

# Congress, the Press and Federal Agencies Are Taking Sides

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By MARTIN ARNOLD  
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WASHINGTON, Nov. 14—A battle is building over the complicated question of the Government's right to keep secret its secrets.

The participants are Congress and much of the national press, on one side, and the White House, the Justice Department and the Central Intelligence Agency on the other.

The fight was touched off by President Ford's veto last month of amendments to the Freedom of Information Act—legislation that would have made government-held information more accessible to the public.

The amendments were vetoed at the behest of nearly every government department and agency, but particularly by those involved in criminal investigations and in gathering domestic and foreign intelligence. The fight is mainly over military and foreign affairs information and the investigative files of the Federal Bureau of Investigation.

## Support to Override

The amendments, 17 in all, were overwhelmingly passed by both houses of Congress. Staff members of the House Foreign Operations and Government Information Committee, which helped draw up the amendments, believe that there will be enough votes in Congress to override the veto, particularly in the climate created by the Democratic sweep earlier this month.

If not, then the new, even more heavily Democratic Congress, will almost surely pass the amendments and override any Presidential veto, these staff members say. In the Senate, the fight to override the veto is being led by Senator Edward M. Kennedy, Democrat of Massachusetts.

Even before that Democratic sweep, Walter W. Gunfeld, president of the National Newspaper Association, said after the organization conducted a Congressional survey that "there appears to be an overwhelming bipartisan Congressional sentiment in favor of overriding the veto." The association represents 6,000 daily and weekly newspapers in the country.

## In Defense of Veto

President Ford defended the veto tonight in a message he prepared for a convention in Phoenix of Sigma Delta Chi, a journalist's fraternity.

The President said the veto may have appeared inconsistent with his pledge that "mine would be an open and candid Administration," but that this was not so. He said some of the amendments would damage national security, diplo-

matic relationships, and the privacy of individuals.

He said that he had proposed that courts be required to uphold government classifications "where a reasonable

basis exists to support them" and that F.B.I. files should be withheld if there was "a substantial possibility that individual rights would be endangered or law enforcement operations compromised."

The Freedom of Information Act, passed in 1966, authorized persons to file a complaint in a Federal District Court to force a government agency to produce information that it was withholding. Exempt from it were medical reports, the agencies' internal rules and regulations, confidential trade secrets and foreign policy and national defense information that had been classified secret by executive order.

One of the 17 amendments

mandated to keep secret the entire file if he felt any part of it should be kept secret. That is the basis upon which the Defense Department, for instance, classifies documents.

The arguments in favor of the amendments include the fact that the Government concedes that at least 17,000 persons are empowered to stamp documents classified, that some of them are as low as navy ensigns, and that a Federal judge would have at least the sophistication of a Navy ensign.

Proponents point out that the Government has a long history of classifying information not on the basis of national defense or foreign affairs but merely because its disclosure would be

embarrassing to the Administration in office.

The C.I.A. not only opposed the amendments but its director, William E. Colby, has also been trying to build up support for toughening the espionage laws. This has been a concern of the agency since The New York Times made public the Pentagon papers in June, 1972.

## Ellsberg Case Cited

Under the espionage laws, which were passed mainly during World War II, there is no criminal sanction for a Government employe who makes public classified information. Dr. Daniel Ellsberg has said he disclosed the Pentagon papers to some of the press, and he was

tried for espionage, theft and conspiracy in a trial that ended in mistrial and dismissal after six months.

"If we don't update the espionage laws we'll have to go through an Ellsberg trial everytime someone leaks important documents, and probably the man will get off," a high official of the C.I.A. said yesterday.

"We are not concerned about getting the publication that prints a leaked document," he said. "We only want to get the source." The official said that he doubted that the new Congress would strengthen the espionage laws, and traditionally Congress has been reluctant to do so, except in several cases, because of fear that a

sensitive executive branch would be tempted to stamp secret on endless number of documents from housing programs to defense plans.

The exceptions have concerned atomic energy information and national defense information that is turned over to agents of foreign governments. These are covered by the espionage laws.

"All we're after is the source," a C.I.A. official said. "The news media can't function if its sources are revealed. All it would mean to a newspaper is that news sources would dry up. In the C.I.A. it might mean the death of a source if our sources and methods are exposed."

## for Battle Over Government's Right to Secrecy

### Decisions at Low Level

The Administration says it is concerned over the amount of bureaucratic time that it would take to make available such things as the F.B.I.'s investigative files. It interprets the amendments to mean that a judge would have the obligation to go over such a file page by page and make the files available, as he sees fit, page by page.

The Justice Department would rather have the judge