The size of the food shortage can be debated; that there is hunger in Kampuchea cannot. A February 9 report from the State Department admitted that the food situation in Kampuchea is "precarious" and noted that malnutrition plagues many parts of the country. How will the United States respond?

Four years ago, Representative Millicent Fenwick urged her colleagues in the House to approve aid for Kampuchea: "We have never cared who sat in the palaces of the world; we have always been concerned about who is starving in the streets." Today, those who could make a difference do not share that sentiment. □

DISPUTE OVER C.I.A. FILES

The Case for the New F.O.I.A. Bill

IRA GLASSER

Later this month a bill that has evoked concern and disagreement among civil libertarians and critics of the Central Intelligence Agency will be sent to the floor of the House of Representatives. The bill, which would exempt certain kinds of C.I.A. files from normal requirements under the Freedom of Information Act, has been scrutinized and debated in a series of recent public hearings before various Congressional committees. After many revisions, the latest version of this bill, H.R. 5164, has a good chance of passing in the full House, partly because, after a long drafting process, it has gained the support of the American Civil Liberties Union.

The A.C.L.U.'s position has been attacked in several forums and publications, among them *The Nation* [see Angus Mackenzie, "The Operational Files Exemption," September 24, 1983]. Some of our critics have gone so far as to suggest that the A.C.L.U. has become, wittingly or unwittingly, an accomplice in weakening the F.O.I.A.

In light of those charges, it is important to understand what the American Civil Liberties Union has been doing, why it supports a much-changed version of legislation it originally opposed and why it thinks the legislation represents a modest victory for those who support the F.O.I.A.

The Freedom of Information Act is one of the most important laws enacted by Congress. By making government information available to the public, the act strengthens America's commitment to informed, robust debate on all public policies. The act is especially vital with respect to the C.I.A., whose illegal activities are encouraged by the shroud of secrecy that envelops them. While the shroud has not yet been sufficiently lifted, over the last decade the F.O.I.A. has been a significant tool in bringing the C.I.A.

Ira Glasser is national executive director of the American Civil Liberties Union.

under increased public and Congressional scrutiny.

But most people who submit requests to the agency under the F.O.I.A. encounter two main problems: the C.I.A. withholds information it should release by hiding behind exaggerated claims of national security, which the courts have never had the courage to reject; and when it does decide to release information it takes an intolerable amount of time—often two to three years.

Aside from pure obstructionism, a primary cause for delay is the time-consuming search the agency undertakes through its "operational" files when processing an F.O.I.A. request. Basically, operational files contain documents and information related to the intelligence *process* rather than the intelligence *product*. For example, a document that describes the technical capacity and location of a sophisticated optics device is considered operational; the information obtained by that device is not. Similarly, how an intelligence source was spotted and recruited, how much he is paid, the details of where and when he meets with his case officer, are all considered operational; any information provided by that source is not.

Such operational information, with a few important exceptions described below, is invariably classified and therefore exempt from release under the provisions of the F.O.I.A. The courts have never ordered the release of such information, and are not likely to under any conceivable standard of classification. Nonetheless, every time an F.O.I.A. request is made to the C.I.A., all operational files have to be reviewed.

To alleviate the problem of delays, the A.C.L.U. set out to draft legislation that would spare the agency from searching through its operational files. At the same time we wanted to insure that the kind of information currently being released or likely to be released in the future would not be exempt or improperly hidden in operational files. We felt that such legislation would obligate the C.I.A. to respond to requests more quickly, while guaranteeing that no new curbs on information would result.

Of course, the C.I.A., already on record as favoring legislation that would exempt it from all provisions of the act, jumped at the opportunity to support a bill that would exempt it from searching its operational files. Our task, therefore, was to defeat the legislation unless its language strictly limited the exemption. That was not easy.

After much lobbying, the Senate passed S. 1324 which, while much improved over the version that was introduced, was not adequate in several important respects. If that had been the final version of the legislation, we would have opposed it and we believe our opposition would have killed it.

