THE VOICE OF SCIENCE ON CAPITOL HILL

F. A. S. *NEWSLETTER*

FEDERATION OF AMERICAN SCIENTISTS—Founded 1946—
A national organization of natural and social scientists and engineers concerned with problems of science and society.

SPECIAL ISSUE ON THE LEGISLATIVE RIGHT TO KNOW

Vol. 25, No. 3 March, 1972

TO FACILITATE CONGRESSIONAL TESTIMONY FAS PROPOSES SECOND "HAT" FOR HENRY KISSINGER

We do not question the right of the President to assert Executive Privilege over confidential communications between himself and his immediate counselors such as Cabinet Members and his immediate aides in the Office of the White House (White House Staff). Recent Administrations have suggested, however, that members of the White House Staff ought to be immune from Congressional inquiry of any kind. The implicit justification for this sweeping immunity is that these persons do nothing else but engage in confidential communications with the President. We note, for the record, that we do not believe that immunity from Congressional inquiry ought to be provided to "individuals" or to "job designations" but only to privileged information. Thus, for example, even persons who do nothing else but provide confidential advice to the President ought to be willing to testify on matters in which they were involved before they took up their present responsibilities. (Thus Averell Harriman, the first "Assistant to the President," provided the Congressional investigation of General MacArthur's dismissal with such testimony based on prior knowledge.)

While White House Staff members have sometimes been considered altogether immune from Congressional inquiry, the right of Congress to call other Executive Branch witnesses has not been challenged.
(Continued on Page 2)

Approved by the Federation Executive Committee, the above proposal was reviewed and endorsed by the following FAS members or consultants whose experience and expertise bear on various aspects of this problem. (Their credentials appear on page 3.)

Raoul Berger **Arthur S. Miller** **Eugene Skolnikoff**
Alton Frye **Bernard Schwartz** **Lee C. White**

THE LEGISLATIVE RIGHT TO KNOW

Increasingly, the power of the Executive Branch is unconstrained. Thirty years of world crisis have provided the Executive with the popular support required to usurp powers of the legislative branch. And the individual legislators themselves have not been last in their willingness to let the Constitutional authority of the legislature slip away. In the control of foreign policy generally; in the war powers in particular; and in rights to information especially; Congress has steadily lost ground. The Executive Branch has made ever more comprehensive claims to authority.

The seriousness of this problem, indeed the existence of it, is too little understood — for many reasons. The legislative branch trains far fewer persons in the perspective of its institution than does the Executive Branch. Whole generations of American officialdom function for years in the unchallenged belief that their function is, and ought to be, simply facilitating the exercise of Presidential power — and hence, necessarily, blunting, circumventing, and placating the power of the legislature.

Nor is the secular loss of legislative power an isolated American phenomenon. Parliaments throughout the world are losing power to their executive counterparts. The advantages of monolithic structure; the power to be won by operational authority; and the ever greater staff needed to cope with the complexities of modern problems — all give the Executive a great and lasting advantage.

But these indications that the problem has permanent features only highlight coming dangers. How long would American freedoms last after the three branches of government ceased to be an effective check upon each other? Both theory, and recent experience, reveal all too clearly how little confidence ought to be placed in the unchallenged common sense of a future chief executive.

Today, many Federation natural and social scientists whose experience has been in the orbit of the Executive Branch have become aware of the critical role of the Legislative Branch. As scientists and scholars, they are conscious also of its fundamental need for information.

This newsletter touches upon four questions involving the legislature's right to know: (1) the obligation of Executive officials to testify; (2) Executive Branch use of Executive Privilege to deny requested information; (3) Executive Branch use of information to lobby the Congress; and (4) selective declassification. □

FAS CALLS ATTENTION TO SOVIET RESTRICTIONS ON SCIENTIFIC EXCHANGE (Page 6)

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In particular, blanket immunity from testifying has not been claimed for officials in the Executive Office of the President other than to those on the White House Staff.

It has also become commonplace for members of the White House Staff to direct, chair, or supervise an entity inside the Executive Office of the President under a different "hat." There are seven such cases at present. And in several of these cases, it has become accepted procedure that the White House Staff Member testify under this second "hat." (See page 3.)

