

would preclude the disclosure of matter relating to "interagency or intra-agency memorandums or letters dealing solely with matters of law or policy."

The United States of America has frequently been involved in civil tort litigation wherein it is claimed that Government personnel carelessly performed their duties in such a way as to cause damage to others. The Federal courts are vested with exclusive jurisdiction in such suits against the United States. The Federal Rules of Civil Procedure are, therefore, applicable and they adopt the principle of broad disclosure. Rules 34 and 26(b) provide the district court in which an action is pending with the discretion to direct any party to the litigation to produce documents which are relevant to the issues. Such documentation is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence, even though the documents sought are not in and of themselves admissible.

In the past, the Federal district courts have required the United States to produce for discovery in such litigation material related to the operational practices of the governmental agency involved, interagency and intra-agency memorandums and letters dealing with the policy affecting such operational practices. For example, the United States of America has been a party to litigation based upon the carelessness of Federal Aviation Agency employees in the manner in which they provided air traffic control over aircraft. In such litigation the Government has been required to produce personnel memorandums, and directives, manuals, and related matter which established the standards of operation governing the manner in which FAA personnel were obligated to perform their duties in controlling aircraft.

The language of exceptions (2) and (5) is such that, if broadly construed, a district court might be required to prevent disclosure of documents obtained in the past pursuant to the Federal Rules of Civil Procedure.

Exception (2) excludes from disclosure matters related to internal personnel rules and practices. In view of the general principle adopted by the bill, we are confident that it is not intended to embrace FAA manuals, and all personnel memorandums which set the standards pursuant to which Government personnel perform their duties in relation to the public. Exception (5) suffers from the same criticism because letters which establish policy to guide operational personnel may thereby be excluded from discovery.

We are frank to admit that we are unable to formulate a change in the language of exceptions (2) and (5) which would enable the discovery of material previously available, but at the same time prevent disclosure of purely internal matter not related to operational activities affecting the public.

We do, however, suggest that an attempt be made to modify exceptions (2) and (5) with the above-mentioned comments in mind. One solution might be to amend the bill to include a statement of principle which would make clear that the exceptions are to be construed narrowly and that matter previously discoverable should continue to be discoverable. Another suggestion is that exception (2) be confined to "internal personnel rules related to hiring, firing, disciplinary action, promotion and demotion" thereby deleting "and practices of any agency." The "practices" portion of exception (2) might be construed to relate to practices or operation affecting the public. Exception (5) might, perhaps, be amended to add a clause so that it reads: "interagency or intra-agency memorandums or letters dealing solely with matters of law or policy, but not of operational practices affecting members of the public."

We truly appreciate the opportunity to express these views. We are confident they will receive your prudent consideration.

Respectfully yours,

LEE S. KREINDLER,
Chairman, Aviation Law Section.

LETTER FROM MAGAZINE PUBLISHERS ASSOCIATION, INC., NEW YORK, N.Y., TO
HON. JOHN E. MOSS

APRIL 12, 1965.

HON. JOHN E. MOSS,
*Chairman, Subcommittee on Foreign Operations and Government Information,
Committee on Government Operations, House of Representatives.*

DEAR MR. MOSS: On behalf of the Magazine Publishers Association and the American Society of Magazine Editors which represent 113 companies publishing