Fortunately, the legislative process is just that, a process. Accordingly, after the Senate approved its bill, we set to work on the House version. For us, the House is a much more hospitable forum, and we thought we stood a good chance of getting everything we wanted. We did. In its present form this bill differs markedly from the Senate's. We support this version because we believe it will obligate the C.I.A. to release information more quickly and prevent it from withholding any information it is currently obligated to release. Here is a summary of the major provisions of H.R. 5164:

§ Operational files in three divisions of the C.I.A.—the Directorate of Operations, the Directorate for Science and Technology and the Office of Security—would be exempt from search and review. (A few important exceptions are noted in the bill and summarized below.) The term "operational" is defined narrowly to include only files that document the means of acquiring information, as opposed to those that contain the information itself. All other C.I.A. files, including those in the three specified divisions, will be subject to search and review under the Freedom of Information Act.

§ All documents from operational files that are disseminated outside the three divisions, whether within the C.I.A. or elsewhere in the government, will be subject to search and review—even a document that concerns the most intimate details of an operation and is sent only to the director of Central Intelligence. Once disseminated, information cannot be exempt, even if it is kept in an otherwise exempt operational file. That includes any document shown to someone outside the three divisions on an "eyes only," no-copy basis and returned to the operational file.

§ All information in operational files concerning covert operations will be subject to search and review, unless the very existence of the covert operation is properly classified information.

§ All information in operational files concerning the subject matter of an investigation of improper or illegal conduct by the C.I.A. will be subject to search and review. Such investigations may be conducted by the agency's inspector general or general counsel, by Congressional oversight committees or by the President's Intelligence Oversight Board. The C.I.A. also initiates an investigation whenever a private citizen makes an allegation of improper or illegal conduct: for example, that an organization has been illegally infiltrated. (It does not investigate claims of a clearly frivolous nature, such as "the C.I.A. is manipulating my brain waves.") Regardless of an investigation's outcome, the C.I.A. will be required, in response to an F.O.I.A. request, to search its operational files for information concerning the alleged abuse. This provision insures that all information in the operational files concerning abuses investigated by the Church and Pike committees will continue to be accessible and that in the future, similar information on alleged abuses will be available.

§ Operational files must be searched in response to U.S. citizens or permanent resident aliens who request information about themselves. This provision preserves the access to information currently available to individuals.

§ Federal courts will have the right to review whether a particular file meets the legal definition of "operational" or whether particular documents are improperly kept solely in operational files. This guarantee significantly improves on the Senate version and clearly opposes the C.I.A. position, taken during Senate hearings last June, that no judicial review should be permitted.

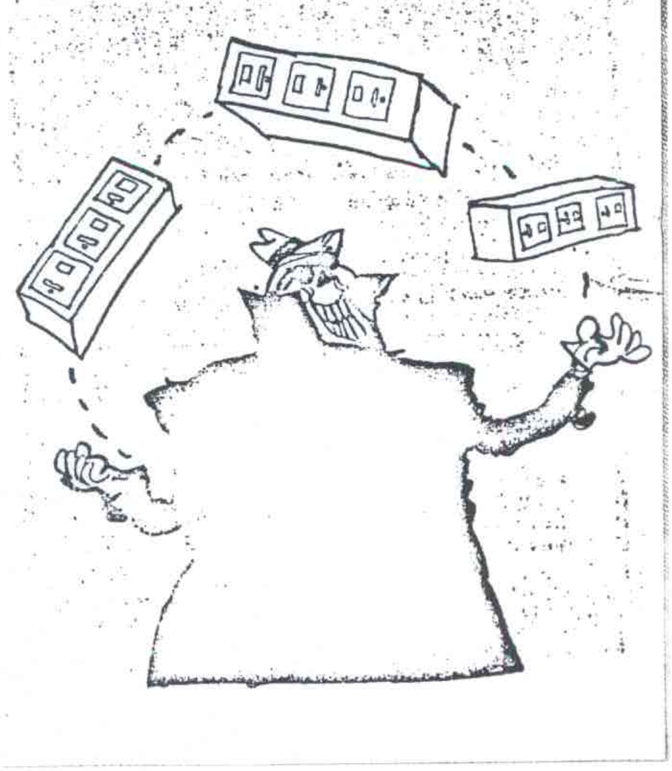
§ Finally, the bill does not apply retroactively to any lawsuit pending on February 7, 1984, the day before the House began hearings on the bill.