Assistant For National Security Affairs Ought To Be NSC Executive Secretary

We believe that this tradition ought to be strengthened. Specifically, we recommend that the Assistant to the President for National Security Affairs be given a second job designation: "Executive Secretary" of the National Security Council (NSC). According to the National Security Act of 1947 and 1949, the Executive Secretary of the NSC is to be filled by a civilian appointed by the President. Under the Nixon Administration, the position has been vacant. However, the officers of the National Security Council staff report directly to Dr. Kissinger.* The budget justification prepared by the National Security Council states that "An Assistant to the President is the principal supervisory officer of the Council." Dr. Kissinger is listed in the United States Government Organization Manual, along with the NSC "staff secretary," as one of two "officials" of the National Security Council. He answers queries on its method of functioning in response to Congressional inquiry. In short he really is, already, the chief of staff of the NSC.**

The proposal we make is analogous to the dual roles played by the "Science Adviser to the President" — a member of the White House Staff. He is also Director of the Office of Science and Technology (OST) in the Executive Office of the President.

When President Kennedy began the present procedure of appointing his science adviser to the job "Director: Office of Science and Technology," he wanted to make it possible for this person to testify before Congress on occasion without disrupting the current Executive Branch policy against permitting testimony by White House Aides. Obviously, he did not give up, by this dual appointment, the right to insist that the science adviser decline to testify on matters on which he simply provided confidential advice to the President.

NSC Does More Than Provide Confidential Advice

Title I of the National Security Act of 1946 setting up the National Security Council says that the "function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security . . ." so that the different agencies might cooperate more effectively. But the totality of work and advice provided the President is certainly not to be construed as "confidential communications." Indeed, the National Security Council has under it the Central Intelligence Agency, whose Director does testify before Congress. Furthermore, the National Security Council itself has as a statutory duty "to assess and appraise the objectives, commitments, and risks of the United States in relation to our actual and potential military power. . . ." The facts it unearths should certainly be open to inquiry by the Congress, just as are the facts unearthed by its subordinate body — the Central Intelligence Agency.

Today, Dr. Kissinger presides over a staff of 54 substantive officers and a total staff of 140 employees. He is chairman of six interagency committees dealing with the entire range of foreign policy and national security. In Fiscal 1971, the budget for the NSC staff was $2.2 million. This job is not the job of a personal aid providing confidential advice only.

Furthermore, on past occasions, the President's Assistant for National Security Affairs has held open press conferences. The contrast between his access to the (public and foreign) press for open questioning and his inability, even on the same subjects, to give his views to authorized committees of Congress is striking.

Our proposal to give the Assistant for National Security Affairs a second "hat" avoids challenge to the new (and questionable) doctrine that White House aides have blanket immunity. It provides a way for the President to permit testimony by White House staff, on certain issues, without giving up claims to blanket immunity over immediate aides. Ever greater concentration of power in the White House without any possibility of review by the Congress can only produce great constitutional pressures.

Our proposal provides a way to vent these pressures in the interests of both Branches of Government. ☐

***See, for example, testimony of the NSC Staff Secretary Mrs. Jeanne Wilson Davis, May 19, 1971 before the House Subcommittee of Appropriations on Treasury, Post Office, and General Government Appropriations, p. 662.**

****Ibid., p. 673.**

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COUNCIL OF ECONOMIC ADVISORS ORIGINALLY TESTIFIED RELUCTANTLY

The Council of Economic Advisers was created by the 1946 Full Employment Act. Its first Chairman, Edwin G. Nourse, was reluctant to testify and, for two years, declined invitations to do so on grounds that it would interfere with his relationship to the President; nor would he permit other Council Members to testify. On August 13, 1948, the President (Harry S. Truman) wrote Professor Nourse in an effort to resolve disagreement among Council members. He said, "I do not wish to induce any member of the Council to testify if he feels it inappropriate for him to do so; nor do I wish to restrain any member from testifying if he feels that to be an appropriate part of his duties." After Nourse, it became traditional for CEA to testify.

In 1952, Leon Keyserling, then chairman of the CEA, defended the decision to testify in these words:

> It is . . . clear that the members of the Council are employees of and advisers to the President, and that they are not employees of and advisers to the Congress in the same sense.
>
> But this does not mean, in my opinion, that the members of the Council cannot or should not testify before, cooperate and consult with, and in a sense give advice to, committees of the Congress, just as this is done by heads of other agencies in the executive branch, and even other agencies in the Executive Office of the President. . . .
>
> . . . In all of these cases . . . none of these officials, except in rare instances, makes available to the public or to the Congress the nature of the advice he gives to the President while he is assisting and advising the President in the preparation of such Presidential messages and the recommendations contained therein; and likewise, it is only in rare instances that such officials make it known to the public or even to the Congress if there is a variance between the advice they give to the President and the extent to which the President follows that advice. . . . Nonetheless after the Presidential message in question and the recommendations contained therein are sent to the Congress . . . it has been practically the universal custom and is entirely appropriate for those officials whose statutory responsibility makes it clear that they have been advisers to the President in the field covered by such Presidential message and recommendations to appear before such congressional committees, to discuss and analyze the matters involved, and in fact to amplify and support the recommendations made by the President and the analysis underlying it. In addition, it has been the almost universal custom and entirely appropriate for such officials to appear before congressional committees and to make analyses and give advice in the fields in which they operate under statute, even when this has not been preceded by a Presidential message.* □

