * * * of employees * * * who are participating in any activities including such things as: PTA in integrated schools, sports activities which are intersocial, and such things as Great Books discussion groups which have integrated memberships."

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

PRIVACY INVASIONS IN INTERVIEWS, INTERROGATIONS, AND PERSONALITY TESTS

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

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

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

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

Did he abuse you?

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

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

The parent of this student wrote:

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

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

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

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

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

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

My sex life is satisfactory.

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

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

I loved my father.

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

I go to church almost every week.

I believe in the second coming of Christ.

I believe in a life hereafter.

I have never indulged in any unusual sex practices.

I am worried about sex matters.

I am very religious (more than most people).

I loved my mother.

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

I believe there is a God.

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

I wish I were not bothered by thoughts about sex.

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

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

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

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

POLYGRAPHS

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

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

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

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

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

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

About 1 month later, I reported for a polygraph test at an office on Wisconsin Avenue in the District or just over the District line in Maryland. I talked with the polygraph operator, a young man around 25 years of age. He explained how the machine worked, etc. He ran through some of the questions before he attached the wires to me. Some of the questions I can remember are—

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

[1] Hearings and reports on the use of polygraphs as "lie detectors" by the Federal Government before a Subcommittee of the House Comimttee on Government Operations, April 1964 through 1966.

"How many times have you had sexual intercourse?

"Have you ever engaged in homosexual activities?

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

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

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

He also asked questions about my parents, Communist activities, etc. I remember that I thought this thing was pretty outrageous, but the operator assured me that he asked everybody the same questions and he has heard all the answers before, it just didn't mean a thing to him. I wondered how he could ever get away with asking a girl those kinds of questions.

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

Commenting on this complaint, the subcommittee chairman observed:

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

COERCION TO BUY BONDS AND CONTRIBUTE TO CAUSES

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

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

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

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

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

"Section 1, paragraph (1) of S. 3779 is particularly important to all Federal employees and certainly to our postal clerks. The extreme arm-twisting coercion, and pressure tactics exerted by some postmasters on our members earlier this year during the savings bond drive must not be permitted at any future time in the Government service.

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

The president of the National Association of Government Employees testified:

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

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

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

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

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

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

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

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

* * * * *

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

* * * * *

A representative of the 14th District Department of the American Federation of Government Employees, Lodge 421, reported:

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

DISCLOSURE OF ASSETS, DEBTS, AND PROPERTY

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

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

The employee criticism of such inquiries was summarized as follows:

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

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

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

(Questionnaire follows:)

CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

(For use by regular Government employees)

Name (*Last, First, Initial*).

Title of position.

Date of appointment in present position.

Organization location (*Operating agency, Bureau Division*).

PART I. EMPLOYMENT AND FINANCIAL INTERESTS

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

Name and kind of organization (*Use Part 1 designations where applicable*).

Address.

Position in organization (*Use Part 1(a) designations, if applicable*).

Nature of financial interest, e.g., stocks. Prior income (*Use Part 1(b) & (c) designations if applicable*).

PART II. CREDITORS

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

Name and address of creditor.

Character of indebtedness, *e.g.*, personal loan, note, security.

PART III. INTERESTS IN REAL PROPERTY

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

Nature of interest, *e.g.*, ownership, mortgage, lien, investment, trust.

Type of property, *e.g.*, residence, motel, apartment, undeveloped land.

Address (*If rural, give RFD of county and State*).

PART IV. INFORMATION REQUESTED OF OTHER PERSONS

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

Name and address.

Date of request.

Nature of subject matter.

(This space reserved for additional instructions).

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

(*Date*).

(*Signature*).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

———, ———.

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

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

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

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

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

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

Sincerely,

———, ———.

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

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

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

Now I am no longer a free American. For example, I can no longer buy stock of a foreign company because that country may be in disfavor with officials of the right or left. And I cannot "own part of America" by buying common stocks until an "approved list" is published by my superiors.

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

In short, I am no longer free to plan my own financial program for the future security of my family. In 1 day I was robbed of the freedom for which I fought two wars. This is a sickening feeling, you may be sure.

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

Sincerely,

———— ————.

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

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

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

How much did you receive in 1965 from social security, pensions (nonmilitary) rent (minus expenses), interests or dividends, un-

employment insurance, welfare payments, or from any other source not already entered?

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

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

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

RIGHT TO COUNSEL

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

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

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

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

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

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

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

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

The president of the National Association of Letter Carriers testified:

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

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

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

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

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

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

EXCEPTIONS

The act under section 9, does not apply to the Federal Bureau of Investigation. Furthermore, section 6 provides that nothing in the act will prohibit an official of the Central Intelligence Agency and the National Security Agency from requesting any employee or applicant to take a polygraph test or a psychological test, or to provide a personal financial statement designed to elicit the personal information protected under subsections 1(e), (f), (i), and (j). In such cases, the Director of the agency or his designee must make a personal finding with regard to each individual to be tested or examined that such test or information is required to protect the national security.

An exception to the right-to-counsel section has been provided to limit this right for employees in the Central Intelligence Agency and the National Security Agency to a person who serves in the same agency or a counsel cleared by the agency for access to the information involved. Obviously, it is expected that the employee's right to be accompanied by the person of his choice will not be denied unless that person's access to the information for the purpose of the case is clearly inconsistent with the national security. Other language recognizes problems unique to these two agencies.

For instance, section 7 requires exhaustion of remedies by employees of the Central Intelligence Agency and the National Security Agency and states that the act does not affect whatever existing statutory authority these agencies now possess to terminate employment. Section 8 is designed to assure that nothing in the act is construed to affect negatively any existing statutory or executive authority of the Directors of the Central Intelligence Agency and National Security Agency to protect their information in cases involving their employees. Consequently, procedures commended to the subcommittee by the Director of the Central Intelligence Agency are spelled out for asserting that authority in certain proceedings arising under the act. Other committee amendments to S. 1035, as detailed earlier, were adopted to meet administrative requirements of the Federal security program and the intelligence community as well as the management needs of the executive branch.

ENFORCEMENT

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

Testimony at the hearings as well as investigation of complaints have demonstrated that in the area of employee rights, a right is only as secure as its enforcement. There is overwhelming evidence that employees have

heretofore frequently lacked appropriate remedies either in the courts or the Civil Service Commission for pursuing rights which belong to them as citizens.

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

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

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

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

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

The bill does not affect any authority, right or privilege accorded under Executive Order 11491 governing employee-management cooperation in the Federal service. To the extent that there is any overlapping of subject matter, the bill simply provides an additional remedy.

THE BOARD ON EMPLOYEES' RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sanctions

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

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

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

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

In view of the difficulty of filing criminal charges and obtaining prosecution and conviction of executive branch officials which might render the criminal enforcement provision meaningless for employees, the criminal penalties were deleted and a Board on Employee Rights incorporated into the scheme of remedies and sanctions in the bill.[1]

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

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

SECTION-BY-SECTION ANALYSIS

SECTION 1.

Section 1(a) makes it unlawful for a Federal official of any department or agency to

[1] In the 89th Congress, S. 1035.

require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency or any person seeking employment to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears.

This section does not prohibit inquiry concerning citizenship of such individual if his citizenship is a statutory condition of his obtaining or retaining his employment. Nor does it preclude inquiry of the individual concerning his national origin or citizenship or that of his forebears when such inquiry is thought necessary or advisable in order to determine suitability for assignment to activities or undertakings related to national security within the United States or to activities or undertakings of any nature outside the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The purpose of this section is to assure that the employee is free from any job-related pressures to conform his thoughts and attitudes and actions in political matters unrelated to his job to those of his supervisors. With respect to his superiors, it protects him in the privacy of his contribution or lack of contribution to the civic affairs and political life of his community, State and Nation. In particular, it protects him from commands or requests of his employer to buy tickets to fundraising functions, or to attend such functions, to compile position papers or research material for political purposes or make any other contribution which constitutes a political act or which

places him in the position of publicly expressing his support or nonsupport of a party or candidate. This section also assures that, although there is no evidence of such activities at present, no Federal agency may in the future improperly involve itself in the undertakings of any political party in the United States, its territories, or possessions.

Section 1(h) makes it illegal for an official to coerce or attempt to coerce any civilian employee in the department or agency to invest his earnings in bonds or other Government obligations or securities, or to make donations to any institutions or cause. This section does not prohibit officials from calling meetings or taking any other appropriate action to afford employees the opportunity voluntarily to invest his earnings in bonds or other obligations or voluntarily to make donations to any institution or cause. Appropriate action, in the committee's view, might include publicity and other forms of persuasion short of job-related pressures, threats, intimidation, reprisals of various types, and "blacklists" circulated through the employee's office or agency to publicize his noncompliance.

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

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

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

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

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

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

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

A committee amendment to S. 782 adds a proviso that a civilian employee serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

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

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

SECTION 2

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

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

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

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

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

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

SECTION 3

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

SECTION 4

Section 4 provides civil remedies for violation of the act by granting an applicant or employee the right to bring a civil action in the Federal district court for a court order to halt the violation, or to obtain complete redress against the consequences of the violation. The action may be brought in his own behalf or in behalf of himself and others similarly situated, and the action may be filed against the offending officer or person in the Federal district court for the district in which the violation occurs or is threatened, or in the district in which the offending officer or person is found, or in the District Court for the District of Columbia.

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

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

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

SECTION 5

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

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

Section 5(b) defines the term of office for members of the Board, providing that one members of the initial Board shall serve for

5 years, one for 3 years, and one for 1 year from the date of enactment; any member appointed to fill a vacancy in one of these terms shall be appointed for the remainder of the term. Thereafter, each member shall be appointed for 5 years.

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

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

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

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

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

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

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

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

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

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

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

Section 5(l) provides for Board action when any officer of the Armed Forces of the United States or any person acting under his authority violates the act. In such event, the Board shall (1) submit a report to the President, the Congress, and to the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice through informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. When this determination and report is received, the person designated shall immediately dispose of the matter under the provisions of chapter 47 of title 10 of the United States Code.