Some critics of the A.C.L.U.'s position say the bill would allow the C.I.A. to withhold information it is currently obligated to release, or conceivably would be obligated to release under a more liberal standard of classification. That claim is false. Various people have shown us documents released under current law that arguably might not be released under the proposed legislation. We have examined them all, and in every case the document would still be released under one of the exceptions provided in H.R. 5164. Moreover, even a liberal administration would without doubt continue to classify the kinds of sources and methods the bill would exempt.

Others suggest that the A.C.L.U. has compromised important principles by lobbying for the bill. That, too, is false. If anyone has compromised in this process, it is the C.I.A., which initially opposed many of the provisions on which we insisted.

Our position was unflinching: from the beginning, we maintained that we would oppose the bill unless each of our concerns was adequately met. Although the Senate bill did not meet them all, H.R. 5164 does. As A.C.L.U. staff counsel Mark Lynch testified before Congress on May 10, "Any movement away from what has been achieved in H.R. 5164 would be unacceptable, and we would oppose any tinkering with this bill in a House-Senate conference."

Such tinkering is unlikely because Senators Barry Goldwater and Daniel Moynihan, chair and vice chair, respectively, of the Senate Intelligence Committee which helped draft the Senate version, have informed the House



committee in writing that they will accept H.R. 5164 without a conference.

The A.C.L.U. believes that the bill deserves the support of information act advocates. It promises to speed up the response to requests and imposes various legal obligations on the C.I.A. that insure against the loss of information now available or likely to become available. While it is not the biggest triumph, it is a significant step forward. It is certainly not the disaster some have made it out to be. □

Vatican

(*Continued From Front Cover*)

testify to that. Missionaries from France, Ireland and elsewhere implanted their faith in Africa, where Catholicism is a fast-growing minority in some countries, under siege in others but recognized, as everywhere else in the Third World, as a religion of the elite. For a long time the Third World Catholic elite, shaped in the image of Rome, lacked self-confidence when confronted by the will or displeasure of the Vatican. But that has changed in recent years.

Since it appeared in Latin America more than fifteen years ago, liberation theology has bothered the Vatican. Priests who allied themselves with the poor or opposed brutal governments embarrassed bishops who tolerated or were friendly to those in power. The situation was worse for the bishops whenever they sided with the priests. In the 1970s Dom Helder Câmara, Archbishop of Recife in overpopulated and perennially drought-stricken northeast Brazil, became perhaps the most famous of the sympathetic bishops. The Brazilian press was forbidden to mention his name, except critically. He was called a communist. His home was burned down several times. His priests were beaten and arrested, and one of his aides was killed. Dom Helder may be a hero to the priests, the nuns and the people, but the Vatican has never really supported him.

Also important was Archbishop Oscar Arnulfo Romero, the primate of El Salvador, who started out as a quiet conservative but became openly critical of the government after the murder of a priest who was a close friend. On March 24, 1980, just before Easter, Romero was murdered as he said mass in a chapel in San Salvador. The order was widely reported to have come from Maj. Roberto d'Aubuisson, who had been the National Guard's intelligence chief only a few months before. On the fourth anniversary of that event, with El Salvador rent more than ever by a bloody civil war and d'Aubuisson standing as a presidential candidate, an unauthorized parade of mothers of the *desaparecidos* marched in commemoration to the cathedral where Romero is buried, carrying banners with the Archbishop's words: "Do not fear those who kill, because they cannot kill the spirit." Maurizio Clerici, correspondent for Milan's *Corriere della Sera*, described the scene outside the cathedral,

T.M. Pasca is an American journalist who writes for The Nation *from Rome.*

EXCHANGE.