*Case Studies in American Government, Bock & Campbell, Prentice Hall, Inc., 1962, pg. 314. (Hearings before Joint Economic Committee.)

EXECUTIVE OFFICE OF THE PRESIDENT CONTAINS MANY ENTITIES

The Executive Office of the President contains eighteen subentities besides "The White House Office." (It is in the White House office that the so-called White House Staff are found.) With regard to eight of these eighteen entities, the chief official (director or chairman) is not now on the White House Staff and he evidently testifies on Congressional request without special problems. These eight entities are: Office of Management and Budget (OMB); Council of Economic Advisers (CEA); Office of Economic Opportunity (OEO); Office of Emergency Preparedness (OEP); Office of the Special Representative for Trade Negotiations; Office of Intergovernmental Relations; Council on Environmental Quality (CEQ); and the Office of Telecommunications Policy. The National Aeronautics and Space Council is chaired by the Vice President, but its Executive Secretary — not a member of the White House Staff — testifies on request also. (Two new executive offices of the President entities are The Pay Board and The Price Commission — neither of them run by the White House Staff.)

The remaining seven entities are run (in one fashion or another) by White House special assistants (of one kind or another). Thus the Special Assistant to the President for Consumer Affairs (Mrs. Virginia H. Knauer) is Director: Office of Consumer Affairs. Mrs. Knauer even uses the title "Special Assistant to the President" when testifying. The Special Consultant to the President for Narcotics and Dangerous Drugs (Dr. Jerome H. Jaffe) is Director: Special Action for Drug Abuse Prevention; he testifies using both titles.

The Science Adviser to the President (Dr. Edward E. David, Jr.) is Director: Office of Science and Technology and testifies in the latter capacity. The Counsellor to the President, Donald Rumsfeld, is Director of the Cost of Living Council. (When he was Director of OEO, he testified while holding the title of Counselor. Sargent Shriver was also Director of OEO while on the White House Staff — as Special Assistant to the President.)

Until a few days ago, the Assistant to the President for International Economic Affairs was Peter G. Peterson who was also Executive Director: Council on International Economic Policy. The Assistant to the President for Domestic Affairs (Mr. John D. Ehrlichman) is Executive Director: Domestic Council. (The seventh entity is the NSC.) □

CREDENTIALS OF FAS CONSULTANTS

Raoul Berger, esq.: retired Professor of Law, probably America's leading expert on Executive Privilege.

Alton Fyre: Joint Fellow of the Woodrow Wilson International Center and of the Council on Foreign Relations; author of a forthcoming study "A Responsible Congress: Security, Science and Foreign Policy."

Arthur S. Miller: Professor of Law, George Washington University; Consultant, Senate Subcommittee on Separation of Powers.

Bernard Schwartz: Webb Professor of Law, New York University; Author of the five volume work "A Commentary on the Constitution of the United States."

Eugene Skolnikoff: Chairman, Department of Political Science, MIT; formerly special Assistant to three successive Science Advisers to the President.

Lee C. White: Law firm of Semer, White and Jacobsen; White House legal adviser (deputy special counsel) to President Kennedy and (special counsel) to President Johnson. □

EXECUTIVE PRIVILEGE

Executive Privilege is the power asserted by the President to be "inherent" in the executive to withhold information from the public, from the legislature or from the judiciary. It is in direct opposition to an inherent right of the legislature to make inquiry into the administration of the laws it makes and to be properly informed in order to draft legislation. The Supreme Court has never ruled specifically on this conflict between the branches although the privilege has been asserted since the time of President Washington by about 20 different Presidents.