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

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

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

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

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

SECTION 6

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

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

SECTION 7

Section 7 requires, in effect, that employees of the Central Intelligence Agency and the National Security Agency exhaust their administrative remedies before invoking the provisions of section 4 (the Board on Employee Rights) or section 5 (the Federal court action). An employee, his representative, or any organization acting in his behalf, must first submit a written complaint to the agency and afford it 120 days to prevent the threatened violation or to redress the actual violation. A proviso states that nothing in the act affects any existing legal authority of the Central Intelligence Agency under 50 U.S.C. 403(c) or of the National Security Agency under 50 U.S.C. 833 to terminate employment.

SECTION 8

Section 8 provides that nothing in the act shall be construed to affect in any way authority of the directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or Executive order. In cases involving his employees, the personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order is to be conclusive and no such information shall be admissible in evidence in any civil action under section 4 or in any proceeding or civil action under section 5. Nor may such information be receivable in the record of any interrogation of an employee under section 1(k).

SECTION 9

Section 9 provides that the Federal Bureau of Investigation shall be excluded from the provisions of this act.

SECTION 10

Section 10 provides that nothing contained in sections 4 or 5 shall be construed to prevent the establishment of department and agency grievance procedures to enforce this act. This section makes it clear that the existence of such procedures are not to preclude any applicant or employee from pursuing any other available remedies. However, if under the procedures established by an agency, the complainant has obtained complete protection against threatened violations, or complete redress for violations, such relief may be pleaded in bar in the U.S. district court or in proceedings before the Board on Employees' Rights.

Furthermore, an employee may not seek his remedy through both the Board and the court. If he elects to pursue his remedies through the Board under section 5, for instance, he waives his right under section 4 to take his case directly to the district court.

SECTION 11

Section 11 is the standard severability clause.

Mr. HRUSKA. Mr. President, I am pleased today to join my distinguished colleague from North Carolina, Senator ERVIN, in support of S. 1688, which seeks to protect certain constitutional rights of employees of the executive branch of Government.

This measure has come before the Senate on several previous occasions and has received unanimous approval each time as I recall; but has subsequently failed to receive similar approval in the House.

The thrust of the bill is to prohibit the Federal Government from requiring employees of the executive branch and applicants for other Government positions to disclose their race, religion, or national origin. The measure also prohibits questions about the activities of employees after duty hours and in activities unrelated to their work or about their personal attitudes and beliefs, or their political views or preferences. In addition, it makes illegal the requirement for the

filing of a personal financial statement unless a conflict-of-interest question is raised.

Some of the major objections to previous measures on this subject have been overcome in the instant bill. The Federal Bureau of Investigation, Central Intelligence Agency, and National Security Agency are exempt completely from the provisions of S. 1688. Moreover, the bill now provides for the right to have counsel present during certain proceedings, and for access to the courts for judicial remedy where complaints may arise.

It is fitting that S. 1688 come before the Senate for consideration at this time. This measure coincides with the President's recent announcement on the establishment of a Cabinet-level Commission on Privacy. The purpose of the Commission is to institute positive efforts by the Federal Government to protect the fundamental rights of privacy for all citizens. S. 1688 is one segment of that effort as it provides the Congress an opportunity to express its collective will in an area of concern to all Americans.

I urge my colleagues in the Senate, and in the other body, to act in an expeditious manner on this measure so that it may be placed before the President for his approval in the near future. This legislation is overdue, as a recognition of the President's proposal for a Commission on Privacy indicates. Therefore, it is now within the grasp of the Congress to recognize the need for the protection of the rights of privacy for executive branch employees and take appropriate action to achieve that end.

Mr. ERVIN. I am deeply grateful to the Senator from Nebraska, not only for his remarks on this occasion but for his assistance throughout the years in perfecting this measure. I think the bill in its present form protects the right to privacy of Federal employees without doing any substantial injury to the necessary processes of government.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 1688) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1688

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. It shall be unlawful for any officer of any executive department or any executive agency of the United States Government, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person seeking employment in the executive branch of the United States Government, to disclose his race, religion, or national origin, or the race, religion, or national origin of any of his forebears: *Provided, however,* That nothing contined in this subsection shall be construed to prohibit inquiry concerning the citizenship of any such employee or person if his citizenship is a statutory condition of his obtaining or retaining his employment: *Provided further,* That nothing contained in this subsection shall be construed to prohibit inquiry concerning the national origin or citizenship of any such employee or person or of his forebears, when such inquiry is deemed necessary or advisable to determine suitability for assignment to activities or undertakings related to the national security within the United States or to activities or undertakings of any nature outside the United States.

(b) To state or intimate, or to attempt to state or intimate, to any civilian employee of the United States serving in the department or agency that any notice will be taken of his attendance or lack of attendance at any assemblage, discussion, or lecture held or called by any officer of the executive branch of the United States Government, or by any person acting or purporting to act under his authority, or by any outside parties or organizations to advise, instruct, or indoctrinate any civilian employee of the United States serving in the department or agency in respect to any matter or subject other than the performance of official duties to which he is or may be assigned in the department or agency, or the development of skills, knowledge, or abilities which qualify him for the performance of such duties: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit taking notice of the participation of a civilian employee in the activities of any professional group or association.

(c) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(d) To reqiure or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to make any report concerning any of his activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned in the department or agency, or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties, or unless there is reason to believe that the civilian employee is engaged in outside activities or employment in conflict with his official duties.

(e) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the department or agency from advising any civilian employee or applicant of a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(f) To require or request, or attempt to require or request, any civilian employee of the United States serving in the department or agency, or any person applying for employment as a civilian employee in the executive branch of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

(g) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to support by personal endeavor or contribution of money or any other thing of value the nomination or the election of any person or group of persons to public office in the Government of the United States or of any State, district, Commonwealth, territory, or possession of the United States, or to attend any meeting held to promote or support the activities or undertakings of any political party of the United States or of any State, district, Commonwealth, territory, or possession of the United States.

(h) To coerce or attempt to coerce any civilian employee of the United States serving in the department or agency to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or to make donations to any institution or cause of any kind: *Provided, however,* That nothing contained in this subsection shall be construed to prohibit any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, from calling meetings and taking any action appropriate to afford any civilian employee of the United States the opportunity voluntarily to invest his earnings in bonds or other obligations or securities issued by the United States or any of its departments or agencies, or voluntarily to make donations to any institution or cause.

(i) To require or request, or to attempt to require or request, any civilian employee of the United States serving in the department or agency to diclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or thoose of any member of his family or household: *Provided, however,* That this subsection shall not apply to any civilian employee who has authority to make any final determination with respect to the tax or other liability of any person, corporation, or other legal entity to the United States, or claims which require expenditure of moneys of the United States: *Provided further, however,* That nothing contained in this subsection shall prohibit the Department of the Treasury or any other executive department or agency of the United States Government from requiring any civilian employee of the United States to make such reports as may be necessary or appropriate for the determination of his liability for taxes, traiffs, custom duties, or other obligations imposed by law.

(j) To require or request, or to attempt to require or request, any civilian employee of the United States embraced within the terms of the proviso in subsection (i) to disclose any items of his property, income, or other assets, source of income, or liabilities, or his personal or domestic expenditures or those of any member of his family or household other than specific items tending to indicate a conflict of interest in respect to the perfomance of any of the official duties to which he is or may be assigned.

(k) To require or request, or to attempt to

require or request, any civilian employee of the United States serving in the department or agency, who is under investigation for misconduct, to submit to interrogation which could lead to disciplinary action without the presence of counsel or other person of his choice, if he so requests: *Provided, however,* That a civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency may be accompanied only by a person of his choice who serves in the agency in which the employee serves, or by counsel who has been approved by the agency for access to the information involved.

(1) To discharge, discipline, demote, deny promotion to, relocate, reassign, or otherwise discriminate in regard to any term or condition of employment of, any civilian employee of the United States serving in the department or agency, or to threaten to commit any of such acts, by reason of the refusal or failure of such employee to submit to or comply with any requirement, request, or action made unlawful by this Act, or by reason of the exercise by such civilian employee of any right granted or secured by this Act.

SEC. 2. It shall be unlawful for any officer of the United States Civil Service Commission, or for any person acting or purporting to act under his authority, to do any of the following things:

(a) To require or request, or to attempt to require or request, any executive department or any executive agency of the United States Government, or any officer or employee serving in such department or agency, to violate any of the provisions of section 1 of this Act.

(b) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to submit to any interrogation or examination or to take any psychological test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters: *Provided, however,* That nothing contained in this subsection shall be construed to prevent a physician from eliciting such information or authorizing such tests in the diagnosis or treatment of any civilian employee or applicant where such physician deems such information necessary to enable him to determine whether or not such individual is suffering from mental illness: *Provided further, however,* That this determination shall be made in individual cases and not pursuant to general practice or regulation governing the examination of employees or applicants according to grade, agency, or duties: *Provided, further, however,* That nothing contained in this subsection shall be construed to prohibit an officer of the Civil Service Commission from advising any civilian employee or applicant on a specific charge of sexual misconduct made against that person, and affording him an opportunity to refute the charge.

(c) To require or request, or to attempt to require or request, any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any civilian employee of the United States serving in any department or agency of the United States Government, to take any polygraph test designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters.

SEC. 3. It shall be unlawful for any commissioned officer, as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, to require or request, or to attempt to require or request, any civilian employee of the executive branch of the United States Government under his authority or subject to his supervision to perform any of the acts or submit to any of the requirements made unlawful by section 1 of this Act.