The A.C.L.U. and the F.O.I.A. Bill

From the time it was first suggested in the late 1970s, the idea that Central Intelligence Agency files might in some way be exempted from the Freedom of Information Act has stirred vigorous debate, protests and periodic angry accusations among civil libertarians and C.I.A. critics. Although the C.I.A. got nowhere with its original proposal that its files be entirely exempt, last fall a controversial bill to exempt "operational files" was introduced in the Senate. An exchange appeared in The Nation *at that time, in which charges that the American Civil Liberties Union had cut a deal with the C.I.A. to help pass the legislation were met with a flat denial [see Angus Mackenzie, "The Operational Files Exemption" and Morton H. Halperin and Allan Adler, "There Is No Deal," September 24, 1983].*

This spring, when hearings on a revised version of the bill were held before various House committees, the dispute flared again. On June 2 we published "The Case for the New F.O.I.A. Bill," by A.C.L.U. national executive director Ira Glasser, explaining the organization's reasons for supporting the legislation. Since then, various groups concerned with open information and at least one local chapter of the A.C.L.U. have expressed reservations—and alarm—about the national office's position. On June 5 in Los Angeles, Morton Halperin, director of the A.C.L.U.'s National Security Project in Washington, addressed the executive committee of the organization's 20,000-member Southern California affiliate, elucidating the national's stance. The committee rejected Halperin's arguments, voting unanimously to oppose the bill and dissociate itself from the national office's position.

Meanwhile, H.R. 5164 has been held up in the House Subcommittee on Information, and we have received a number of letters about Glasser's article. Some of them, along with Glasser's reply, follow. —The Editors

A C.I.A. FIG LEAF

Pacific Palisades, Calif.

Casey's C.I.A. says, Trust me. A.C.L.U. lawyers say, If you agree to follow certain procedures, we will trust you. What's more, we will recommend to Congress that *it* trust you and vote for the C.I.A.-drafted, A.C.L.U.-blessed H.R. 5164.

Ira Glasser's article, a disingenuous statement if ever we saw one, deserves a close look. He says, "Some of our critics have gone so far as to suggest that the A.C.L.U. has become, wittingly or unwittingly, an accomplice in weakening the F.O.I.A." We go so far as to suggest that the A.C.L.U. (principally its Washington law office) has wittingly or unwittingly strengthened the C.I.A. by cloaking it with civil libertarian approval, thereby making it difficult for those members of Congress who care about civil liberties to take a contrary stand.

Glasser's lip service to the Freedom of Information Act omits the fact that the act has already been badly gutted by major exemptions for law enforcement and intelligence agencies. Such emasculation as was not done by statute was completed by executive order and administrative fiat. The F.O.I.A. was briefly a great act, but its virtual demise has never been properly noted or mourned. The A.C.L.U. might more usefully employ its not inconsiderable influence by resisting the relentless growth of official secrecy rather than by aiding and abetting the process.

Glasser summarizes the major provisions of H.R. 5164 to show that while the bill exempts operational files from search and review, it sets up safeguards to insure against C.I.A. abuse of the exemption. According to Glasser, exempting operational files from search and review will save the agency time and money (out of its presumably tight budget), and the F.O.I.A. applicant will get a speedier reply. Maybe. Maybe not. But will he or she get more information? Or any information? Nothing in H.R. 5164 requires the agency to respond to requests for information within a given period of time. Although such details may be spelled out later in rules and regulations, those are entirely of the C.I.A.'s making. Again we are asked to trust the C.I.A. The bill nowhere provides for an independent check on C.I.A. decisions. What the applicant gets instead is a right to judicial review. Ernest Mayerfeld, the C.I.A.'s legislative liaison, describes the judicial review as "one we can live with." And why not? He says, "It has very limited judicial review. It provides [for] how a case gets into court and that would not defeat the purpose of the bill." Quite right. Former Director of Central Intelligence Stansfield Turner has stated, "We have not lost a case in the court when we have claimed that something was classified." In what may well be the definitive comment on the amended F.O.I.A., the Supreme Court (*E.P.A. v. Mink*, 410 U.S. 73, 1973) ruled that executive branch decisions were virtually unreviewable and that in camera inspection of a contested classified document was neither authorized nor permitted under the law, "however cynical, myopic or even corrupt that decision might have been," according to Justice Potter Stewart.

