EXTENSIONS OF REMARKS

1972 GOOD CITIZENSHIP AWARD WINNERS ANNOUNCED

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. WHITEHURST. Mr. Speaker, I am pleased to announce the winners of my Good Citizenship Award contest conducted among high school seniors in Norfolk and Portsmouth, Va., the Second Congressional District. They are Miss Ann Reid Priest, of Norfolk, and Mr. Richard Martin, Jr., of Portsmouth. The two will represent their city during an all expense paid trip to Washington, May 1, as my guests and be "Congressmen for a Day."

The aim of the Good Citizenship Award is to bring public attention to the fact that the majority of our students are good citizens, and are helping in the orderly growth of our cities. The backgrounds of Miss Priest and Mr. Martin are outstanding, and yet the mayor's committee in each city that selected the final winner faced difficult decisions because each high school's nominee is an active participant in school and community affairs.

Conducting this contest, with the splendid cooperation of the mayors of Norfolk and Portsmouth and the two cities' school superintendents, brings factual evidence to me once again that the great majority of today's youth should not be saddled with the stereotype created by the actions of a few.

I look forward with pride to being host during the visit of Miss Priest and Mr. Martin.

Mr. Speaker, I sent out a press release April 11 regarding the Good Citizenship Award winners in which I reviewed their activities. I am sure there are high school seniors throughout this great land with similar backgrounds, but these two have been selected to represent the youth of the Second District of Virginia, and I am most proud of them. I insert the release at this point in the RECORD.

GOOD CITIZENSHIP AWARD WINNERS ANNOUNCED

Final winners in the Good Citizenship Award have been announced by Second District Congressman William Whitehurst, sponsor of the contest.

Ann Reid Priest, a senior at Norfolk Catholic High School, has been chosen winner of the award for Norfolk; and Richard Martin Jr., a Cradock High School senior, was selected for the Portsmouth Award.

The two students will receive an all expense paid day in Washington on May 1 as the personal guests of Congressman Whitehurst.

A Mayor's Committee selected each city winner from nominees representing their school. The contest was open to all seniors. Selection was made on the basis of volunteer work, participation in a community service project, and leadership in school activities.

Miss Priest listed her activities as Business Manager of the school newspaper, Defensor; Tutor at St. Mary's Academy; varsity cheerleader; National Honor Society; student of patient care at DePaul Hospital; Open Door neighborhood service in Park Place; active in changing conditions at the Norfolk Zoo; attends Blessed Sacrament Church; and plans to attend the school of nursing science at Old Dominion University.

Martin listed his community and school activities as co-editor of the school yearbook; drum major; member of concert, stage and regional bands, representative to the Eastern Regional Chorus at the All-State Chorus; four year letterman of Cradock baseball team; active member of Fairview Heights Baptist Church; and serves as Master Councilor, highest office of the DeMolay.

The Mayor's Committee, which made the final selection from the school nominees, is made up of leading citizens in the community. The Norfolk Mayor's Committee is chaired by Councilman R. Braxton Hill. Other members are Jack Rixey, President of the Norfolk Chamber of Commerce; Eugene Gordman, President of the Norfolk Association of PTA's; Neal Windley, Assistant to Norfolk City Manager; and Mrs. Bessie T. Hennigan, Member at Large.

The Portsmouth Mayor's Committee is chaired by Theodore Masters, City Clerk. Other members are Richard J. Davis, President of the Portsmouth Chamber of Commerce; Lloyd L. Peele, Vice President of First and Merchants Bank; Emilie S. Spong, retired school board member, and mother of U.S. Senator William Spong; and Elijah L. Jones, Assistant of Special Subjects, Portsmouth Public Schools.

The award is given in cooperation with Norfolk School Superintendent E. L. Lamberth, Portsmouth School Superintendent M. E. Alford, Norfolk Mayor Roy Martin, and Portsmouth Mayor Jack Barnes.

ONE YEAR LATER—THE LEGISLATIVE STATUS REPORT

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. FAUNTROY. Mr. Speaker, periodically I have issued a legislative status report for the people of the District of Columbia in order to keep them informed about my legislative activities. Since I do not have a vote in the formal proceedings of this House, I have made it a point to use my ability to introduce and cosponsor legislation as a means toward expressing my concerns about the many problems that confront all of us. This time I am inserting the status report into the RECORD to share it with my colleagues and the citizens of the District of Columbia.

I have been representing the people of this city in Congress for almost a year now. I believe that I have accomplished much. I have introduced a people's home rule bill, after holding public hearings in each of the city's eight wards, where hundreds of citizens told me what they wanted in their bill; and, the Senate has passed a home rule bill by the largest margin in history. I have also introduced legislation to give the District voting representation in the House and Senate. This measure has been approved by the Committee on the Judiciary and awaits actions by the House Rules Committee.

With respect to efforts to obtain passage of a home rule bill by the House, Senator BROOKE and I have put together a national home rule coalition that brings the power of national organizations, working with local groups, to our struggle. These organizations represent labor, business, education, and farmers as well as the League of Women Voters and many others. As a result of this coalition and the support of my many friends and colleagues here on the Hill, home rule hearings before the full Committee of the District of Columbia are now underway.