SEC. 4. Whenever any officer of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, violates or threatens to violate any of the provisions of section 1, 2, or 3 of this Act, any civilian employee of the United States serving in any department or agency of the United States Government, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf of himself and others similarly situated, against the offending officer or person in the United States district court for the district in which the violation occurs or is threatened, or the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation. The Attorney General shall defend all officers or persons sued under this section who acted pursuant to an order, regulation, or directive, or who, in his opinion, did not willfully violate the provisions of this Act. Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation. With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1, 2, or 3 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional association made up in whole or in part of civilian employees of the United States and which has as one of its purposes dealing with departments, agencies, commissions, and independent agencies of the United States concerning the condition and terms of employment of such employees.

SEC. 5. (a) There is hereby established a Board on Employees' Rights (hereinafter referred to as the "Board"). The Board shall be composed of three members, appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member as chairman. No more than two members of the Board may be of the same political party. No member of the Board shall be an officer or employee of the United States Government.

(b) The term of office of each member of the Board shall be five years, except that (1) of those members first appointed, one shall serve for five years, one for three years, and one for one year, respectively, from the date of enactment of this Act, and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) Members of the Board shall be compensated at the rate of $75 a day for each day spent in the work of the Board, and shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from their usual places of residence, as authorized by section 5703 of title 5, United States Code.

(d) Two members shall constitute a quorum for the transaction of business.

(e) The Board may appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

(f) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

(g) The Board shall have the authority and duty to receive and investigate written complaints from or on behalf of any person claiming to be affected or aggrieved by any violation or threatened violation of this Act and to conduct a hearing on each such complaint. Within ten days after the receipt of any such complaint, the Board shall furnish notice of the time, place, and nature of the hearing thereon to all interested parties. The Board shall render its final decision with respect to any complaint within thirty days after the conclusion of its hearing thereon.

(h) Officers or representatives of any Federal employee organization in any degree concerned with employment of the category in which any alleged violation of this Act occurred or is threatened shall be given an opportunity to participate in each hearing conducted under this section, through submission of written data, views, or arguments, and in the discretion of the Board, with opportunity for oral presentation. Government employees called upon by any party or by any Federal employee organization to participate in any phase of any administrative or judicial proceeding under this section shall be free to do so without incurring travel cost or suffering loss in leave or pay; and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal in or because of their participation. Any periods of time spent by Government employees during such participation shall be held and considered to be Federal employment for all purposes.

(i) Insofar as consistent with the purposes of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, relating to the furnishing of notice and manner of conducing agency hearings, shall be applicable to hearings conducted by the Board under this section.

(j) If the Board shall determine after hearing that a violation of this Act has not occurred or is not threatened, the Board shall state its determination and notify all interested parties of such determination. Each such determination shall constitute a final decision of the Board for purposes of judicial review.

(k) If the Board shall determine that any violation of this Act has been committed or threatened by any civilian officer or employee of the United States, the Board shall immediately (1) issue and cause to be served on such officer or employee an order requiring such officer or employee to cease and desist from the unlawful act or practice which constitutes a violation, (2) endeavor

to eliminate any such unlawful act or practice by informal methods of conference, conciliation, and persuasion, and (3) may—

(A) (1) in the case of the first offense by any civilian officer or employee of the United States, other than any officer appointed by the President, by and with the advice and consent of the Senate, issue an official reprimand against such officer or employee or order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed fifteen days, and (ii) in the case of a second or subsequent offense by any such officer or employee, order the suspension without pay of such officer or employee from the position or office held by him for a period of not to exceed thirty days or order the removal of such officer or employee from such position or office; and

(B) in the case of any offense by any officer appointed by the President, by and with the advice and consent of the Senate, transmit a report concerning such violation to the President and the Congress.

(l) If the Board shall determine that any violation of this Act has been committed or threatened by any officer of any of the Armed Forces of the United States, or any person purporting to act under authority conferred by such officer, the Board shall (1) submit a report thereon to the President, the Congress, and the Secretary of the military department concerned, (2) endeavor to eliminate any unlawful act or practice which constitutes such a violation by informal methods of conference, conciliation, and persuasion, and (3) refer its determination and the record in the case to any person authorized to convene general courts-martial under section 822 (article 22) of title 10, United States Code. Thereupon such person shall take immediate steps to dispose of the matter under chapter 47 of title 10, United States Code (Uniform Code of Military Justice).

(m) Any party aggrieved by any final determination or order of the Board may institute, in the district court of the United States for the judicial district wherein the violation or threatened violation of this Act occurred, or in the United States District Court for the District of Columbia, a civil action for the review of such determination or order. In any such action, the court shall have jurisdiction to (1) affirm, modify, or set aside any determination or order made by the Board which is under review, or (2) require the Board to make any determination or order which it is authorized to make under subsection (k), but which it has refused to make. The reviewing court shall set aside any finding, conclusion, determination, or order of the Board as to which complaint is made which is unsupported by substantial evidence on the record considered as a whole.

(n) The Board shall submit, not later than March 31 of each year, to the Senate and House of Representatives, respectively, a report on its activities under this section during the immediately preceding calendar year, including a statement concerning the nature of all complaints filed with it, its determinations and orders resulting from hearings thereon, and the names of all officers or employees of the United States with respect to whom any penalties have been imposed under this section.

(o) There are authorized to be appropriated sums necessary, not in excess of $100,000, to carry out the provisions of this section.

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

SEC. 7. No civilian employee of the United States serving in the Central Intelligence Agency or the National Security Agency, and no individual or organization acting in behalf of such employee, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency one hundred and twenty days from the date of such complaint to prevent the threatened violation or to redress the actual violation: *Provided, however,* That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under section 403(c), of title 50, United States Code, and any authorities available to the National Security Agency under section 833 of title 50, United States Code, to terminate the employment of any employee.

SEC. 8. Nothing in this Act shall be construed to affect in any way the authority of the Directors of the Central Intelligence Agency or the National Security Agency to protect or withhold information pursuant to statute or executive order. The personal certification by the Director of the agency that disclosure of any information is inconsistent with the provision of any statute or Executive order shall be conclusive and no such information shall be admissible in evidence in any interrogation under section 1(k) or in any civil action under section 4 or in any proceeding or civil action under section 5.

SEC. 9. This Act shall not be applicable to the Federal Bureau of Investigation.

SEC. 10. Nothing contained in sections 4 and 5 shall be construed to prevent establishment of department and agency grievance procedures to enforce this Act, but the existence of such procedures shall not preclude any applicant or employee from pursuing the remedies established by this Act or any other remedies provided by law: *Provided, however,* That if under the procedures established, the employee or applicant has obtained complete protection against threatened violations or complete redress for violations, such action may be pleaded in bar in the United States district court or in proceedings before the Board on Employee Rights: *And provided further,* That if an employee elects to seek a remedy under either section 4 or section 5, he waives his right to proceed by an independent action under the remaining section.

SEC. 11. If any provision of this Act or the application of any provision to any person or circumstance shall be held invalid, the remainder of ths Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Mr. ERVIN. Mr. President, I ask unanimous consent that the text of the bill and a statement prepared by me with respect to the bill be printed in the RECORD at this point.

There being no objection, the bill and the statement were ordered to be printed in the RECORD, as follows:

Mr. ERVIN. Mr. President, over the past decade I have taken the floor many times to urge passage of legislation to insure that the privacy of federal employees is respected and protected. My colleagues here in the Senate have been unstinting in their support of my efforts. They have repeatedly approved, usually by unanimous votes, the Federal Employee Privacy Bill—also known as the "Federal Employees Bill of Rights"—which was again passed by the Senate this afternoon as S. 1688.

I am gratified by the Senate's renewed unanimous approval of these privacy-protective measures. It is now up to the House of Representatives to vote on this legislation which heretofore has languished and died in the House Post Office and Civil Service Committee. This year I understand that, through the good efforts of Representative Waldie and his colleagues on the House Retirement and Employee Benefits Subcommittee, who have recently held hearings on this legislation, there is a good chance that the Federal Employee Privacy Bill will at last be reported out for a vote on the House floor. I urge my friends in the House of Representatives to consider favorably this federal employee privacy legislation, which the Senate has so often approved in the past.

I have been impressed in recent days by the broad bipartisan support for seeking ways to assure individual Americans of their right to privacy. Everywhere I turn these days I am pleased to see new evidence of this bipartisan determination to protect individual privacy from unwarranted governmental interference. Forty-four Senators, on both sides of the aisle, have joined me in cosponsoring S. 1688, the Federal Employee Privacy Bill.

On another front in the fight to protect individual privacy, Senators of both political parties, as well as the Justice Department, are currently cooperating in drawing up legislation designed to protect the privacy of individuals who may be the subjects of criminal justice information systems. As Chairman of the Constitutional Rights Subcommittee, I am in the process of chairing hearings regarding this important privacy legislation. I am particularly impressed by the broad areas of agreement among virtually all interested parties that more effective constraints on the unwarranted collection, storage and dissemination of criminal justice information are needed now.

Moreover, the President's recent Address on Privacy underscores the Administration's comitment to the protection of individual privacy as "the most basic of all individual rights." The President concluded his address with a statement in which I emphatically concur:

"In the first half of this century, Mr. Justice Brandeis called privacy the 'right most valued by civilized men.' In the last half of this century, we must also make it the right that is most protected."

I look forward to the "direct enforceable measures" which the President has promised as the fruits of this concern about individual privacy.

The passage of the Federal Employee Privacy Bill by the Senate today is further evidence of this broad bipartisan support for the protection of individual privacy. I urge both Democratic and Republican Members of the House of Representatives, as well as the President to join the Senate in taking positive privacy protective action by seeing that this legislation designed to protect the privacy of government servants becomes law.

The need for this legislation is greater now than ever before. The report on the Federal Employee Privacy Bill (S. 1688), which I filed earlier this week, outlines in great detail the kinds of abuses and invasions of privacy which the federal employee privacy legislation is designed to prevent. Let me take just a moment now to share with you some of the additional threats to individual privacy which federal employees have brought to my attention in the past few weeks.

One instance involves some constituents of mine down in Durham, North Carolina.