Of the various groups testifying on H.R. 5164, only the American Bar Association and the A.C.L.U.'s Washington lawyers favored its passage. Publishers, editors, reporters, historians, are forthrightly opposed. Many A.C.L.U. members throughout the country are also opposed. Those testifying were in general agreement that the bill served no useful purpose. For reasons not entirely clear, A.C.L.U. lawyers have chosen to provide the C.I.A. with a fig leaf. Why?

Mae and Robert Churchill

EXPAND THE ACT

Herndon, Va.

Ira Glasser's arguments in support of H.R. 5164 unfortunately reflect legalistic idealism based on a misconception of the problems and their causes. According to Glasser, the proposed legislation would expedite the C.I.A.'s processing of F.O.I.A. requests without any significant loss of information. But the underlying reason for the agency's several-year backlog is not, as he claims, the time-consuming search process; rather, it is the C.I.A.'s deliberate noncompliance and delay.

My own experiences prove my assertion. While with the C.I.A. I directed a review of all operational and intelligence files concerning the agency's worldwide activities against the People's Republic of China. At the time, the operational files were more extensive than they are today. Within several months my ten-person team, while continuing its normal work, completed the review. It can be done. Each time a document is processed for F.O.I.A. disclosure, a record photocopy should be retained. For subsequent requests all that need be done is to copy the already-processed document. Within about one year using such a method, the C.I.A. could process virtually its entire file holdings of information sought under the F.O.I.A. Exempting the operational files will simply allow the agency to devote additional time and energy to stonewalling the few remaining qualifying requests.

Glasser seems unaware of the magnitude of the exemptions under H.R. 5164. I estimate that 80 percent of the operational files consist of, in Glasser's words, "the means of acquiring information," which would be exempt. Most F.O.I.A. requests focus on agency abuses found in the operational files of the three divisions covered by H.R. 5164. A quick look at past operations reveals why the agency is seeking those exemptions.

Over the years the Directorate of Operations conducted numerous illegal domestic operations, including M.H. CHAOS, which targeted political groups, and others, which sponsored books and used student, youth, teacher, labor, religious and media organizations, all within the United States, in defiance of the C.I.A. charter. The Directorate for Science and Technology tested a variety of mind-altering drugs on unwitting subjects both here and abroad, causing at least one documented suicide, and experimented with the effects of radiation, electric shock and

(*Continued on Page 803*)

conscious patriots in Solarz's district and that in Israel they certainly have shown no reluctance to fight in the wars against the Arabs.

On another occasion Pentagon representatives visited Levy at her home and told her that the bill—and Hatch's support of it—would only make Americans dislike Jews because they would be seen as more loyal to Israel than to the United States. The Pentagon flacks wound up by suggesting that if she wanted any other job in town, she'd better get her boss to change his attitude on the bill.

The Senate in its usual fashion dealt with the issue by leaving it up in the air. On June 15 it accepted a diluted amendment offered by Senator Hatch which makes no mention of religious headgear. It would create a study commission, consisting of Pentagon appointees, to make recommendations by the end of the year reconciling the religious interests of those in the armed services with the desire of the military to maintain "discipline and uniformity of appearance." The Secretary of Defense would then issue regulations as he sees fit. When it comes to the religious rights of Orthodox Jews or anyone else in the military, the Senate has apparently decided, Defense Department bureaucrats know best. □

EXCHANGE.

