

STATEMENT OF HON. SAM J. ERVIN, JR., A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, the Federal Government can no longer afford to operate without the guideline of an effective Federal public records law such as this subcommittee is considering. And in the face of an increasingly more complex and enlarging Federal Government, the American people can no longer afford to be without the healthy countervailing force which is set in motion by a policy of free-flowing of Government information.

Yet, despite the fact that the sponsorship for these measures represents all sections of the country, the proposals introduced in the last several Congresses to achieve this end have met considerable opposition. The sponsors have, in my opinion, made every effort to accommodate the agencies and departments. It appears to me that every legitimate need for protection of any records or information in the custody of departments or agencies has been considered in the House and Senate measures. The eight exceptions to disclosure allow ample authority for the executive branch to limit availability of materials relating to (1) national defense or foreign policy; (2) internal rules and practices; (3) matters exempted from disclosure by statute; (4) confidential trade secrets and commercial or financial information; (5) memorandums and letters dealing with law or policy; (6) personnel and medical files; (7) investigatory files for law enforcement, and (8) reports regarding regulation or supervision of financial institutions.

There is no validity therefore to the frequently heard argument that these proposals impinge on executive privilege for they would not affect the proper exercise of authority of the President and department heads.

I have cosponsored similar legislation in the Senate for several years, and have found solid and widespread support for it, especially in my State. Hundreds of letters have come in from newspaper editors and publishers, owners of radio and television stations, businessmen and lawyers, and many other citizens with no special interest beyond their determination that Government officials shall not deny, distort or delay Government information. In view of the human element in public administration, there will always be some instances of this type of withholding information, and no open-records law, however carefully tailored, is going to cure every problem of this sort. Under a government by law, however, what we can prevent is withholding which is based on any loose statutory authority or which is done at an administrator's discretion in the absence of specific guidelines defining his duties in this area.

Officials can find no refuge in the arguments that such a proposal would overburden them with paperwork, and would violate the privacy of those with whom Government has dealings. A number of States have adopted the model Sigma Delta Chi freedom of information law, which defines the public's right to know, and others have some form of inspection of records statutes. We are fortunate that we have the benefit of State experience with such laws for I think all reports of this experience have shown that the public's right to full information about government is consistent with our democratic traditions. If, indeed, this proposal might entail a bit more paperwork, require a little more time on the part of our civil servants, I think the principle involved here far outweighs these considerations. Certainly, throughout the Federal bureaucracy which has enveloped our daily activities, time and money is expended every day to much less advantage than implementing the citizen's right to know.

Much is being said these days about the press and its invasion of the privacy of the individual. There are many knowledgeable people who believe that the scales are weighted in favor of the press, and that an effective public records law will but further the imbalance. But I do not agree with their premise. This legislation should indeed help the newspaperman who is charged with ferreting out the news and conveying it to the public through whatever media he works for.

More important, though, is the leverage it will give the private litigant whose case depends upon information in the hands of the Government, or the attorney whose duty it is to be informed on certain matters, or the businessman, who must rely on agency decisions, or all the other millions of Americans who have dealings with the Federal Government.

The value of the individual's privacy in our society can have meaning only as long as we have a free society, and we shall enjoy such a society only as long as the Congress, the press, and the public have complete access to informa-