Presidents Johnson and Nixon have followed a precedent set by President Kennedy that executive privilege could be invoked only by the President and not delegated to lower-ranking executive branch officials. This has, however, led to gamesmanship in which the Defense Department has justified refusals with executive-privilege-like phrases and the Justice Department has explained them as simply "preliminary" refusals. Evidently, Committees must address their letters to the President and insist on his signing the replies! But often there is simply an Executive Branch flat refusal or no answer. As Senator Fulbright has testified, the commitment that only the President could invoke executive privilege "has been reduced to a nullity by the simple device of withholding information without formal invocation of executive privilege."

Two Approaches To The Conflict

There are two approaches to the on-going conflict between the Branches. One approach suggests that these interbranch conflicts are essentially power struggles about which nothing can be done. Some observers consider it unsophisticated to say that an executive branch (or legislative branch) act is unconstitutional. They believe that the balance of power between the branches is something the Constitution either cannot regulate, or something intended to be left to a continuing conflict in the name of checks and balances.

A second approach argues for submitting the controversy to the third branch of Government, that is, to the courts. De Tocqueville observed about America: "scarcely any political question arises . . . that is not resolved sooner or later, into a judicial question." In this view, only the Supreme Court can devise ground rules for rights to information that would fairly adjudicate this quite complicated dispute.

Recently, the Ervin subcommittee of Senate Judiciary (Separation of Powers) released 600 pages of hearings on Executive Privilege. The testimony was dominated by the careful and thorough research of Professor Raoul Berger. Professor Berger is among those who argue for a court test. He notes at the outset of a lengthy study: "There is little if any historical warrant, I propose to show, for the notion that executive privilege was ever intended to be among the checks on the legislative power of inquiry."** He argues persuasively that the Constitution was meant to be interpreted in the sense in which it was adopted. And he argues that an unrestrained right of investigation was meant to be provided to the legislative branch.

Unfortunately the abuse of legislative investigatory prerogatives by the late Senator Joseph McCarthy induced the Executive Branch to commit itself to correspondingly rigid claims in order to protect itself. The Attorney General of that period (Attorney General Rogers, now Secretary of State) claimed the right to "uncontrolled discretion" to withhold information. In particular, the Executive claimed that administrative efficiency required secrecy. Unfortunately Senator McCarthy was not censured by the Senate for abusing his investigatory rights but for obstructing the Senate from investigating him.

History Supports Legislature

Professor Berger shows that the British House of Commons in the seventeen hundreds was not put off from investigating executive mismanagement despite apprehensions about disrupted alliances and the specter of a civil war that might flow from the revelations. Colonial Assemblies followed the lead of the House of Commons in expecting full disclosure. The Continental Congress, in creating a Department of Foreign Affairs, provided that any member of Congress would have access to all papers in the Department provided that no copy were taken of secret matters without leave of Congress. About a hundred years later, in 1854, Attorney General Cushing advised the President that it was the duty of the heads of departments to communicate information on matters of official duty to either House of Congress when desired.

The Executive Branch argument for an Executive Privilege to withhold information must claim some "inherent" right of executive branch power; no such right being mentioned in the Constitution. Attorney General Rogers saw this right as stemming somehow from the President's duty to enforce the laws. But the duty to enforce the laws ought not be so construed as to permit the Executive to hinder Congress's duty to make new laws and oversee the operation of old ones.

The Courts have never supported the use of Executive Privilege when invoked against the legislature. They have only considered cases involving citizen or judicial inquiries.

Executive Branch Claims "Uncontrolled Discretion"

The "uncontrolled discretion" to withhold information from the legislative branch claimed by the Executive Branch is much broader than the rights the courts have supported in cases involving both executive branch military secrets and *private* parties. Thus it is unlikely that the Courts would sustain such an absolute claim against the legislature. In the trial of Aaron Burr, for example, Chief Justice Marshall ruled that the President and Department heads could be subpoenaed. He further made it clear that the President would have to produce requested papers or persuade the *court* that their production should not be insisted upon, by showing the paper in question to the court.

No doubt there are, and will be, sound reasons to resist certain Congressional inquiries. But it seems evident that no one branch of Government should be permitted, by itself, to determine the boundaries of a fundamental conflict between the branches. Not only would this be inappropriate, it would obviously lead to efforts by the Executive Branch to maintain much greater control over information it generates than less involved observers would sanction. The claim to "unlimited" discretion is obviously a case in point. ☐

**This excellent study appears in 12 UCLA Law Review 1044 (1965) and is reprinted in full (150 pages) in the Ervin hearings.

IS CONGRESS LOBBIED BY THE EXECUTIVE BRANCH?