They are data processing, administrative and clerical personnel (GS–4 through GS–13) who work for the Environmental Protection Agency in the Data Systems and Procurement Management Divisions. Early this year twenty or more of these folks received a notice that "your position has been identified as one requiring a post-appointment full field investigation." They were instructed to complete, in triplicate, Form 86, "Security Investigation Data for Sensitive Position," as well as Form 87, the FBI fingerprint form.

Now, as Mr. Huston Blair of Durham, North Carolina, who informed me of this matter, pointed out, none of these twenty data processing, administrative and clerical workers were in any way involved in matters affecting the national security. Nor did they hold positions classified as sensitive. It sounded to Huston Blair, and it sounds to me, like unnecessary government snooping into the private lives of its employees.

I asked the Environmental Protection Agency to look into the matter and explain to me why these twenty civil servants down in North Carolina should be required to provide, on pain of criminal penalties, personal information about themselves, members of their families (living and dead) and their associations, so that their "character and honesty" can be evaluated. The Environmental Protection Agency replied that these so-called "security investigations" of people in non-sensitive clerical and administrative positions were standard operating procedures "consistent with policies of other regulatory agencies."

In addition, within the past few days I learned about some secret files kept by all supervisors of Air Force civilian employees. The Air Force Regulation under which the files were established describes them as containing "a record of the employee's conduct, performance evaluations, reprimands, commendations, debts, and complaints that may be necessary and useful in making and supporting decisions of work assignments." This regulation further provides that "an employee has no right to see" his record. On the other hand, his record must be available "for easy review by CPO [Central Personnel Office] representatives, higher level supervisors, and others authorized to make such a review." An Air Force civilian employee has described to me some of his difficulties in trying to find out about what he describes as "derogatory and libelous information about me, my personal life and medical history," which has been made a part of this secret file.

I have also been reading recently about revised instructions for preparing and submitting "Minority Group Designator data," as well as revisions of Agency Personnel Management Evaluation Systems which are to incluude various reports, evaluations and "personnel questionnaire surveys." Now, I do not yet know precisely what all these plans and changes mean for the privacy of federal employees. But these changes do demonstrate the fact that without the enactment of federal employee privacy legislation, the possibilities for increasing intrusions into the private lives of federal employees are unlimited.

In speaking about "government bureaucracies [which] seem to thrive on collecting additional information," President Nixon called, in his Address on Privacy, for "reasonable limits on what is collected and how it is used." I submit that Presidential support for the Federal Employee Privacy Bill, which has just passed the Senate, is perhaps the most appropriate way I can think of for him to begin setting these reasonable limits on governmental intrusion into people's private lives.

It is said that charity begins at home. I think that is where privacy begins, too. I hope that the President will see fit to begin his promised privacy protective measures right here in the Executive Branch, with statutory protections for the privacy of his own people, the millions of federal employees whose privacy is invaded perhaps more ruthlessly than any other Americans.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, what is the pending matter before the Senate?

The PRESIDING OFFICER. There is no matter pending before the Senate at this point.

HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 669, S. 3066, so that it may become the pending business, and that no time be consumed on the bill today.

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

The second assistant legislative clerk read as follows:

A bill (S. 3066) to consolidate, simplify, and improve laws relative to housing and housing assistance, to provide Federal assistance in support of community development activities, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. ROBERT C. BYRD. Mr. President, under the agreement previously entered into, I ask the Chair whether the amendments to be offered by the Senator from New York (Mr. JAVITS), which are specified in the agreement, would be in order regardless of their germaneness.

The PRESIDING OFFICER. Under the precedents of the Senate, named amendments under a unanimous-consent agreement would not have to be germane.

Mr. ROBERT C. BYRD. I thank the Chair. That was my intention in propounding the request.

So that there will be no question about it, I ask unanimous consent that those amendments by Mr. JAVITS be in order, regardless of their germaneness.

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

ORDER FOR ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10:30 a.m. tomorrow.

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

AUTHORITY FOR STAFF MEMBERS TO RECEIVE BILLS, RESOLUTIONS, AND AMENDMENTS AT THE DESK WHEN SIGNED AND PRESENTED BY A SENATOR DURING THE REMAINDER OF THIS CONGRESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the remainder of this Congress it be in order for the proper members of the staff to receive bills, resolutions, and amendments at the desk when signed and presented by a Senator at any time during the day of a session of the Senate when no question is raised thereon, and that in accordance with the rules, it be in order to refer them to the appropriate committee or to refer the amendments, or order them printed and to lie on the table, as requested by the said Senator.

May I say to the Senator from Texas that this request has been cleared earlier today with the leadership on his side of the aisle.

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 5 minutes.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. BARTLETT) laid before the Senate the following letters, which were referred as indicated:

REPORT OF DEPARTMENT OF NAVY

A letter from the Secretary of the Navy, transmitting a report of the facts concerning action pertaining to the Fleet Missile Systems Analysis and Evaluation Group, Corona, California (with an accompanying report). Referred to the Committee on Armed Services.

PROPOSED LEGISLATION OF SMALL BUSINESS ADMINISTRATION

A letter from the Administrator, United States Small Business Administration, transmitting a draft of proposed legislation to clarify the authority of the Small Business Administration, and for other purposes (with an accompanying paper). Referred to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION BY FEDERAL ENERGY OFFICE

A letter from the Administrator, Federal Energy Office, transmitting a draft of proposed legislation to provide for the labeling of major appliances and motor vehicles to promote and effect energy conservation, and for other purposes (with an accompanying paper). Referred to the Committee on Commerce.

REPORT OF HIGHWAY TRUST FUND

A letter from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, the eighteenth annual report on the financial condition and results of the operations of the Highway Trust Fund dated June 30, 1973 (with an accompanying report). Referred to the Committe on Finance.

REPORT OF OVERSEAS PRIVATE INVESTMENT CORPORATION

A letter from the President, Overseas Private Investment Company, transmitting, pursuant to law, a report on "Possibilities of Transferring OPIC Programs to the Private Sector" (with an accompanying report). Referred to the Committee on Foreign Relations.

PROPOSED LEGISLATION BY DEPARTMENT OF STATE

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting a draft of proposed leg-

In conclusion, Mr. President, I would add that the purpose of the bill I introduce today is to protect the privacy and first amendment rights of all Americans. While the bill would not affect law enforcement or State or local governments, it would prohibit the compelling of Americans to submit to polygraphs in order to obtain or to hold a job in the Federal Government or in industries whose activities affect interstate commerce. The wealth of considered opinion on the unreliability of lie detectors and the unfairness of permitting them to be used as a test of employment has persuaded me that the time has now come for Congress to express itself against their use.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2836

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. It shall be unlawful for any officer or employee of any executive department or agency or any individual acting under the authority of such officer and employee to do the following:

(a) to require or request, or to attempt to require or request, any officer or employee of the United States, or any individual applying for employment as an officer or employee of the United States, to take any polygraph test in connection with his services or duties as such officer or employee, or in connection with such individual's application for employment;

(b) to deny employment to any individual, or to discharge discipline, or deny promotion to any officer or employee of the United States, or to threaten to commit any such act by reason of his refusal or failure to submit to such requirement or request.

SEC. 2. It shall be unlawful for any person engaged in any business or other activity in or affecting interstate commerce, or any individual acting under the authority of such person to do the following:

(a) to require or request, or to attempt to require or request any officer or employee employed by such person or any individual applying for employment in connection with such business or activity to take any polygraph test in connection with his services or duties or in connection with his application for employment.

(b) to deny employment to any individual, or to discharge, discipline, or deny promotion to any officer or employee employed in connection with such business or activity, or to threaten to commit such act by reason of his refusal or failure to submit to such requirement or request.

SEC. 3. Whoever willfully violates or willfully attempts to violate any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

SEC. 4. (a) Whenever—

(1) any officer or employee of any executive department or any executive agency of the United States Government, or any person acting or purporting to act under his authority, or

(2) any commissioned officer as defined in section 101 of title 10, United States Code, or any member of the Armed Forces acting or purporting to act under his authority, or

(3) any person engaged in any business or other activity in or affecting interstate commerce, or any individual acting under the authority of such person.

violates or threatens to violate any of the provisions of section 1 or 2 of this Act, any employee or officer of the United States, or any person applying for employment in the executive branch of the United States Government, or any person seeking to establish civil service status or eligibility for employment in the executive branch of the United States Government, or any individual applying for employment in connection with any business or activity engaged in or affecting interstate commerce, or any employee or officer employed by a person engaged in such business or activity, who is affected or aggrieved by the violation or threatened violation, may bring a civil action in his own behalf or in behalf of himself and others similarly situated, against the offending officer or employee or person in the United States District Court for the district in which the violation occurs or is threatened, or for the district in which the offending officer or person is found, or in the United States District Court for the District of Columbia, to prevent the threatened violation or to obtain redress against the consequences of the violation.

(b) Such United States district court shall have jurisdiction to try and determine such civil action irrespective of the actuality or amount of pecuniary injury done or threatened, and without regard to whether the aggrieved party shall have exhausted any administrative remedies that may be provided by law, and to issue such restraining order, interlocutory injunction, permanent injunction, or mandatory injunction, or enter such other judgment or decree as may be necessary or appropriate to prevent the threatened violation, or to afford the plaintiff and others similarly situated complete relief against the consequences of the violation.

(c) With the written consent of any person affected or aggrieved by a violation or threatened violation of section 1 or 2 of this Act, any employee organization may bring such action on behalf of such person, or may intervene in such action. For the purposes of this section, employee organizations shall be construed to include any brotherhood, council, federation, organization, union, or professional organization made up in whole or in part of employees and which has as one of its purposes dealing with departments, agencies, commissions, independent agencies of the United States, or with businesses and industries engaged in or affecting interstate commerce, concerning the conditions and terms of employment of such employees.