In the area of fiscal affairs, the House has approved a District revenue bill with the highest Federal payment increase in history. The increase was double the largest approved before I was elected. During committee consideration of that bill I led the fight, and cast the deciding votes, in defeating a proposal to double the sales tax on food sold in the city. With assistance from the White House and persistent pressure by many Members of this body, the District's subway program has been placed on solid footing.

More generally, I am the primary House sponsor of national and local legislation to combat the dreaded disease of sickle cell anemia. The national program has passed the Senate and the House by unanimous votes. In terms of guaranteeing equal opportunities for all people, I served as the spokesman in this body on the transfer of Federal job discrimination functions from the Civil Service Commission to the Equal Employment Opportunity Commission. Congress has passed a wide-ranging employment discrimination that for the first time introduces into law remedies for employees discriminated against by the Federal Government.

SELF-DETERMINATION FOR THE PEOPLE OF THE DISTRICT OF COLUMBIA

Without a doubt self-determination is the most important question facing the people of the Nation's Capital. My home rule bills, developed with the aid of the people, answer the needs of self-government and consideration of the unique "national" character of Washington, D.C.

PEOPLE'S HOME RULE BILL—H.R. 9499, 10196, 10197, 10198

More than 40 other Members joined with me in introducing these bills which provide for an elected Mayor, 11-member City Council—three at large—and a youth council. Under this bill, the city can legislate on "any subject as to which Congress could exercise its authority as the Legislature for the District, including imposition of appropriate taxes and fees." There is no Presidential veto and the Federal payment is fixed as a percent of the locally collected revenues. There is an additional payment to the city to cover the costs of national demonstrations. The city will also be able to borrow money for capital improvements.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

While the bonds will not be tax exempt, the bills provide for an interest subsidy by the Federal Government. All of the costs of constructing the facilities for higher education in the city are also to be paid by the Federal Government. Hearings have now begun before the full Committee of the House Committee on the District of Columbia.

CONGRESSIONAL REPRESENTATION—HOUSE JOINT RESOLUTION 684

Amendment of the Constitution of the United States would provide the District with two Senators and as many Representatives as they would be entitled if they were a State. District Congressmen and Senators will have the same rights and responsibilities as would any Member in either house. This bill has passed the House Judiciary Committee and awaits action by the full House.

ABOLISH THE HOUSE DISTRICT COMMITTEE—HOUSE RESOLUTION 751

The House Committee on the District of Columbia would be abolished and a select committee would be established with the power to enter into agreements with the other standing committees with respect to the disposition of bills affecting the District of Columbia.

ELECTION LAW REFORM—H.R. 9893, 10598

I introduced several bills to reform the election law in the District of Columbia. Among these was H.R. 9893, which specifically gave the right to vote to any ex-felon who was released from prison. H.R. 10598 completely revamped the election law. Another important item is the establishment of criteria for financial reporting.

Additionally, the bill establishes a presidential preference primary. A "clean bill" reported and passed by both Houses was enacted into law by Public Law 92-220.

NUTRITION STANDARDS AND HEALTH CARE

No society can have high productivity or be secure from within if its people are hungry or ill. The bills in this group provide for programs that attack those diseases which have been ignored and for funds to offer care for the chronically ill and the very young.

PILOT PROJECT IN THE DISTRICT OF COLUMBIA ON SICKLE CELL ANEMIA—H.R. 11170

As the District of Columbia has one of the highest percentages of black people, it also has one of the highest incidents of the dreaded disease, sickle cell anemia. This bill is designed to provide in the District a pilot program using money from HEW to identify, counsel, and treat the disease. Additionally, the bill provides for funds for research in local medical schools, hospitals, and research institutions. Hearings on this bill have been held before the Subcommittee on Public Health and Welfare of the House District Committee.

NATIONAL ATTACK ON SICKLE CELL ANEMIA—H.R. 11171

This bill declares and finds it to be the policy of the Congress that sickle cell anemia is a national health problem that affects black people in particularly disastrous ways. The bill authorizes grants to establish screening, counseling, and education and treatment programs. This measure has passed both the House and the Senate.

SUPPLEMENTARY MONEY FOR SICKLE CELL ANEMIA—H.R. 10870, 10935, 10936, 11251

These supplemental appropriation bills provide $10 million for detection and treatment of sickle cell anemia under existing programs for this year.

CHRONIC CARE REHABILITATION—H.R. 11962

This bill provides funds for demonstration programs and projects designed to rehabilitate elderly patients in long-term health care facilities or programs to assist such patients in attaining self-care. This is now before the Committee on Interstate and Foreign Commerce.

LOW-COST MEALS FOR THE ELDERLY—H.R. 11961

Grants are made available under this act for the establishment, maintenance, operation, and expansion of low-cost meal programs, nutrition training and education programs for the elderly who often lack the resources and the ability to prepare nutritionally sound meals for themselves. The bill is before the Committee on Education and Labor.