On August 12, 1970, the day of the ABM vote, Senator John Sherman Cooper was advised that a secret letter from Ambassador Gerald Smith, our SALT negotiator, was evidently circulating among ABM proponents. Speaking on the Senate floor, Senator Cooper said:

> "In the last 2 or 3 days, it has been rumoured that the chief negotiator of the United States has made some statements about the ABM as a bargaining chip. If he has made such a statement, I think, in candor, someone should come to the Congress and tell us in this Chamber today, and not let a message be passed around by rumour, leaving impressions which may be true or untrue." (Congressional Record S-13288)

This incident is an example of the Executive Branch propensity to "lobby" the Legislative Branch by quietly or informally advising its supporters of matters that should, by rights, be known to all Senators equally.

These actions raise important questions. Should the Executive Branch have the right to send a circular letter to some — but not all — Senators conveying certain information? If one thinks of the Senate as a body of equals sitting in judgment upon Executive Branch proposals, the answer would seem to be "no." Certainly, the Judicial Branch would not permit information to be given to one member of a panel of judges but not to all. One solution to this problem worth considering is this: unsolicited information from the Executive Branch conveyed in letters or memoranda sent to one or more Senators (Congressmen) should be filed with the relevant committee of the Senate (House) where any other Senator (Congressman) would be able to examine it. The simple filing of this information would pose little burden on the Committee which could, for example, hold it for only a year.

Do Committee Chairmen Share Information?

On December 16, 1971, Dr. John S. Foster, Director of Defense Research and Engineering, wrote Senator Claiborne Pell that the Defense Department was unwilling to disclose its activities concerning weather modification. However, his letter said that "recognizing that the Congress is concerned," he had "seen to it that the Chairmen of the Committees of Congress with primary responsibility for this Department's operations have been completely informed regarding the details of all classified weather modification undertakings by the Department."

What does this mean? The "Congress was concerned" only in the sense that Senator Pell was concerned. In what sense will the Committee Chairmen see themselves as repositories of this information for the members of their body? Will they advise, or not advise, other Senators of the facts? Do they, and should they, consider themselves to have greater rights to know than other Senators? Can a Senator, as a matter of course, get the relevant Committee to help him secure information from the Executive Branch? Or again, if one Senator receives a letter from the President on a subject of general interest, e.g. on U.S. policy toward MIRV, should other Senators feel free to ask him for the text of this letter as if it were a communication to the Senate itself? Alternatively, should such letters be considered proprietary information of the Senator who requested the information?

Much of the weakness of the Legislative Branch vis-a-vis the Executive Branch stems from an absence of solidarity among Legislative Branch members both in securing information, and in protecting the rights of fellow members to information. This absence of solidarity stems, in part, from a lack of definition of ground rules. U.S. Code 18 Section 1913 precludes the use of appropriated monies to "influence in any manner a Member of Congress." It makes an exception for Government employees who are "communicating to Members or to Congress through the proper official channels, requests for legislation." Presumbly, it is up to Congress to decide what is a communication "to Congress" and what are the "proper official channels." In defining these terms, and in generating its own traditions, Congress ought to remember that only in unity is there strength. ☐

SELECTIVE DECLASSIFICATION

Intense public interest in over-classification by the Executive Branch has tended to obscure a more fundamental political problem — selective declassification. On most issues, it is not the *degree* of classification but the *pattern* of it that most bedevils public education. The Executive Branch can, and often does, simply declassify information that supports its case and keeps classified what does not. Senators may, or may not, be given access to the information that is classified. But since, in any case, they can make no public use of it, the distinction is of little importance. Indeed, for most Congressmen, unless the information achieves a certain amount of publicity in the press, it is much less likely to come to the attention of Congressmen or their staffs. It is still less likely to be usefully and credibly communicated by them to other offices.

The Federation believes that Congressional hearings on selective declassification would be useful and informative. Hearings on selective declassification would give dramatic evidence of the ways in which information is manipulated, not simply through cautious bureaucratic overclassification, but through deliberate release of preferred information and deliberate refusal to release information no more sensitive.

One example might be provided. The number of missile defense interceptors to be deployed in the SAFEGUARD missile defense was an exceedingly significant number in any analysis of SAFEGUARD's effectiveness — it was, after all, the amount of ammunition available to fire at incoming objects. There was no reason to classify this number. As Dr. Wolfgang K. H. Panofsky wrote to the *New York Times,* "Anyone can count the number of anti-missiles once the holes are dug." And, as he pointed out, the number of interceptors was so small that only a tiny fraction of an incoming force which might be a threat to Minuteman could be intercepted. For example, in one article, this number of interceptors was estimated at 215 while the attacks that were under consideration involved 1500 incoming warheads.