By Mr. HART (for himself, Mr. HUGH SCOTT, Mr. CASE, and Mr. CLARK):

S. 2837. A bill to regulate the interstate and foreign commerce trading of futures contracts in order to prevent unfair and deceptive acts and practices. Referred to the Committee on Agriculture and Forestry.

FUTURES EXCHANGE ACT

Mr. HART. Mr. President, today, with Senators HUGH SCOTT, Republican of Pennsylvania, CLIFFORD CASE, Republican of New Jersey, and DICK CLARK, Democrat of Iowa, I am introducing a comprehensive bill to regulate the trading of futures contracts. Senator HUMPHREY and Senator MCGOVERN previously introduced bills to strengthen regulation of futures contracts as did some Members of the House. It is my hope that all our efforts soon will result in action in this important field.

To the uninitiated, futures contracts are mystifying. They are simple in theory but complex in fact. Basically a futures contract is an agreement to buy or sell a good, service or intangible for delivery in the future. The contract is verbal only. It is traded on an exchange much like a stock. The contract terms are set forth in the rules and regulations of the exchange on which it is traded. A person who wants to buy or sell a futures contract places an order with a broker, who may sell stocks as well as futures. The order then is executed by a floor broker on one of the exchanges where the particular contract is traded. There are 13 active futures exchanges which, for the most part, trade different contracts.

The exchange rules state the quantity, quality and delivery places of the underlying good, service or intangible which is covered by a contract. Despite the fact that futures contracts provide for delivery, such delivery takes place less than 3 percent of the time. Futures contracts, then, are not a device to buy or sell products, but rather a paper transaction that various commercial interests claim they use to hedge against fluctuations in prices. Others who have no direct interest in the product also trade futures contracts in the hope of making a profit. They are called speculators.

Futures contracts are traded on a variety of things. Included are such agricultural commodities as cotton, corn, soybeans and wheat and food products produced primarily outside the United States such as cocoa, sugar, and coffee. Nonagricultural products also are involved, such as plywood, propane, silver and various moneys, for example, Japanese yen, British pound, deutsche mark, U.S. silver coins. It recently has been announced that trading will commence in ship charters and is being considered on home mortgages and petroleum. Trading has grown enormously. In 1972 the volume of trading was almost $400 billion. In 1973 it is expected to be $500 billion. In 1969 it was $81 billion.

The price of futures contracts potentially affects everyone for they serve as a basis for producer, middleman and consumer prices. For example, when a farmer brings his grain to the country elevator operator for sale, the country evelator often will pay the farmer based on the futures price, less charges for handling, storage, and transportation. A company selling flour to a baker to be delivered some months hence, will often contract with the baker at the futures price for wheat for the month nearest delivery time plus or minus a differential for processing and other costs. As the futures price is referred to in the various stages of processing, the price to the ultimate consumer in influenced by the futures price.

Commercial interests claim that they use futures contracts to shift the risk of price fluctuations to the speculator. They contend that without futures contracts consumers would have to bear the risk in the form of higher prices. This is the economic justification given for the existence of futures markets. Some people contend futures trading is merely legalized gambling. In any case, it appears futures trading is here to stay. Thus it is crucial that it be adequately regulated.

Presently, there is a law—the Commodity Exchange Act—which regulates

specifically listed commodities. It is administered by the Department of Agriculture's Commodity Exchange Authority. The act does not apply to most nonagricultural products such as money and plywood or to those products grown outside the United States like sugar, coffee and cocoa or the anticipated contracts in home mortgages and petroleum. In 1972 over $130 billion in futures contracts—or 80 percent of the total—were completely unregulated.

The attention of Congress and the press has focused on futures contracts in the past several months because of the volatility of the markets and rising food costs. Well-publicized is the fact that the soybean price rose about $3.30 to $12.90 a bushel and has settled at around $6 today. Corn and wheat also had gigantic price rises as did cocoa—which more than doubled. The causes of the volatility of the futures markets, some claim, were a lax Commodity Exchange Authority, the Russian wheat deal, manipulation of the markets by giant grain companies, excessive speculation, or all of those things. Others say merely the the markets reflected supply and demand. To me, the cause is unclear. What is important is that the wild fluctuations of those markets brought them to the public's attention. For the first time many people became aware of futures markets—and aware when the CEA was referred to, it did not necessarily mean the Council of Economic Advisors, but might mean the Commodity Exchange Authority.

Scrutiny of the futures market revealed many disturbing things—

First. Many contracts involving products essential to our well being were completely unregulated.

Second. Contracts that were regulated were under the jurisdiction of the Department of Agriculture although farmers seldom trade in futures and although futures contracts are much more like an insurance policy or a security than they are a sale of agricultural commodities.

Third. The Commodity Exchange Authority lacks sufficient personnel, money and legislative authority adequately to regulate the markets.

These conditions invite abuse of the markets.

The ideal market is one which reflects economic factors—supply, demand, financial conditions, and in the case of agricultural products, weather conditions, and crop failures. An ideal market is one not subject to manipulation by giant corporations or unscrupulous individuals. The thrust of this bill is to prevent any form of distortion of the markets so that they may function freely.

To date, much of the regulation has been left to the exchanges. While, indeed, some of the exchanges must be complimented on their self-regulation, one cannot expect those trading in this market to police themselves as diligently as is necessary. It is difficult to act both as the law enforcer and the accused.

Certainly, day-to-day operations of the exchange should be left to the exchanges. So should certain functions—like the setting of margins—with which the exchange may be more intimately acquainted than a Federal agency.

However, a Federal agency should have broad supervisory powers over an exchange, even as to something like margins. It is conceivable that an exchange might set a margin at 1 percent or 2 percent, a figure, I think, everyone would agree is too low. In such a situation, the Federal Government should have power to change the margin. Thus, while various sections of the bill give the exchange power to make rules and regulations regarding many functions of the exchange, section 202 provides that the Commission may modify rules of the exchange, after hearings and findings supported by those hearings. Basically, this bill gives the initial decisionmaking power to the exchange, with oversight power in the Commission.

The bill I introduce today, as those introduced by Senators HUMPHREY and MCGOVERN, sets up an independent agency to regulate trading of futures contracts. This is essential for several reasons. First, some futures contracts cover products, services, and intangibles, which are not agricultural in nature. Second, a futures contract does not relate directly to the underlying product but rather is more like insurance or a security. Third, this is an industry which has grown to a half a trillion dollars in volume—a size which would seem to make it merit a special agency to deal with its problems. Fourth, not only is the volume of trading large, but a fair market is essential to reasonable consumer prices.

This bill differs from those which have been introduced in the Senate in several significant ways:

First. It is a comprehensive bill. Rather than amending the Commodity Exchange Act, which has been amended 18 times and is now almost incomprehensible, this bill begins anew. While this may cause some members of the industry to feel insecure, surely if we are trying to improve the law it should be put into modern intelligible language. Those parts of the Commodity Exchange Act which are still relevant to the trading of futures contracts are incorporated in the bill.

Second. It requires exporters and importers to report to the Commission information relating to the initiation, completion or termination of negotiations for exports or imports. The purpose is to keep the Commission informed of the size of exports or imports so that if the amount is so substantial that it may cause a chaotic market the Commission may take action in the public interest. This provision is aimed at preventing the feverish trading—and distorted prices—which followed announcement of the Russian grain sale.

Third. It requires the clearinghouse or the exchange to make a daily record showing the time of each trade, the contract, the price, the delivery month, and the name of the trader. While some exchanges make part of this information available, none of them identify the trader because the broker is not required to give the name of the trader to the exchange. This bill requires him to do so. Certainly a case can be made that the name of the trader should not be made public, or else other traders might take unfair advantage of such information. However, it seems essential that the name of the trader, along with the other information required, be available to the Commission. This would allow the Commission to examine who had made what transactions during a given day and might well alert it to a potential manipulation of the market.

Fourth. The bill forbids foreign traders from trading on American futures markets unless they post a surety bond which will be forfeited if they refuse to submit to the jurisdiction of the courts, the Commission or an exchange. Recently, increasing numbers of foreign individuals and companies have begun to trade on U.S. futures markets. If those companies do not do business in the United States, there is no way to obtain jurisdiction over them should they violate a law of the United States. This provision would insure that they submit to the jurisdiction of U.S. authorities or forfeit a sum of money.

Fifth. The bill requires that a broker only take orders from persons he has reasonable grounds to believe are financially suited to deal in futures contracts and who sign a statement indicating that they understand the high probability of loss. Similarly, it requires advertisements and promotional literature to state that the trading of futures contracts is highly speculative. Studies indicate that futures trading is highly hazardous. These provisions would discourage anyone from dealing in futures contracts unless they are financially able to do so. This protects both the potential trader and the marketplace by keeping those out of it who are not financially able to meet its obligations.

Sixth. This bill requires that all persons who deal with the public—brokers, salesmen and investment advisers—and contract analysts, take examinations to demonstrate an understanding of the futures market. This should protect the public and the market from uninformed traders so the marketplace should function better.

Seventh. It prohibits any person from engaging in unfair and deceptive practices. Some are defined in this bill. This provision was made broad so that the Commission, either by rule or in court, would have the power to prohibit unfair and deceptive schemes as they are devised.

Eighth. It prevents the fixing of Commission rates. In the past, members of exchanges have price-fixed the amount of commission rates. This practice is being challenged in a suit by the Department of Justice. It also was challenged in some private suits which have been settled and would phase out one of the three types of commissions in 4 years. This provision goes further and makes price-fixing of all commissions illegal, which would seem in accordance with the antitrust laws.

Ninth. It permits the Commission to make exceptions for so-called world contracts—products which are produced primarily outside the United States and traded on foreign and U.S. exchanges. Exchanges trading such products contend they need certain exceptions. If this

automatically accepted the concluding sentence "Consider him a security risk."

But the most disturbing statement in the Gailes' report is that his failure to show "much response" to incriminating (relevant) questions may indicate "guilt" for in other reports too much response is said to indicate guilt. In short, it would seem that employees were termed security risks equally for giving too little response or too much response to relevant questions.