FOOD STAMPS IN HALFWAY HOUSE—H.R. 11466

Assurance that adequate foods and nutrition will be available for prisoners in halfway houses is provided by allowing food stamps to be used by certain halfway houses conducting drug treatment and rehabilitation programs. The bill would also permit some addicts to use food stamps for the purchase of meals. It is pending before the Committee on Agriculture.

CONGRESSIONAL CONCERN FOR THE RETARDED—HOUSE RESOLUTION 406

Initially introduced by Congressman GILBERT GUDE, Republican, of Maryland, this House concurrent resolution states that it is the feeling of the Congress that in keeping with the Universal Declaration of Human Rights and the Declaration of the Rights of the Child—both documents of the United Nations—it be clearly stated that the mentally retarded person has the same basic rights as any other citizen. While this resolution does not provide any specific remedy for these handicapped people, it does serve as the basis for future legislation and is a clear unambiguous statement of the policy of the Congress.

TO SAVE CHILD HEALTH CARE PROGRAMS—H.R. 8799

This legislation is designed to extend for 5 years congressional authorization for 67 children and youth comprehensive health care projects and 57 maternal and infant care projects. The projects, which deliver health care to almost half a million children and youth of lower socio-economic levels in central cities and rural areas throughout the country, are scheduled to end on June 30, 1972. In the District of Columbia, they are as follows: First, the Maternity and Infant Care Project, 901 North Capitol Street NE., under the direction of Edward R. Wermtznig M.D.; second, the Children and Youth Project at 801 North Capitol Street, under the direction of Hilary Miller, M.D.; and third, the Children and Youth Project at the Children's Hospital, under the direction of William Oberman, M.D. The bill was referred to the Ways and Means Committee.

NATIONAL SICKLE CELL ANEMIA INSTITUTE—H.R. 8597

Cosponsored with Congresswoman GRASSO, Democrat, of Connecticut, this bill establishes a National Sickle Cell Anemia Institute in order to begin a national, coordinated attack on this terrible disease which affects only black people. The institute would conduct and support research for the diagnosis, treatment, and prevention of sickle cell anemia; provide training and fellowships to study the disease; create nationwide screening programs to find persons affected by the disease. My National Sickle Cell Anemia Prevention Act was adopted in lieu of this measure.

SUPPLEMENTAL APPROPRIATION FOR PREVENTION OF LEAD-BASED PAINT POISONING—H.R. 10871, 10933, 10934, 11252

These bills provide a total of $23 million for research in the prevention and treatment of lead-based paint poisoning. The bills are now before the Committee on Appropriations.

TO REQUIRE CHILD CARE FACILITIES IN PUBLIC HOUSING PROJECTS—H.R. 8864

This bill will amend the Public Housing Act of 1937 to require the inclusion of child care facilities in all future federally assisted public housing projects.

Entitled "The Child Care Facilities Amendment of 1971," the legislation provides that each project should include a center where the children could be cared for and participate in educational and creative activities while the parent works, undergoes job training, or receives additional education preparatory to employment. The bill was referred to the Committee on Education and Labor.

CRIMINAL JUSTICE IN THE NATION AND THE NATION'S CAPITAL

Criminal justice is more than just providing adequate police and judges who are well paid and adequately equipped. Part of it is assuring that those who are incarcerated are given every opportunity for rehabilitation, education, and desire to emulate the best aspects of our society. Another aspect is assuring that everyone is treated fairly and equitably when he has contact with our criminal justice system whether as one charged or as an unfortunate victim.

COMPENSATION FOR VICTIMS OF CRIME—H.R. 11507

Introduced with Congressman ABNER MIKVA, Democrat, of Illinois, this bill provides compensation for any person who suffers a pecuniary loss as the result of a crime against him or against another who is being assisted by the victim of the loss. At present, there is no provision in law to assist one who suffers a loss, as the result of the commission of a crime, for medical, present or future earnings, and funeral expenses. The bill is now before the Committee on the District of Columbia where hearings are now being held.

CREATION OF COMMUNITY BASED CORRECTIONAL FACILITIES—H.R. 12529

This bill provides assistance to the States and the District of Columbia in phasing out large prisons which are located a substantial distance from the urban centers and replacing them with

small facilities located in the community. It also provides for the creation of innovative programs of vocational training, job placement, and on-the-job counseling. In addition to developing specialized curricula and the training of educational personnel, funds are provided for research and demonstration grants. The bill has been referred to the Committee on the Judiciary.

GRIEVANCE PROCEDURES FOR MEMBERS OF THE ARMED FORCES—H.R. 11958

Under the provisions of this bill, procedures providing members of the Armed Forces redress of grievances are established as well as a Commission on United States Military Justice whose responsibility shall be to determine the complaints alleged and conduct such investigations and makes such recommendation as are necessary to correct any discovered abuses.

DEATH PENALTY SUSPENDED AND STUDY INITIATED—H.R. 11797

This bill prohibits the imposition of a death sentence until such time as the Congress is able to thoroughly study and make a determination of its desirability as a form of punishment. Originally introduced by Congressman EMANUEL CELLER, Democrat, of New York, who is chairman of the House Judiciary Committee, the bill was reintroduced by Mr. FAUNTROY after an analysis concluded that, of the possible alternatives available, this was the most likely to accomplish the objectives of providing for a thorough and unemotional study of the death penalty since all executions would be suspended during the time of the study. The bill is now before the House Committee on the Judiciary.