(*Continued From Page 786*)

various forms of harassment. At the same time, the Office of Security conducted illegal nationwide police-type operations.

Under the provisions of H.R. 5164, the C.I.A. would probably deny details of all those operations to F.O.I.A. requesters. Glasser says not. "All information in operational files concerning the subject matter of an investigation of improper or illegal conduct by the C.I.A. will be subject to search and review," he claims. "Such investigations may be conducted by the agency's inspector general or general counsel, by Congressional oversight committees or by the President's Intelligence Oversight Board."

But Glasser must know that the Intelligence Oversight Board is a useless policy-supportive entity. Relying on the various internal C.I.A. elements to investigate the agency's illegalities is like relying on the fox to guard the chicken coop. And although it is true that the Congressional Intelligence Committees may request search and review of "a specific subject matter of investigation," the C.I.A. constantly stonewalls and lies to those committees. The C.I.A. will interpret the language of H.R. 5164 precisely: Tell us exactly how we are violating the law, and we will search and review only that specific subject. Of course if the oversight committees knew such details, they would not need search and review.

In his most naïve observation, Glasser notes, "All information in operational files concerning covert operations will be subject to search and review, unless the very existence of the covert operation is properly classified information." My God! All covert operations are classified by definition, and the vast majority of C.I.A. operations are covert. I estimate that about 85 percent of all C.I.A. operations would fall into that exempted category. Its disinformation operations aimed at the American people, such as planting "Communist" weapons shipments and forging documents; its violent operations to overthrow other governments, as in Nicaragua today; its support of death squads; its covert operation in Indonesia in 1965 which resulted in the murder of more than a half-million innocent people—all those and other such operations were and are, according to the C.I.A., "properly classified." If that isn't bad enough, President Reagan's Executive Order 12333 authorizes the C.I.A. to conduct its covert operations within the United States, in direct violation of its legislated charter; such operations will also be "properly classified."

I do not question Glasser's sincerity. The A.C.L.U. has represented me well in numerous legal battles with the C.I.A., and I much appreciate that help. However, in relation to H.R. 5164, Glasser reveals his naïve idealism and ignores the reality of the C.I.A. The elimination of properly classified covert operations from search and review—along with the other elements of the proposed legislation—will virtually free the agency from all provisions of the F.O.I.A. With this carte blanche we can be certain that restraints on C.I.A. dirty tricks will be removed. I suggest that the overriding objective of the A.C.L.U. and other Americans should be to protect and expand, rather than limit, the Freedom of Information Act. *Ralph McGehee*

EXISTENTIAL INFORMATION

Washington

I do not ascribe evil motives to the A.C.L.U.'s support of legislation to lessen the C.I.A.'s obligations under the Freedom of Information Act. I strongly disagree, however, with Ira Glasser's contention that the pending bill will "prevent [the C.I.A.] from withholding any information it is currently obligated to release."

Under current F.O.I.A. procedures, the C.I.A. (like all other agencies) is required to search for requested documents and, if taken to court, account for all located material and justify its withholding. Those justifications are contained in public indexes which generally list the dates, lengths and types of documents that are being withheld. Through this procedure, a requester can learn the volume and general nature of material in the custody of the C.I.A. An organization, for instance, can ascertain whether the agency maintains information relating to its activities and determine whether the information is of recent vintage. While it is true that the vast majority of such documents are never released, the *fact that they exist* generally is.

The pending legislation will relieve the C.I.A. of its obligation to locate and account for information in operational files, thus ending a requester's right to obtain even indexes of withheld material. To my mind, the fact that records exist *is* information, and often significant. In most cases, public access to that information will end if the A.C.L.U.-supported legislation is enacted. While the bill might represent a compromise born of political reality, it is not, as Glasser claims, "a significant step forward." *David L. Sobel*

WHOSE VICTORY?