Fortunately for Gailes—and nine other individuals who also "failed" their polygraph tests and were discharged—the trial examiner ordered the company to offer them "immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority of other rights and privileges" and full back pay.

However, a woman in Idaho was not as fortunate in her experience with a polygraph examination. She was fired from her job for refusing to submit to the test. Since then, in addition to being unable to find another job, she has also been denied unemployment insurance benefits because the State department of employment considers her refusal to take the test "insubordination" and "noncompliance" with company policy. In appealing the ruling denying her unemployment benefits on the basis of her "misconduct"—refusing to submit to the polygraph test—wrote:

When I agreed to work at the store, I was faced with the choice of starvation or submission to the polygraph examination. I much prefer to work instead of being supported by the government. However, I refuse to be taken advantage of. When I began to work, I did not know the polygraph examination included questions personal and in many instances unrelated to employment. The test including giving the examiner an itemized list of my bills and expenses per month. It also included questioning work habits and ethics of other employees—a practice I consider highly unethical. There were also questions of a legal nature—have you ever written a bad check? Do you use marijuana or narcotics? Have you ever driven while drunk?

Of course, I was recommended for employment at the conclusion of the test; but having experience a polygraph examination, I decided that starvation is better than submitting to personal probes of circumstances unrelated to employment. I feel it was demoralizing and a definite infringement of my rights. I believe an employee should not be coerced into giving personal information to an employer for the sake of being able to work for him.

After learning what the polygraph examination involved, I would have been exceedingly stupid to consent to another examination of this sort—especially under an implied accusation concerning a shortage of money in the store.

You determined that my unemployment is due to "having been discharged for misconduct in connection with the employment." Misconduct is defined in Webster's Dictionary as "improper or illegal conduct." I really can't understand how my refusal to publicize personal information can be construed as "improper conduct." I would think instead that being asked to reveal this information is "improper conduct."

I am angered that retaining a job requires the sacrifice of principles and a willingness to reveal personal information. It it especially disappointing that my employer should state that I was "an honest and dependable employee" and say that he found that I went out of my way to do a very good job in the store—and yet fire me.

The statement to which she referred was a recommendation given her by her immediate supervisor. He wrote:

She was released for refusing to take a polygraph examination. The examination is a company policy and if a person refuses to take it then [the Company] will no longer let them continue employment.

[The woman] refused the exam because of personal principles and not because of dishonesty.

It is my personal opinion that [the woman] was an honest and dependable employee.

Mr. President, in my opinion, a law-abiding person seeking a job should not be coerced by means of a lie detector to reveal personal information against his will. I am not questioning the right of an employer to hire whomever he feels would be the best candidate for a position or to dismiss an employee for cause. However, traditional employment screening procedures provide companies with ample access to sources of information on individuals without sacrificing the constitutional rights of all employees or applicants because of the transgressions of a few.

If an individual chooses not to respond to reasonable questions in a traditional employment interview and to provide proper information to facilitate inquiries about himself, then, of course, he should not be hired. Business must be able to protect itself. Yet, in this, as in other areas, expediency must not be permitted to negate the liberties of all Americans. Our rights should never be measured on a dollar-and-cents basis.

Recently I received a sampling of polygraph reports from the President of a large midwestern company which were intended to demonstrate how valuable the tests are in effective employee screening programs. In describing the results of the polygraph examinations he wrote:

In practically every one of these cases the man involved was, from appearances, most acceptable, and it was only after a revelation of his past history that we could make a valid decision about his possibilities as an employee.

You will notice that in all of these instances our decision was made on the evidence that the man himself gave. We did not condemn anyone because the machine or the examiner passed an opinion. The evidences here are based upon the statements made by the people being tested.

While these reports were sent to support the position that the polygraph was essential in employment, I submit that they may in fact show the opposite. If one discounts completely the evaluation of the examiner as to the subject's suitability or honesty, or the machine itself, the justification for its use evaporates.

Almost all of the case histories I received contained information pertaining to previous criminal activities. Many of the subjects had been arrested and convicted of varied offenses including glue sniffing, driving while intoxicated, selling drugs, rape, and armed robbery.

Several of the subjects had medical problems which would have prevented them from performing the duties of the position for which they were applying.

Some had poor work records.

Several had taken merchandise or money from previous employers.

A few were regular users of narcotics.

Since, in most instances such information is readily revealed and verified by traditional employment procedures, the polygraph is not essential in ferreting out this information.

Yet, these polygraph reports also contain a wealth of extraneous information unrelated to employment such as:

He was arrested once for sniffing glue at the age of 13 or 14 and remanded to his mother's custody.

The subject states that he had received a total of fifty cents in tips while working for [a Company].

Subject has approximately $158 in fixed monthly bills of which $93 is his car payment. His just purchased his car last week and the first payment is due on 10/20/72.

Subject was arrested in 6/71, he loaned his vehicle to an unlicensed drive (sic) who was involved in a car accident, released on bond. Charges dropped . . .

Subject stated that between the age of 12 and 15, he occasionally shoplifted magazines, candy bars.

Subject has approximately $268 in fixed monthly bills, all current. His wife is employed and has a monthly income of $450 gross.

At the age of 13, subject was kicked in the genitals (involved in a fight) which resulted in some swelling. Subject has never seen a doctor for this and states no residual problem.

If this information is irrelevant, why collect it? Why report it? One answer is that irrelevant questions are required in order to establish reaction patterns for the relevant questions. However, I must admit that I can see no justification for this line of personal inquiry. It is scarcely compatible with the rights of privacy guaranteed our citizens.

And finally, what uses will be made of a polygraph report? In this computer age, every detail acquired from such investigations about a person's life, habits, attitudes, and beliefs can be made available in seconds. Therefore, it is more important than ever that the individual be assured that information conveyed about him be correct, current, and relevant to the decisions being made about him.

I was particularly disturbed to see that a carbon copy of one of the "confidential reports I received was sent to a private detective agency. Who else receives the information from polygraph reports? Do polygraph companies pool their information? If the judgment and evaluations of the polygraph examiner is made part of an indiivdual's personnel file, will it then find its way into credit files and the like?

These are not idle concerns. In view of the proliferation of the use of the polygraph, and other truth detection devices such as the Psychological Stress Evaluator (PSE) and "wiggle seat," we should all be concerned about the use of machines which compel people to reveal their innermost thoughts about their most personal matters in order to obtain employment.

The legislatures of our land have begun to express themselves against the use of such machines. To a varying degree 13 States prohibit the use of polygraph tests in connection with application for employment or as a condition to continuation of employment. Of the remaining States, 15 required polygraph operators to be licensed.

fool for a client, so I hired an attorney. He obtained the Prosecutor's agreement to retest me, given the great disparity between the facts and the polygraph, on the single condition that they pick the operator to be used and that I stipulate that the exam could be introduced against me. They chose a man in New York City, whom I paid a rather substantial sum of money to fly to Seattle and give me the second test. He did, and, like the first polygraph operator, failed me.

It is extremely difficult to explain to anyone the mental conflict that goes on inside a person's mind when he is told by a machine that he lied when he knows he was telling the absolute truth. The conflict becomes even clearer when a second polygraph man, presumably one of the best in the nation, tells him the same thing. I was fortunate in that the objective facts were highly inconsistent with the opinion of the polygraph operators.

You would understand that if an attorney wished to smuggle contraband to a client in the City Jail, a very simple and absolutely fool-proof method exists: all he has to do is to go to the Jail and ask to see his client to confer, and his client is brought to a small interview room where he can speak with his client in absolute privacy with no bars or other impediments separating them. Any small item of contraband can be passed to the client in absolute safety as the clients are never searched by the Jail personnel on the way back to their cell. Therefore, if an attorney wished to smuggle a balloon filled with heroin to a client, a simple and secure method for so doing exists. On the other hand, it is standard procedure to screen every item of clothing, food, cigarettes, etc. that they receive for Jail inmates and so an attorney who gave cigarettes to a Jail matron for a Jail inmate, knowing there to be contraband inside the cigarettes, would know the chances of him being discovered and prosecuted were extremely high.

I asked my law partner to take the cigarettes to the Jail, knowing full well that he was going to deliver them to the matron. Therefore, if I had known there was contraband in the cigarettes. I would have known that I was going to be discovered and prosecuted. Thus, you can see the absurd conflict between the objective facts as to how the cigarettes were delivered and what the polygraph operators said I knew at the time the cigarettes left my office. They said that I knew there was heroin in the cigarette pack.

To shorten this story somewhat, after six-and-one-half months of waiting, my case was brought to trial and was tried for six days to a packed courtroom. The Prosecutor was allowed by the Court to introduce every shred of evidence that they could muster. I and my attorney had researched the polygraph and its operation and history with extreme thoroughness during the months intervening my being charged and the trial and were able to cross-examine the polygraph operators, one of whom you should remember is one of this country's most highly acclaimed operators, with such thoroughness that the inconsistencies and absurdities in the theories supporting the polygraph became crystal clear to everyone. These absurdities and inconsistencies were highlighted by our own case, which consisted of the objective facts surrounding the incident and an expert witness from the University of Washington Department of Physiopsychology, Dr. Hans Doerr.

Dr. Doerr is a professor in the University of Washington School of Medicine and is director of the school's Physiopsychology Laboratory. Physiopsychology, as you know, is the medical discipline that studies the relationship between psychology and physiology. In his research, Dr. Doerr uses sixteen extremely sophisticated polygraphs to measure physiological changes which occur in conjunction with psychological changes. Even with all of these polygraphs hooked up together and working on one individual, and assisted by amplifiers, filters, and computers to analyze results, Dr. Doerr testified that only a fool would say he could determine whether or not a person was telling the truth or not.