MONTHLY FURLOUGHS FOR FEDERAL PRISONERS—H.R. 12964

Each prisoner, under this bill, whose record shows that he has faithfully observed all rules and not been subjected to punishment or deemed to be a threat to society through the disposition of a violent nature is eligible for a 24-hour family visitation furlough each month. This provides an incentive for each prisoner and allows him to keep meaningful contact with his family. The bill was referred to the Committee on the Judiciary.

HEARINGS FOR SUSPENSION-REVOCATION OF DRIVING PERMITS AND PROCEDURES FOR THE REMOVAL AND DISPOSAL OF ABANDONED CARS—H.R. 10956

Individuals whose driving permits are suspended will be entitled to hearings before the Commissioner of Motor Vehicles, if such is requested. This will allow an individual to present any reason which would serve to ameliorate the suspension, an opportunity which is now lacking. Additionally, the city officials would be authorized to take custody and provide for the disposal of any vehicle which is found to be abandoned under the guidelines set out. The bill is before the House Committee on the District of Columbia.

ABOLITION OF THE HOUSE COMMITTEE ON INTERNAL SECURITY—H. RES. 600

Cosponsored with Congressman JEROME WALDIE, Democrat, of California, and more than 20 other Members of the House, this resolution would abolish the House Committee on Internal Security which is the successor to the House Un-American Activities Committee—HUAC. A committee like this, whose past practices have often stained the good reputations of many citizens, is neither necessary or desirable in a democratic society. The resolution has been referred to the Committee on Rules.

HOUSING AND ECONOMIC DEVELOPMENT

Housing remains one of the great unsolved problems in all urban communities and Washington, D.C., is no exception. It has been estimated that we need 10,000 units per year for 10 years in order to meet the current population demand for housing. We also need jobs for the people who live in these houses and a means by which they can contribute to the local economy. In the meantime, of course, we must provide the means for many people to achieve a marketable skill.

EXPANSION OF THE EMERGENCY UNEMPLOYMENT ACT—H.R. 12011

While economic development requires the creation of goods and services, as long as the economy is in a recession, it is necessary that the provisions of the Emergency Unemployment Act be expanded so that the minimum purchasing power is maintained. Only in this way can the other programs be successful. This bill is before the Committee on Education and Labor

DISTRICT OF COLUMBIA URBAN DEVELOPMENT CORPORATION—H.R. 12301

Governed by 15-member board, the corporation would be empowered to build and rehabilitate housing, community projects, industrial, and commercial enterprises in the city. These would be done by the corporation alone or with the aid and assistance of private developers. The corporation is intended to end the fragmentation of the plethora of alphabet agencies where no one has the authority, the funds, or the expertise to spearhead an attack on the problems of inadequate housing and commercial enterprises. The only Federal moneys required would be for startup purposes since the funding would be by Government guaranteed bonds. The bill is being considered by the Committee on the District of Columbia.

INCREASE CEILINGS ON UNEMPLOYMENT COMPENSATION—H.R. 10895

Cosponsored with Congressman DONALD FRASER, Democrat, of Minnesota, this bill was introduced to amend and update the Unemployment Compensation Act to make it conform to Federal Law as well as provide for an increase in the ceiling of the maximum benefits. Under current law, an individual may receive an amount up to 50 percent of the average weekly wage paid in the District of Columbia. This bill amends that to 66⅔ percent. As a result, more people will receive an amount that better approximates the intention of providing a viable insurance system for those who become unemployed through no fault of their own. This bill has been passed by both Houses and is now a public law, Public Law 92–211.

DEVELOPMENT BANK CREATED FOR CITY ECONOMIC LIFE—H.R. 11501

The creation of a development bank for the city is designed to assist those economic development projects which would normally be difficult to finance from the usual private or public sources. Priority would be given to those undertakings which increase employment or broaden the tax base. The bank would be private and of a limited profit nature with a 13-man board which includes three officers of the Federal Government, the Mayor, and the chairman of the city council. The bill has been referred to the House Committee on the District of Columbia. It has been approved by the subcommittee action.

SEED MONEY FOR NON-PROFIT LOW AND MODERATE INCOME HOUSING—H.R. 10075

This bill is designed to provide nonprofit housing corporations with interest free loans for pre-construction costs such as engineering studies, architect, and counsel fees. The bill also adopts for the District of Columbia the Uniform Disposition of Unclaimed Property Act which allows unclaimed funds, such as dormant bank accounts, deposits, and refunds held by utility companies and fiduciaries to be deposited in the fund. This measure has been referred to the Subcommittee on Business, Commerce, and Fiscal Affairs of the House District Committee.

DISTRICT OF COLUMBIA COMMUNITY DEVELOPMENT ACT—H.R. 10036

This bill modifies several provisions in existing law which inhibits the city and the RLA in providing safe and sanitary housing. Among other things, it allows the city to share land to which it has title with private developers and corporations. The city is also permitted to sell land to a nonprofit housing corporation at a price to be determined by the intended use of the land, as opposed to that price which would be commanded if the sale were based on the best economic use of the land. This measure has also been referred to the Committee on the District of Columbia.