While this number was kept classified, the Defense Department released ever greater information about the Soviet threat to Minuteman missiles; about the rate of growth of Soviet SS-9's; about the size of projected warheads upon it; and even about methods of using the warheads efficiently for an attack upon us (reprogramming) — methods of which the Soviet Union might not have been aware! ☐

The 26 year old FAS Constitution commits the Federation to "strengthen the international cooperation tradition among scientists" and to meet the responsibility of scientists to the welfare of mankind. In this connection, we deplore those long-standing restrictions on scientific communication and travel which are so evident in the articles on this page and so well known in any case. In response to this problem the FAS elected National Council released the statement in the box below.

SOVIET CENSORS STOP FEDERATION MAIL

On January 19, 1971, the Federation wrote the Soviet Committee on Human Rights. The FAS letter described the Federation and noted certain analogies between the Soviet Committee and its own history and goals. Both organizations were made up of scientists. Both were loyal to their own country, but independent of their own Government. Both sought to inject science into Government and to ensure a just application of law.

No response was received. There are indications that the letter was never delivered. In particular, on November 5, Dr. Valery Chalidze, who founded the Committee, complained of interference with his mail and telephone calls in a letter to the Soviet Ministry of Communications. On December 7, 1971, FAS tried again with a heavily registered air mail letter. But two months have passed and no reply has been received.

The existence of Soviet censorship has, of course, been known throughout the world for many many years. Over one hundred and thirty years ago, the Marquis De Custine complained of the "most minute examination" of his papers and books upon entering Russia. (Journey for Our Times, Gateway Publications). More recently, Solzhenitsyn complained about the problem. Few educated Russians doubt that censorship of incoming mail and Soviet journals exists. And, as foreigners are acutely aware, only a handful of copies of a very few noncommunist periodicals from the West can be purchased in Russia, and only in the most major intourist hotels.

Nevertheless, the Soviet Constitution of 1936 protects the basic democratic rights of Soviet citizens, including such rights as regards freedom of the press, of conscience, and of assembly, and it guarantees, in addition, the right of secrecy of correspondence.

In 150 pages of "The Medvedev Papers: The Plight of Soviet Science Today" (St. Martin's Press, New York), Zhores A. Medvedev describes how he meticulously decoded the fact and style of Soviet mail censorship. The Soviet censorship office, called Glavit, is evidently swifter in handling outgoing mail than incoming. It takes about a week longer to handle incoming mail to Moscow than it does mail to other towns where, presumably, the traffic is less heavy. On incoming magazines, the censor puts a small double angle to signify "O.K." Prohibited issues of a magazine receive a hexagon. The angles and hexagons are associated also with a number, which is keyed to the inspector bearing responsibility.

As a result of Medvedev's persistence in sending letters abroad, he lost his job. The Post Office returned to his superior letters he had sent abroad. In a subsequent meeting with several officials, the orthodoxy of his views on Czechslovakia was challenged and a variety of other political questions asked him. The next day he was dismissed "for incompatibility with his duties." □

ON THE FREEDOM OF SCIENTIFIC COMMUNICATION

Mankind is faced with threats from many sides: nuclear annihilation; resource depletion; environmental degradation; and the debasement of traditional human values. Science and scholarship have helped to produce some of these threats. But they will be resolved, or forestalled, only with the application of educated thought. All nations must make intellectual contributions to solving these global problems. Scientists must unite in cooperating among themselves to facilitate solutions. And nations must make this cooperation possible. Indeed, nations who make international cooperation difficult for their scientists can only retard their own national development. A nation can help mankind go forward, or hold itself back. This is the only choice.

We therefore urge all nations to facilitate intellectual exchanges between scientists and scholars. No limitations should be placed on the rights of scientists to attend conferences of their peers or to invite their foreign colleagues to their own country. No censorship should prevent their correspondence on matters of scientific and scholarly interest.

We call on all scientists and scholars to assist each other in requiring that Nations fulfill these obligations.

— *Council of The Federation of American Scientists*

SOVIET COMMITTEE ON HUMAN RIGHTS

The "Committee for Human Rights in the USSR" was formed in Moscow on November 4, 1970 and consisted at that time of: Academician A. D. Sakharov, and Physicists A. N. Tvyordokhlebov and V. N. Chalidze.