After hearing all the evidence, the Judge wasted little time in convicting my co-defendant, the individual who had brought the cigarettes into my office, and acquitting me, indicating that there was not the slightest shred of evidence against me, including the polygraph. Since that time, the Prosecutor's office has indicated to me that their confidence in the polygraph was so shaken by our defense in my case, that they have decided not to take polygraphs into consideration in deciding whether to file charges or not in the future; thus, it appears that in the future, others will not have to suffer as I did because of the pseudoscientific hocus pocus of the polygraph hucksters.

Another positive effect that my trial had was to education people in this area in a rather classic confrontation between objective facts and the polygraph, that the polygraph is indeed fallible and can do a great deal of damage.

I might mention that Dr. Doerr has become so interested in the use of the polygraph as a lie-detector, that he proposes to call a symposium of physiopsychologists from around the country in the near future to address themselves to just this question. I mention this because the product of this symposium might be of some use to you in gaining support for your Bill.

I apologize for taking so much of your time, but would again like to indicate my support and offer my assistence. If I can be of help to you in any way whatsoever, please do not hesitate to let me know. Anything I can do to prevent or minimize the damage and heartache the polygraph might cause to others, I will do. Thank you for your time.

Sincerely yours.

ROGER W. JOHNSON.

Mr. ERVIN. Mr. President, quite apart from the unreliability of the polygraph are the questions of necessity in employment situations, due process rights, and basic fair play. Industrial use of the polygraph both for preemployment screening and for on-going surveillance of its work force has become more widespread. A report by the Maritime Trades published in 1970 indicates that:

Industrial firms which use the polygraph run the gamut of America's economy.

Many use polygraphs in an attempt to halt the theft of such state and federally regulated products as narcotics and alcohol—hence, drug and liquor manufacturers, hospitals and even doctors' offices, are frequent clients for polygraph agencies.

Businesses such as electronic and chemical companies, which produce expense products and which are concerned about possible theft of material or industrial espionage, frequently employ "lie detector" firms or maintain their own staff of examiners.

Banks and investment firms, whose employees customarily handle large sums of money, have been among the more active users of polygraphs. So have mail order houses, discount shops, clothing and shoe stores, a leading restaurant chain, tobacco stores and supermarkets.

Use of polygraphs on a regular basis has been found among delivery companies and freight movers—where pilferage has been a common complaint for years. But the devices are found, as well, among copper refiners, steel producers, rubber manufacturers, food and oil processors and meat packers.

The American Polygraph Association estimates that one-fourth of all major corporations now use the polygraph with between 200,000 and 300,000 tests administered last year in the United States alone.

However, it remains to be shown that the use of polygraph tests actually "screens out potential thieves" or "keeps workers honest." The main value of the polygraph apparently is the psychological pressures it brings to bear upon an employee or applicant. Whether the machine actually works is irrelevant to whether the subject believes it works. That is why proponents of the polygraph are intent on preserving its image.

What is a prospective employee to do when confronted by a polygraph examination. If an employee refuses to submit to the test then he is automatically suspected of "hiding" something. If he submits he is faced with the burden of proving his "honesty" to the satisfaction of the examiner. What has happened to our cherished presumption of innocence?

For example, in a published decision of the NLRB in the Lone Star Co and General Drivers, Warehousemen, and Helpers Local Union No. 968 case—No. 23–CA–1563, November 13, 1964—the following polygraph report was the basis for firing an employee.

Subject Gailes has many, many gripes. Stated that his pay was too low, that he had to do too much work. States that he does not know just how much he is making per hour. States that he does not like the idea of having to leave his COD payments in a box to be counted by someone else the next day because he is being shorted. Stated that every pay day there is some taken out of his check because of errors in COD payments. States that the only way the company has been good to him is that when he had an emergency they loaned him some money. This person seemed very unhappy with the company. This person has taken the test about 5 or 6 times. He does not show much response to the relevant questions. There could be reasons for this: (1) he is completely innocent and therefore is unconcerned; (2) he has taken the test so many times that it does not bother him to lie which could be the reason; (3) he is the type of person who, because of his environment, has learned or been taught that stealing was not wrong and that everything that a person can get and get away with is theirs. There (sic) it is possible that a combination of things, his lack of concern for the test, and his guiltless feelings over stealing. Could be the reason for his lack of concern. Consider him a security risk.

Obviously the polygraph examiner rejected out of hand the possibility that Gailes was "completely innocent: of stealing from the company despite the lack of any evidence to the contrary. In assessing the conclusions of the polygraph report, the trial examiner said:

Of course the most striking thing about this report is the admission that Gailes might be "completely innocent" of any wrongdoing. But if he was not innocent, what had he done? The report does not say and it does not even speculate on what Gailes "might possibly" have done. There is no evidence, however, that Lone Star inquired of Truth Verification which explanation—innocent or guilty—seemed more probable or that it asked what Gailes had done if the "completely innocent" explanation appeared the less likely of the two. Instead, Lone Star

automatically when a person lies or tries to deceive. A polygraph is a machine which records one's physical response against the statements he makes. A pneumatic tube is placed around the subject's chest, a blood pressure cuff around his upper arm and sensors are attached to his palm or finger tips. The recording units track the subject's blood pressure and pulsations, his breathing patterns, and his galvanic skin responses on a continuous graph. The galvanic skin response or GSR is the amount of electric resistance in the skin which is affected by the subject's sweat gland activity.

The premise behind the use of the polygraph is the assumption that lying leads to conflict; conflict causes tension; this tension can be accurately recorded and measured by the polygraph; and the operator by studying these reactions can tell whether the subject is being deceptive or truthful. However, no regular relationship between lying and physical responses has yet been established.

What is recorded, therefore, is not the subject's veracity, but his physiological responses to the examiner's questions. The graphs recorded by the "lie detector" are worthless unless "interpreted" by the examiner.

In interpreting the results, the examiner makes personal judgment as to what may have produced a tension response. A tension response can be induced by fear, anxiety, love, hate, hostility, frustration, conflict, or physical discomfort as well as by guilt. A negative reaction can be caused by resentment at the impertinent questions being asked, but we must rely on the training of the examiner to decide whether the response indicates a lie. Furthermore, differences in heredity, environment and background will influence an individual's mental, emotional and motor behavior, further obscuring the reason for a tension reaction, or lack of reaction, during a polygraph examination.

Thus, the interpretation process is not the mechanical function which some would have us believe. The examiner interprets the recorded tension reactions based upon his subjective judgment concerning the subject's motivation, honesty, and reliability. Since another examiner can and frequently does reach an opposite conclusion after reviewing the same graph, this form of truth verification can hardly be called an exact science. In fact, I have likened it to 20th century witchcraft and I have seen no documentation to alter my view.

There are too many variables involved in polygraphy. There are too many subjective judgments required in polygraphy. Bear in mind that it is not the machine or some demonstrated scientific fact which determines that the subject is being deceptive. It is solely the examiner's interpretation of the readings. As such, the polygraph examination is quite different from the types of comparisons involved in fingerprint identifications, ballistic tests, or even blood-alcohol tests. The late J. Edgar Hoover rejected the idea that the polygraph was a "lie detector" and declared that—

Ninety percent of the polygraph's usefulness depends on the careful evaluation of the results by experienced examiners.

And even then certain categories can fool the most experienced operators: the brazen liar or hardened criminal; the dull-witted or "supercool"; or a person with no cultural belief about right or wrong. At the same time, an innocent, honest, introspective, sensitive person might register "deceptive" reactions because he is nervous or hostile to the test.

Nevertheless, proponents of the polygraph have made extravagant claims as to its value as a test of deception in routine uses. Attempts at proving the reliability of the polygraph as a lie detector have not sustained the virtual infallibility claims by its proponents.

First of all, independent tests to verify polygraph determinations are susceptible to the same criticism as the polygraph test itself. Such verification generally consists of having a group of polygraph examiners independently review selected cases to determine if the examining operator was correct in his judgment. Whether running the actual polygraph test or reviewing test results, each operator brings with him his own set of values, interpretation and methods of arriving at his conclusions. Therefore, any such study more accurately measures the extent of agreement or consistency among examiners and not whether the judgments are correct. Unfortunately it is possible to be both consistent and wrong.

Despite this criticism, the accuracy rates established during independent verification studies do not sustain the use of the polygraph as a lie detector. In 1965 the Department of Defense established a joint services group on a coordinated R. & D. program of lie detection research to study the reliability of the polygraph chart as the sole basis for judging deception. Their preliminary findings released on August 28, 1968, indicated a "reliability" rate between 30 and 93 percent depending upon the type of polygraph examination reviewed. It is interesting to note that during this same period of time the number of polygraph examinations given by the Defense Department in criminal cases dropped from 5,626 in 1965 to 1,445 in 1967.

However, even a 99-percent accuracy figure is of little comfort to an individual falsely accused as a result of "failing" a polygraph test. I received a letter from an attorney in Seattle who described the unreliability of polygraphs in terms of his own personal experience.

I ask unanimous consent to have his letter printed at this point in the RECORD.

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

SEATTLE, WASH.,
January 29, 1973.

Hon. SAM J. ERVIN,
U.S. Senate Old Senate Office Building, Washington, D.C.

DEAR SENATOR ERVIN: I happened to read in the January 13 issue of Business Week an article regarding pre-employment screening with polygraphs, and I noted that you are sponsoring a Bill to severely limit or prohibit the use of that device for screening job applicants. I would first like to applaud your efforts and indicate my strong support for the Bill, and secondly, relate to you an experience I recently had which will perhaps explain my attitude.

First, I am an attorney practicing here in Seattle, Washington. A large part of my practice consists of representing people accused of crimes. In April of 1972, I was representing a young woman incarcerated in the City Jail and charged with a felony. On April 15, her husband came into my office and asked if I might be going over to see his wife that afternoon. I indicated I hoped to, and he asked me if I would drop off some cigarettes for his wife. He tossed two sealed packages of cigarettes on my desk when I indicated I would do so. We talked for awhile about his wife's case and he opened one of the packs of cigarettes and smoked several cigarettes from it. Then he left.