THE ENVIRONMENT AND TRANSPORTATION

The protection of our environment and the prividing of safe, adequate, efficient mass transportation compliment each other. Where we are able to reduce the number of cars, our streets will be safer and the air will be cleaner. To the extent that the automobile is still necessary, provisions must be available to assure that insurance is available for the elderly as well as protection against those who are uninsured. All of the bills assist in this end.

PUBLIC OWNERSHIP OF THE TRANSIT COMPANIES—H.R. 11799

This bill would permit the city, through the WMATA, to acquire ownership of the D.C. Transit Co.'s equipment and other useful transportation facilities as well as cancel the franchise granted to Mr. Chalk. It would also provide for the acquisition of the privately operating companies in the metropolitan area since a unified transit system would be most economical and efficient to operate.

Provisions for reduced fares, and maintenance of the integrity of labor and other contracts are established along with means for both temporary and permanent financing. The bill is now before the House Committee on the District of Columbia.

NEW TRANSPORTATION SERVICES FOR THE ELDERLY—H.R. 11959

This bill provides that all applications filed under the provision of the Urban Mass Transportation Act must contain a reduced fare program for those who are 66 years and older. The bill also provides that motor vehicle insurance must be made available to the elderly and that all facilities for transportation be equipped to insure access for both the elderly and the handicapped. This bill is now before the Committee on Banking and Currency.

ESTABLISHMENT OF TRANSPORTATION TRUST FUND—H.R. 11967

Since efficient utilization of funds requires coordination, this bill provides that the several various trust funds for specific modal applications be merged into a single transportation trust fund which will permit general planning in line with the national needs and in terms of the technological and financial resources which are available. The bill requires that recommendations be specifically made with respect to the need for rapid development and improvement of mass transportation. The bill is now before the Committee on Ways and Means.

PROTECTION FOR VICTIMS OF UNINSURED MOTORISTS—H.R. 8958

This bill was cosponsored with Congressman GILBERT GUDE, Republican, of Maryland, and is designed to protect District of Columbia residents involved in accidents caused by negligent drivers of uninsured vehicles. It would supplement the current Motor Vehicle Safety Responsibility Act and would include the establishment of an unsatisfied judgment fund, consisting of fees paid by owners of uninsured vehicles from which a victim may recover if the defendant were found to be judgment-proof. The bill was referred to the Committee on the District of Columbia.

INCENTIVE MEASURES TO STOP POLLUTION—H.R. 9297 AND H.R. 9298

These two bills were cosponsored with Congressman LES ASPIN, Democrat of Wisconsin, and are designed to curb pollution through the use of economic incentives. The first bill would place a retailer's excise tax of 10 cents on nonreturnable cans and bottles for beer and soft drinks. The second bill would tax detergents containing phosphates at a rate dependent upon the percent of phosphates. All tax moneys collected would be returned to the local governments. Both measures have been referred to the Committee on Ways and Means.

INSURING CONTINUED EXPANSION OF BLUE PLAINS SEWAGE TREATMENT PLANT—H.R. 12703

Introduced with the other four area members—Messrs. HOGAN, BROYHILL, GUDE, and SCOTT—this bill insures that there will be no lag in Federal funding for the expansion of the Blue Plains sewage treatment plant. Expansion is provided in an omnibus water pollution bill which has passed the Senate but not the House. The EPA does have some funds available for the project; but the authorization expired on October 31. This bill allows EPA to resume grants without waiting for the new omnibus bill. The bill is before the Committee on Public Works.

CREATE HOUSE COMMITTEE ON THE ENVIRONMENT—HOUSE RESOLUTION 799

This resolution would create a standing committee in the House with responsibility for all legislation that would affect the environment. The need for a specialized committee is becoming increasingly apparent as it is evident that the expertise on the environment is now lacking in the other standing committees and as environmental legislation becomes increasingly complex. The legislation before the Committee on Rules.

CARE AND CONSIDERATION OF THE ELDERLY

The need of providing adequate foods, transportation, and health care, for the elderly in our population must not be overlooked. They are the ones who have given so much in building our communities and we must not neglect them. The vitality that was once theirs is now ours and it is only fitting that our society provide the mechanisms of care and consideration that will enable their declining years to be golden ones.

NEW TRANSPORTATION SERVICES FOR THE ELDERLY—H.R. 11959

This bill provides that all applications filed under the provision of the Urban Mass Transportation Act must contain a reduced fare program for those who are 66 years and older. The bill also provides that motor vehicle insurance must be made available to the elderly and that all facilities for transportation be equipped to insure access for both the elderly and the handicapped. This bill is now before the Committee on Banking and Currency.

ASSISTANCE FOR THE CONSTRUCTION AND OPERATION OF SENIOR CITIZEN COMMUNITY CENTERS—H.R. 11960

Under the provisions of this act, states may qualify for funds to construct multipurpose senior citizen centers. The bill is before the Committee on Education and Labor.