A. D. Sakharov is a world-famous physicist who made important contributions to the Soviet H-bomb. His title "Academician" places him in the ultimate rank of Soviet science. His recent "Appeal of Scientists" (with V. F. Turchin and R. A. Medvedev) received the widest possible publicity inside the United States and was universally admired. Chalidze, though trained as a physicist, is a self-taught lawyer and a man of unusual integrity. As a result of his activities in authoring and compiling documents about human rights, he was removed from his leadership of the Polymer physics group at the Plastics Research Institute in Moscow.

The Committee on Human Rights formulated five principles underlying its activities. It planned to operate in accordance with laws of the land. It would not accept members of political parties or organizations participating in the Government or, on the other hand, members of orthodox opposition parties.

The Committee's aims were "consultative assistance" to the organs of government; "creative assistance" to persons engaged in research into human rights questions; and "legal enlightenment" on human rights questions. The Com-

mittee decided to take the Universal Declaration of Human Rights as its guide and to take into account the traditions and real difficulties faced by the Soviet State. Finally, the Committee was prepared to enter into contact with foreign public and scientific organizations so long as the activities of these groups were based on the principles of the United Nations and were not aimed at harming the Soviet Union.

Three months after the group's creation, on February 15, 1971, Chalidze and Tvyordokhlebov were summoned separately to the Department of General Surveillance of the Moscow Procuracy and told that they had violated laws relating to voluntary societies and unions. They were warned of their responsibility under article 200 of the Russian Criminal Code (taking the law into one's own hands). A response from Chalidze on February 19 noted that the Committee on Human Rights was not in fact covered by the 1932 regulations relating to voluntary organizations. Chalidze's note called the prospect of criminal proceedings "alluring" as a way of making it possible in "open judicial debate" to examine the right of association under current practice.

On March 29, the home of V. N. Chalidze was searched by the KGB. Documents on human rights and copies of the Committee's [samizdat] journal "Social Problems" were confiscated.

On April 28, the Committee became the Soviet affiliate of the International League for the Rights of Man and, shortly thereafter, elected Lenin Prize-winning mathematician Igor Rostislavovich Shafarevich to membership. On May 20, Chalidze wrote the Presidium of the USSR Supreme Soviet in defense of the right of Jews to leave the Soviet Union; Committee Members Sakharov and Tvyordokhlebov associated themselves with his arguments that Zionism was not anti-Soviet, anti-communist, or reactionary.

The Committee studied the case of R. A. Medvedev who was for a time imprisoned in an insane asylum as a punitive measure for his advocacy of certain constitutionally protected freedoms. The committee noted that imperfect guarantees of the rights of the mentally ill create a danger that psychiatry will be misused to discredit unorthodox scientific, social, political and philosophical ideas. The Committee appealed to the Fifth World Congress of Psychiatrists to draw up international legal guarantees for the mentally ill.

On February 4, 1972, the *New York Times* reported a high-level Communist Party decision to suppress "The Chronicle" in which the Committee's views have been circulating. A general crackdown on dissidents is evidently in progress. However, the January 5 issue of the journal was being circulated nevertheless. ☐

SHOULD THE PRESIDENT BE PERMITTED PRIVATE INTERNATIONAL AGREEMENTS?

On January 19, the Senate Foreign Relations Committee reported favorably a bill (S.596) requiring the President to transmit to the Congress, within 60 days of its coming into force, the text of any international agreement to which the United States is a party. Agreements that cannot be made public are to be transmitted in secrecy to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs. The State Department opposed the bill. It passed the Senate on February 16, 81-0. ☐

FAS TESTIFIES ON SEA-BED TREATY RATIFICATION

On January 27, the Senate Foreign Relations Committee took up the "Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor." Negotiations on this treaty had been underway for four years.

The idea of keeping the seabed free for "peaceful purposes" had been raised in the UN by the Permanent Representative of Malta, Mr. Arvid Pardo. However, the United States had been willing to discuss the possibility of banning only the emplacement of nuclear weapons from the sea-bed. Hence conventional weapons on the seabed, or defensive military installations (especially anti-submarine warfare capabilities) would not be included. In addition, the United States announced on October 7, 1969 that vehicles which could "navigate in the water above the seabed and submarines" would not be precluded from anchoring or resting on the seabed even if they had nuclear weapons on board.

In effect, therefore, the Treaty banned fixed nuclear installations on the sea bottom and, during the negotiations, it was agreed that nuclear "creepy crawlers" walking along the seabed would be excluded as well.