After a bit, my partner came down to the office (it was Saturday) and asked what I was working on. We chatted briefly and he mentioned he was going over to the City Jail later that afternoon. I asked him to check with me before he went as I might be going over also and we could walk over together.

During the course of the afternoon, I smoked two or three cigarettes from the open pack that my client's husband had brought in. The other pack remained on my desk, sealed. Later, my partner came back into my office and asked if I was ready to go to the Jail. I told him I still had work to do and asked if he would drop the sealed pack of cigarettes off at the Jail for my client. He said he would leave them with the matron for the woman, and I said that would be fine. He left them with the matron, and during a routine check of the package of cigarettes, the matron discovered there was a small balloon of heroin inside.

When my partner and I learned of this, we cooperated with the police detectives in every way we could, explaining exactly what had happened, and indicating the name and identity of the person who brought the cigarettes into our office. Then the Prosecuting Attorney told us he would have to ask us to take a lie-detector test and would have to ask us to stipulate that it could be used against us if we failed it. We agreed, requesting only that he stipulate that if we passed the polygraph, there would be no charges filed. This he said he couldn't do. My partner and I agreed to their conditions and he took the test that evening. I was scheduled to take it the next day.

While my law partner was taking the test, I became somewhat angry that they had required him to go through this, especially considering that he had practiced in this community for better than 20 years and his reputation for integrity and honesty was unimpeached. The next day I told the Prosecutor that I would be more than happy to take their polygraph test and would stipulate that it be used against me if I failed it, but that they were going to have to stipulate that if I passed it there would be no charges filed. Again, they said they could not do that. I indicated to them that I knew they could do that because they had done that before with clients of mine, some of whom had long criminal records, and I thought that it was only fair that we be treated at least as well as they were willing to treat criminals with long records. They told me they couldn't do it, and I refused to take their test.

Later that day they offered me a non-stipulated test, pointing out that if I failed it, it couldn't hurt me or be used against me, and if I passed it, they made no promises that they wouldn't still file charges. I refused the non-stipulated test, and again told them the only kind of polygraph I would take was one where it was stipulated that if I failed it, it could be used against me and if I passed it, there would be no charges filed. Finally they agreed. I took the test, and the polygraph operator failed me. The following day I was charged with attempting to smuggle heroin into the City Jail.

It was at that point that I finally realized that the man who represents himself has a

By Mr. NELSON:

S. 2845. A bill to amend the Federal Food, Drug, and Cosmetic Act in order to protect consumers against food additives which have mutagenic or teratogenic effects on man or animals. Referred to the Committee on Labor and Public Welfare.

By Mr. HART (for himself, Mr. MAGNUSON, Mr. CHILES, and Mr. EASTLAND):

S. 2846. A bill to protect the flow of interstate commerce from unreasonable damage to environmental health by assuring an adequate supply of chlorine and other chemicals and substances which are necessary for safe drinking water and for waste water treatment. Referred to the Committee on Commerce, by unanimous consent.

By Mr. BAYH:

S. 2847. A bill for the relief of Barbara Olivia York. Referred to the Committee on the Judiciary.

By Mr. HATFIELD (for himself, Mr. HUGHES, Mr. DOMENICI, Mr. HANSEN, Mr. NUNN, Mr. JOHNSTON, Mr. ALLEN, Mr. FANNIN, Mr. STENNIS, Mr. BARTLETT, Mr. CHILES, and Mr. RANDOLPH):

S.J. Res. 183. Original joint resolution to proclaim April 30, 1974, as a National Day for Humiliation, Fasting, and Prayer. Considered and passed.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ERVIN:

S. 2836. A bill to protect the constitutional rights of citizens of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of the polygraph for certain purposes. Referred to the Committee on the Judiciary.

Mr. ERVIN. Mr. President, on June 24, 1971, I introduced S. 2156, a bill to protect the American people against the invasion of their privacy through the use of the polygraph. Today I reintroduce this measure.

The technological era is not one of unmixed blessings. We all can take great pride in our American ingenuity which has made the United States the world's greatest industrial Nation. However, only recently have we awakened to the dangers of permitting expediency to dictate the course of our economic and social progress. Our great industrial and technological revolution has been not only at the expense of the quality of the air we breathe and water and food we consume, but at the expense of the uniqueness and dignity of all of us as individuals.

I refer specifically to the trend to use this new technology to promote controversial behavioral science theories which are supposed to help us obtain and measure truth. One such theory which has found currency in the employment field is that if one can only acquire sufficient information in advance on an individual, then one can predict and control behavior, so "truth verification" devices have been developed. The most widely used device is the polygraph or so-called lie detector.

Increasingly, traditional employment practices are being abandoned in favor of polygraph examinations. This instrument is being used to determine the fitness of individuals for employment, for promotion, for dealing with security information, or to determine ethical misconduct or violations of personnel regulations. And they are being used despite the fact that there is no clear scientific proof that they prove anything or predict anything for employment purposes.

During a polygraph examination it is common practice for the operator to probe into many personal details of an individual's life, unrelated to his employment. In fact, personal, controversial, or stimulating questions are deliberately asked in order to form a basis of "norm" for measuring reactions to "relevant" questions. Consequently, polygraph reports contain such personal information as how the subject thinks; how he behaves in his personal life; what he reads; what his conduct and attitudes are in sexual matters; how he relates to his parents and family; and what he dreams about.

As long as these machines are permitted in employment situations, they will be a perpetual danger to the freedom which is most cherished by us all—our right to privacy.

The Constitution itself creates a right to privacy which is designed to assure that the minds and hearts of Americans remain free. The bulwark of this constitutional principle is the first amendment. The first amendment was designed to protect the sanctity of the individual's private thoughts and beliefs. It protects the individual's right to free exercise of conscience; his right to assemble to petition the Government for redress of grievances; his right to associate peaceably with others of like mind in pursuit of a common goal; his right to speak freely what he believes; and his right to try to persuade others of the worth of his ideas.

The fourth amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In addition to the privacy of one's home and personal effects, the privacy of his person—or bodily integrity—and even his private telephone conversations are protected by the fourth amendment. The fifth amendment guarantees that an individual shall not be forced to divulge private information which might incriminate him. It also protects individual privacy by preventing unwarranted governmental interference with the individual's person, personality, and property without due process of law.

The ninth amendment's reservation that "the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people" clearly shows that the Founding Fathers contemplated that certain basic individual rights not specifically mentioned in the Constitution—such as privacy—should nevertheless be safe from governmental interference.

The Supreme Court has held many aspects of individual privacy to be constitutionally protected. In recognizing that "specific guarantees in the Bill of Rights have perumbras formed by emanations from those guarantees that help give them life and substance" (*Griswold* v. *Connecticut*, 381 U.S. 479, 484) the Court has found that those penumbras protect the right to give and receive information, the right to family life and child-rearing according to one's conscience, the right to marriage, the right to procreation, the right to contraception, and the right to abortion.

All Americans can testify to the power of those protections of the individual's rights. The Constitution assures these rights to all citizens whether their exercise is pleasing to Government or not. And by the same token, it assures the individual the converse of these rights: the right not to speak what he believes, whether his silence is pleasing to Government or not; and his right not to act, not to associate, not to assemble, whether his inaction is pleasing to Government or not.

During the study or privacy which the Constitutional Rights Subcommittee has been conducting, we found that the number and kinds of privacy invasions are limited only by the ingenuity of human beings and by their technical capacity for committing them. It is sometimes hard to find rhyme or reason to some actions. This is why the subject of privacy is a very difficult field in which to draft legislation to protect individual rights.

If I were forced to find one comman denominator for all of these techniques and practices, I would say it is the effect they have on the individual's free exercise of his mind and his freedom to seek his own destiny.

Probably no instrument in modern time so lends itself to threats to constitutional guarantees of individual freedom as the polygraph or so-called lie detector The threat of its use or the intimidation inherent in its use restricts free expression and communication of ideas; intrudes on an individual's subconscious thought; makes him fear to speak his thoughts freely; or compels him to speak against his will.

To my mind the entire purpose of these machines is to invade a man's mind and find what lurks in the innermost part of his mental consciousness for reasons which have nothing to do with his ability to perform a job. If the right of privacy means anything at all, and if it is a right to be cherished in our society, it means that people should be entitled to have thoughts, hopes, desires, and dreams that are beyond the reach of a bureaucrat, an employer, or an electronic technician. This is something which enthusiasts for these machines do not seem to understand. They do not understand and they do not appreciate how important privacy is to each American and as long as that lesson is not understood, we all will find our right to privacy constricted, if not abrogated entirely.

I propose this legislation to ban the use of the polygraph for employment purposes in the hopes that Congress will pause for a moment, step back, and take a long look at the issues involved in the unrestrained use of the polygraph. Legislation is necessary to bring some order and control to the practice.

Just what is a polygraph? Contrary to popular belief, it is not a "lie detector." Bells do not ring and lights do not flash

S.1688

ROUTING AND RECORD SHEET

SUBJECT: (Optional)
S. 1688

FROM:
OLC
7D35

EXTENSION

NO.

STAT

DATE
8 March 1974

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. DDM&S D/Pers				Senator Ervin's bill on protecting the privacy of Federal employees, S. 1688, was favorably reported out by the Senate Judiciary Committee on 4 March and passed the Senate without dissenting vote on 7 March. Attached is an excerpt from the Congressional Record which reflects floor statements and the text of the bill. The missing pages set forth the Committee report, a copy of which is attached. The bill should as in the past be referred to the House Post Office and Civil Service Committee. Our efforts will be with that staff to seek a total exemption for the Agency, as granted the FBI. [redacted] STAT Assistant Legislative Counsel
2. D/S OMS				
3. IG OGC				
4.				
5.				
6. Copy of entire excerpt and this routing slip to				
STAT 7. [redacted] OS 3/13/74				
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