LOW-COST MEALS FOR THE ELDERLY—H.R. 11961

The bill provides grants to the States for the establishment, maintenance, operation, and expansion of low-cost meal programs, nutrition training and education programs, for the elderly who often lack the resources and the ability to prepare nutritionally sound meals for themselves. The bill has been referred to the Committee on Education and Labor.

REHABILITATION OF ELDERLY WHO ARE IN LONG-TERM HEALTH CARE FACILITIES—H.R. 11962

Funds are provided in this bill for projects to develop or demonstrate programs designed to rehabilitate elderly patients in long-term health care facilities or to assist such patients in attaining self-care. The Committee on Interstate and Foreign Commerce is considering the bill.

INCOME AND WELFARE

Many bills and programs provide broad expanses of authority that have macroeconomic effects. These are important; but, it is equally important to assure that individuals are given the means to achieve a decent standard of living by assuring that the programs employ the people, where possible, they are designed to assist.

SENIOR CITIZEN CENTERS—H.R. 11960

The persons employed in these centers are to be, where possible, senior citizens since the centers are built for them with the intent that they be the primary beneficiaries. Under this provision, the elderly will be able to supplement their fixed incomes.

EXTENSION OF THE MINIMUM WAGES—H.R. 10074

The minimum wage is extended to a greater number of persons under the provisions of this bill and for the first time, household workers are covered.

EXPANSION OF THE EMERGENCY EMPLOYMENT ACT—H.R. 12011

This bill expands the Emergency Employment Act of 1971 to reduce national unemployment and stimulate noninflationary economic growth through the establishment of a special employment assistance program with funds to carry out the provisions. Provisions for the allocation of funds are also made so that not less than 80 percent will be apportioned among the States on the basis of the proportion which the total number of unemployed persons bears to the total number of such persons in the United States. The Committee on Education and Labor will consider this bill originally introduced by Mr. REUSS, of Wisconsin.

EDUCATION

The following bills attempt to provide the mechanisms by which everyone can achieve the best education that is available whether they are rich, poor, health, or handicapped.

EDUCATION BILL FOR VETERANS—H.R. 9627

Co-sponsored with Congressman MARVIN L. ESCH, this bill provides for a direct payment of $1,000 by the Veteran's Administration to educational institutions for any eligible veteran not on active duty but who enrolled on at least a half-time basis. Designed to establish a comprehensive educational program for veterans returning from Vietnam, the payment may be used to cover not only tuition but books, fees, and other related costs. The veteran would also receive a subsistence allowance of $175 per month with a sliding scale for those with dependents. This bill has been referred to the Committee on the Veterans' Affairs.

HANDICAPPED EDUCATION ACT—H.R. 11131

Under the provisions of this bill, which was co-sponsored with Congressman BADILLO, Democrat, of New York, funds are set aside for the establishment of a tutorial and related instructional services to be provided to homebound children through the employment of college students.

This bill is designed to enable the homebound to have a greater sense of participation in the educational process. Since college students are to be employed, it will enable those who need funds to receive a stipend as well as be able to contribute to the education of those who are handicapped. The bill is now before the House Committee on Education and Labor.

DRUG TREATMENT

One of the most pressing problems is the control of the drug traffic and the providing of programs for those who are addicted. These programs must not only offer a substitute to addiction but provide

the incentive for remaining away from drugs.

STOPPING ILLEGAL DRUG TRAFFIC FROM FOREIGN COUNTRIES—H.R. 7820

This bill was cosponsored with Congressman RANGEL, Democrat, of New York. The purpose of the legislation is to cut off foreign aid to countries failing to halt illegal drug traffic into the United States. The bill was referred to the Committee on Foreign Affairs.

FOOD STAMPS TO AID HALFWAY HOUSES—H.R. 11466

Cosponsored with Congressman HERMAN BADILLO, Democrat, of New York, this bill amends the Food Stamp Act to 1964 to permit certain types of narcotic addicts and certain organizations and institutions conducting drug treatment and rehabilitation programs for narcotics addicts to be able to use food stamps in their rehabilitative programs. The bill would also permit some addicts to use food stamps for the purchase of meals. It is now pending before the House Committee on the Agriculture.

MEDICINES TO CURE, PREVENT, OR TREAT DRUG ADDICTION—H.R. 12756

This bill authorizes the establishment of programs to find drugs which will treat, prevent, or cure drug addiction. While some drugs—for example, methadone—are now available, many of these are only substitutes for the addict and do not cure or prevent addiction.

DISCRIMINATION AND JOB PROTECTION

There is nothing that is more discouraging to a qualified worker than to learn or discover that his promotion, hiring, or dismissal is the result of his race or sex. Besides my support for a strong EEOC bill, I have introduced other legislation that attempts to provide a means to combat discrimination—some of which is at the doorsteps of the Congress itself. Other forms of discrimination, religion, association, manifest themselves in harassment, etc., lead to the need for a clear policy which is spelled out in legislation.

PROTECTION FOR LIBRARY OF CONGRESS EMPLOYEES—H.R. 10591

Introduced after the events of June and July at the Library, this bill is intended to provide for the establishment of a program which will encourage and enable an employee to bring a complaint of discrimination.