San Francisco

In explaining the proposed Freedom of Information exemption for C.I.A. operational files, Ira Glasser says H.R. 5164 is a victory for supporters of the F.O.I.A. But my research shows it will empower Director of Central Intelligence William Casey to designate as exempt from release his files on domestic political operations. Why give Casey more secrecy powers when he's covered up so much already?

Glasser doesn't address the domestic-spying issue. Instead, he cites false facts basic to his argument and misstates the fundamental point: who wrote the legislation he supports. He says, "The A.C.L.U. set out to draft legislation that would spare the agency from searching through its operational files." But the C.I.A., not the A.C.L.U., drafted the proposed law Glasser supports. Senate Report 98-305 says then-Deputy Director of Central Intelligence Frank C. Carlucci first proposed the "exemption for certain operational files" in 1979, when the A.C.L.U. opposed and stopped it.

Glasser builds on his false premise and concludes that the operational files exemption is a victory because it means civil libertarians successfully beat back the agency's demand for a complete exemption. But the agency gave up its total-exemption dream in 1979 with Carlucci's proposal.

Which brings us to 1983. How did the bill get reintroduced? The C.I.A.'s Ernest Mayerfeld confirmed that the legislation was revived only after assurances from the A.C.L.U.'s Mark H. Lynch that civil libertarians would consider supporting the exemption. The A.C.L.U. essentially promised to withhold opposition. Without that promise, the exemption would have died. "Our opposition would have killed it," Glasser rightly maintains.

Glasser says the bill defines "narrowly" the operational files it would exempt. But historians have told Congress that "operational files" can be what Casey wants them to be. The proposed law broadly, not narrowly, defines the files to be kept secret:

1) Those dealing with "counterintelligence" operations, the domestic aspects of which President Reagan authorized December 4, 1981. Domestic espionage has long been hidden in the to-be-exempted counterintelligence department.

2) "Intelligence" files, which also may be domestic.

3) Files concerning "security liaison arrangements," under which the C.I.A. has infiltrated domestic political newspapers, in cooperation with local law enforcement agencies and in violation of a law prohibiting C.I.A. police functions.

Besides covering up current or future illegal C.I.A. domestic espionage, the bill may help hide C.I.A. files on past abuses. It says only the *specific* subject matter of an investigation into C.I.A. wrongdoing will be released. The C.I.A. will decide what is "specific." How about C.I.A. files on dissident U.S. publications that Senator Frank Church's committee failed to inspect? C.I.A. attorney Mayerfeld told me he'd have to research which of those files on domestic newspapers would be available under the proposed law. I can't even get them under the current law. While Glasser says such information would be made public, the agency makes no such promise. Unfortunately, the C.I.A., not Glasser, holds the files.

Finally, if the A.C.L.U. is so victorious in this matter, Glasser might explain why journalists' groups oppose the legislation and resent the A.C.L.U.-C.I.A. deal. Those include the Newspaper Guild, the Society of Professional Journalists and the Radio-Television News Directors Association.

[illegible] Mackenzie

GLASSER REPLIES

New York City

With the exception of David L. Sobel's, the letters responding to my article show some talent for rhetoric and bombast but reflect little knowledge of the Freedom of Information Act or the proposed legislation and its history. It is possible and legitimate to disagree with the strategy of the proposed bill. But the letter writers misstate key facts in an apparent attempt to portray the bill as something it is not.

The Churchills claim that nowhere in the bill is there an effective provision for an independent check on C.I.A. decisions. To prove their point, they quote Ernest Mayerfeld, the C.I.A.'s lobbyist, as saying that the bill has only "very limited judicial review." They do not tell us when Mayerfeld said that or what bill he was referring to. In fact, the Senate version, which the A.C.L.U. opposed, did not have full judicial review. But the House version does, because we insisted on it. Their mistake is typical.