The Federation Executive Committee endorsed the Treaty as a "potentially useful — if minor — effort to keep the arms race out of spheres into which it has not yet spread."

In testimony before the Senate Foreign Relations Committee and in a subsequent letter, however, FAS director Jeremy J. Stone pointed out that the negotiators had evidently not discussed submarines "specifically designed" to sit on the ocean bottom. (Indeed, the Soviet Union had never made any formal reply to the U.S. assertion that submarines were not covered by the Treaty!) Dr. Stone agued that the United States would feel precluded from building such special submarines because they would seem to be a circumvention of the Treaty. If so, he urged that the legislative history of the Treaty reflect a U.S. view that such submarine were precluded by the spirit and letter of the Treaty.

He also urged that future efforts be made to prohibit conventional weapon deployment on the seabed since such weapons might be used someday to blockade parts of the sea. He noted that the Treaty contained an article requiring further negotiations aimed at keeping the arms race off the seabed. And he criticized a two-sentence statement of the Joint Chiefs in which the Chiefs expressed their concern that "any additional constraints" would "bear a potential for grave harm to U.S. national security interests." Only when the treaty constraints are defined, Stone argued, could professional military analysis determine whether, on balance, the constraints placed on the United States were justified by the desirability of having comparable constraints placed on possible adversaries.

The Treaty was ratified by the Senate 83-0 on February 15, 1972. ☐

SENATOR FULBRIGHT TO OFFER FAS AMENDMENT TO WAR POWERS BILL

On February 9, the Senate Committee on Foreign Relations released its Committee Report on S-2956 — the Javits-Stennis-Eagleton Bill on War Powers. In "Additional Views" provided by the Chairman, Senator J. W. Fulbright noted his complete concurrence with the Federation of American Scientists proposal that the U.S. first-use of nuclear weapons be prohibited without explicit authorization by Congress. The Chairman proposed to offer an amendment to the War Powers bill which would embody this view.

The present form of the bill limits the President's authority to conduct military operation in the absence of a declaration of war. Conditions under which the President may make emergency use of the armed forces are specified as follows:

(1) To repel an armed attack upon the United States; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;

(2) To repel an armed attack against the Armed Forces of the United States located outside of the United States, and to forestall the direct and imminent threat of such an attack, and

(3) To protect, while evacuating, citizens and nationals of the United States, as rapidly as possible, for any country in which such citizens and nationals are present with the express or tacit consent of the government of such country.

FAS TESTIFIES ON PRIORITIES

On February 2nd and 3rd, 1972, the full Senate Committee on Appropriations chaired by Senator Allen J. Ellender heard four days of hearings on national priorities. Three witnesses testified in the name of the Federation.

Richard L. Garwin spoke on priorities in military and non-military R&D. He called for more exploratory R&D expenditures and warned against premature engineering development. Adam Yarmolinsky cautioned the Committee against the "automatic priority" for defense spending. He suggested that the Committee had the responsibility to balance the competing claims of experts in the military field with specialists asking for funds for health, urban renewal and so on. He urged the Committee to exercise broad powers of judgment, while keeping in mind the fact that our national security is by no means solely a function of our military strength.

Morton H. Halperin argued that no methodology exists to compare the payoff from expenditures on strategic programs with those on domestic programs. Within wide limits, he felt the size of the defense budget was essentially arbitrary. He urged the Appropriations Committee to write into legislation those ceilings on expenditures it intends to approve over the next five years with a view to providing general guidance to the Executive Branch in its construction of budgets. In a wide-ranging analysis, Dr. Halperin discussed waste and efficiency in defense spending on both strategic and general purpose forces. ☐

TEST BAN PROGRESS

The January FAS newsletter called for a total Test Ban without on-site inspection. Eight eminent former Government officials (members of FAS) who were familiar with this problem endorsed the FAS statement.

On January 24, Senator Edward M. Kennedy gave a major speech proposing a related Senate resolution. He urged the United States to announce a moratorium on underground nuclear testing that would last for so long as the Soviet Union halted such tests; meanwhile, intensive negotiations would be started with a view to achieving a formal agreement. Senator Kennedy noted that new developments in technology had made his resolution possible; he quoted the FAS statement as a good summary of these developments.

On February 4, a *Washington Post* article was titled, "Nixon to Review Stance on Underground Tests." The article began "The Nixon Administration spurred by an initiative by Senator Edward M. Kennedy (D-Mass.) is taking a new look at the idea of expanding the nuclear test ban treaty to encompass underground blasts." ☐

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