While the librarian is accountable only to Congress, this bill establishes the policy that he shall submit his plans for equal employment opportunities to the EEOC which has developed the necessary expertise to provide guidance and enforcement. The bill also establishes the appointment of an arbitrator once a complainant has exhausted his administrative remedies within the Library. His decisions, of course, would be binding. The measure in large part was incorporated in the Equal Employment Opportunity Act of 1972, which has been signed into law by the President.

FEDERAL EMPLOYEE BILL OF RIGHTS—H.R. 8134

Cosponsored with Congressman CHARLES H. WILSON, Democrat of California, this bill is intended to protect the civil rights of Federal employees from unwarranted governmental invasions of their privacy by prohibiting any requirement or test that would cause one to reveal his race, religion, national origin, or activities which are unrelated to his job. In addition, this bill assures every Federal employee of his right to legal counsel in any proceeding that might result in his dismissal or other disciplinary action. The bill also establishes a Board on Employee Rights with injunctive powers. This measure is now pending before the Committee on Post Office and Civil Service.

HONORING OF MARTIN LUTHER KING

This man who gave his life in the belief for nonviolence, racial equality, and economic freedom deserves to be honored by the Nation and be recognized annually by the President.

TO MAKE MARTIN LUTHER KING, JR'S. BIRTHDATE A LEGAL HOLIDAY IN THE DISTRICT OF COLUMBIA—H.R. 10250

This bill makes the birthdate of the late Dr. Martin Luther King, Jr., a legal holiday in the District of Columbia. Under this measure, the third Monday of each January is set aside in recognition and honor of this noble American. The bill also provides that holidays observed by the private sector be the same as those observed by employees of the Federal and city government. This measure has been referred to the Committee on the District of Columbia.

AUTHORIZATION FOR PRESIDENTIAL PROCLAMATION OF MARTIN LUTHER KING, JR., DAY—HOUSE JOINT RESOLUTION 937

This resolution authorizes the President of the United States to declare each January 15 as Martin Luther King, Jr. Day through the issuance of a proclamation calling upon the people to commemorate the life and service of this man to his country through appropriate honors, ceremonies, and prayers. This bill is now before the Committee on the Judiciary.

A BILL TO MAKE THE BIRTHPLACE OF DR. MARTIN LUTHER KING, JR., A NATIONAL HISTORIC SITE—HOUSE JOINT RESOLUTION 691

This measure would make the birthplace of Dr. King in Atlanta, Ga., a national monument. It was referred to the Committee on Interior and Insular Affairs.

FOREIGN RELATIONS

The integrity of the United States is based upon the honest conduct of our foreign relations and upon our understanding of the other nations of the world. It is also based upon a renouncing of the use of the weapons of total destruction, to the extent possible and practical, and renouncement of apartheid policies through sanctions against those nations which engage in the systematic exclusions of blacks and other peoples from the political, economic, and social life of the nation.

ORDER TO THE SECRETARY OF STATE TO PRODUCE DOCUMENTS ON VIETNAM FOR THE HOUSE—HOUSE RESOLUTION 638

This resolution cosponsored with Congressman LESTER WOLFF, Democrat, of New York, is intended to assist the House Committee on Foreign Affairs in obtaining information about the role of American involvement in the recent election in South Vietnam. This comes as a result of the lack of total cooperation given by the Department of State to the Congress. Since this is a House resolution, which affects only that body, no action by the Senate or the President is necessary. The resolution has been reported; it is now on the table in the House, subject to a call at any time.

USE OF NUCLEAR WEAPONS IN WAR—HOUSE JOINT RESOLUTION 1067

This bill establishes it to be the policy of the United States to not use any nuclear weapon except in the case of a response to a nuclear attack. While this is now the expressed policy of the President, it is important that it be spelled out in law. The Committee on Foreign Affairs will consider the bill.

TERMINATION OF U.S. BUSINESS ACTIVITIES IN SOUTH AFRICA

This bill would terminate the activities of those businesses in African countries that systematically exclude blacks and and others from the political, economic, and social life of the nation.

ESTABLISHMENT OF A CHINA INSTITUTE—HOUSE JOINT RESOLUTION 1085

While the United States does not now have any formal diplomatic ties with the People's Republic of China, it is still necessary that we begin to train our potential foreign service personnel and others in the history, culture, and language of the most populous nation. Knowledge provides the means by which the fears of one nation toward another will be ameliorated.

WEEKLY REPORT TO NINTH DISTRICT CONSTITUENTS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. HAMILTON. Mr. Speaker, I include the text of my weekly report to Indiana's Ninth District constituents on the President's trip to China:

WASHINGTON REPORT—PRESIDENT'S TRIP TO CHINA

To understand the significance of the President's historic trip to China, it is essential to understand why the trip was made.

A change is taking place in the relationship among the big powers in Asia. The Soviet Union and China are at odds. Japan has become a major power. The United States is reducing its military presence in the area. The British have departed. And the SEATO grouping of nations is losing its viability.