The Churchills also say the A.C.L.U. recommended to Congress that it trust the C.I.A. Even a brief examination of our testimony and my article would demonstrate to any impartial observer that the opposite is true; we said throughout that the C.I.A. could not be trusted and insisted that specific provisions—such as the one requiring full judicial review—be added to limit the C.I.A.'s discretion. The Churchills say that under the 1973 Supreme Court decision in the *Mink* case, executive branch decisions are "virtually unreviewable" anyway and that the *Mink* decision "may well be the definitive comment" on the F.O.I.A. What they don't tell you is that in 1974 Congress amended the F.O.I.A. to overrule the *Mink* decision.

Mackenzie's respect for facts is equally limited. He says the C.I.A. gave up its desire to seek a total exemption from the F.O.I.A. in 1979. But in 1981, the Deputy Director of Central Intelligence, testifying before the Senate Intelligence Committee, continued to plead that the "C.I.A. and N.S.A. should be given a full exemption from the F.O.I.A." A small point, but it tells you something about the quality of Mackenzie's "research."

He goes on to claim that his research shows that the proposed legislation would give the C.I.A. new powers to "designate as exempt from release" files on "domestic political operations." He doesn't, however, tell you how it would do that or what specific provision he has in mind, because there is no such provision. The bill does nothing to change the law concerning what information must be disclosed. It merely exempts the C.I.A. from searching files containing information that is never disclosed.

Mackenzie has been asked, by the A.C.L.U. and by Congress, to produce a single piece of information he has received in the past that he believes would not be disclosed under the bill. But everything he has produced would still be disclosed. He claims that files relating to domestic spying would not be available. That is not true. A specific provision was added to the House bill to assure that they would be. The legislative history makes clear that the C.I.A. has "no legal authority to collect information on U.S. persons because of their domestic political activities" and that because such activities by the C.I.A. are improper, the files relating to them would be subject to search and review under the bill. Mackenzie also claims that "journalists' groups" oppose the bill. It is our understanding that the only press group to oppose the bill is the Newspaper Guild.

As to McGehee's concerns, the A.C.L.U. is well aware of the improper C.I.A. activities he lists; indeed, as he knows, we share his outrage and spend a good deal of time and resources resisting such activities. McGehee is afraid that information in operational files about such activities might not be subject to search and review under the legislation. We shared that fear and successfully argued in the House for an exemption requiring the C.I.A. to search and review its operational files concerning any C.I.A. activity that was improper, illegal or even the subject of an investigation for alleged impropriety or illegality. Given how automatic it is for an investigation to be initiated in response to any citizen's complaint, that provision affords an effective remedy. Moreover, at our urging, the House committee made clear that *all* "information concerning the specific subject matter of the investigation will remain subject to search and review" and that the scope of the search and review will be determined by the scope of the complaint, not limited to the particular documents reviewed during the investigation. The legislative history clearly answers the concerns of those who think the C.I.A. will have the lawful discretion to interpret that provision narrowly.

McGehee says all covert operations are now classified. That is basically correct. It means we normally can't get information on covert operations through the F.O.I.A. McGehee implies that the bill makes the law worse in this respect. But we insisted that the bill not change current law on this point, and it does not.

Finally, Sobel suggests that affidavits listing the titles of all documents responsive to an F.O.I.A. request would not be prepared under the proposed legislation. However, he is wrong to assert that the C.I.A. is now obliged to produce detailed public affidavits. They are rare, and we believe that those containing useful information—for example, concerning intelligence agency abuses—would continue to be available because of the exceptions we insisted on in the House bill.

We agree with all the letter writers that our chief objective must be to fight the Reagan Administration's campaign to increase secrecy and censorship and restrict the free flow of information. No organization devotes more resources to that fight than the A.C.L.U. And no organization has been more deeply involved in the fight to end covert operations and specifically to cut off funds for the C.I.A.'s "covert" war in Nicaragua. We view our support of H.R. 5164 as consistent with that fight. Reasonable people can disagree about the bill and whether it represents an incremental improvement in the F.O.I.A. But the persistent misrepresentation of the facts, and the attempt to elevate the disagreement based on those misrepresentations to a clash over basic principles, is not constructive and does not advance our mutual interests.

Ira Glasser