Taking place is a reordering of power, especially among the dominant forces in Asia: China, the Soviet Union, Japan, and the United States. The relationship between and among them must be worked out, and the meeting between President Nixon and the leaders of mainland China served the purpose of both nations in beginning a dialogue to work out the relationship.

It will take time to work out an accommodation among the four dominant powers in Asia. The U.S. requires a relatively stable relationship with China to lower its posture, and yet maintain its influence in Asia. China, worried about the massive presence of Soviet troops on the Chinese border, obviously is hoping that a "live and let live" relationship with the U.S. will cause the Soviet leadership concern about a possible collusion between the U.S. and China.

Balance-of-power politics, of course, is a dangerous game. The Soviet Union could get its back up if it believed such a collusion were taking place. The U.S. hope is that a fairly stable relationship among the four powers will emerge including arrangements to defuse trouble spots such as Korea and Vietnam.

President Nixon and Premier Chou concluded nearly a week of meetings by issuing a joint communique which included (1) a pledge for gradual increase in American-Chinese contacts through trade, science, culture, sports, news media, and frequent diplomatic contacts, and (2) the U.S. acknowledgement that all mainland Chinese maintain that "Taiwan is a part of China," and that it is our desire for a peaceful settlement, reached by the Chinese themselves. It also affirmed as an ultimate objective the U.S. withdrawal of the 8,000-man military contingent on Taiwan, "as tension in the area diminishes."

After 22 years of no contact and much hostility between the two countries, the communique was an acknowledgement of both the common interests of China and the U.S., and of their disagreements, such as diverse ideologies and Taiwan. More important than any agreement or disagreement was that a dialogue was begun on the future structure of the Pacific. Just as important as the carefully worded and balanced communique is that the meeting took place with great publicity, cordiality, and expressions of respect.

Quick conclusions about the results of the summit—who won or who lost—should not be made. More significant is the kind of communication which will continue from this point on. The meeting did bring to an end, in a dramatic fashion, the historic containment-of-China policy which the U.S. has followed, sometimes with an evangelical fever, for more than two decades. It would be foolish to pretend, however, that all of the fundamental differences between the two countries have been, or will be, resolved quickly.

Some say the President's concession to China on Taiwan was a U.S. surrender. The language of the communique contains many loopholes and escape hatches, however, in the event that future China conduct is disappointing. For example, we pledge to withdraw U.S. forces from Taiwan as an "ultimate objective, contingent upon the reduction of tension in the area," which is a vague phrase the President can interpret as he pleases. There simply is no other way for the U.S. to begin any kind of accommodation than by dealing with the question of Taiwan.

Not the least significant aspect of the President's widely-publicized China trip is that it opened a whole new world to many Americans, who probably learned more about China and its 750 million people in those few days than they had ever known before. It reopened communications, started some candid talk between Washington and Peking, and cut away many of the illusions which have hampered U.S.-China relations in the past.

WILLY BRANDT'S "WESTPOLITIK"

HON. BENJAMIN S. ROSENTHAL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. ROSENTHAL. Mr. Speaker, Chancellor Willy Brandt of the Federal Republic of Germany, will find, I believe, one of the highest places in the history of postwar Europe. The award of the Nobel Peace Prize to Brandt last year symbolized the recognition he will obtain in increasing measure as history shows him to be right in his efforts to break the bonds of the cold war while keeping Germany closely tied to the democratic West.

Brandt wrote recently in Foreign Affairs, in an article which I include below in its entirety, that Germany's "Westpolitik" is the counterpart and complement to the much better known—and much more severely and unfairly criticized—"Ostpolitik." The latter represents Brandt's attempt to liberate Germany and Western Europe from the confines of the cold war; his "Westpolitik" shows how firmly Germany remains a partner of the West and an ally of the United States.

His article deserves the most careful consideration by those who would attack Brandt as a means of striking at general detente policies whether pursued by our President or by European leaders. It also merits reading by anyone interested in the views of an outstanding European statesman:

GERMANY'S "WESTPOLITIK"

(By Willy Brandt)

After President Nixon and I met at Key Biscayne on December 28 and 29, 1971, a commentator pointed out that the joint statement issued on our talks seemed more like an American-European than an American-German communiqué. This, he felt, showed itself even on the surface in that the terms "European" or "Europe" appeared 11 times whereas "German" or "Federal Republic of Germany" were only mentioned twice.

The talks at Key Biscayne did indeed center on the American-European partnership rather than on German-American relations. This will not surprise anyone who knows to what extent bilateral relations between West European countries and the United States are overlaid by a network of multilateral relations which is steadily getting more dense. In the Federal Republic of Germany there is not a single question of any importance that could be treated outside the context of American-European relations. This applies to international currency and trade affairs as well as to security police and above all to efforts to decrease tensions between East and West.

In the European Community we have not yet reached the point where the head of a member state is authorized to speak for his European colleagues. All the same, we have at least come to the point where none of us—be it the President of France, the British Prime Minister, the Prime Minister of Italy or the West German Chancellor—could or would defrain from bringing joint European interests into play. Each one of us tries in his own way not only to look after his own nation's interests but also to articulate European considerations. This is true even in cases where one or the other might feel tempted to extract some special advantage from talks with the Americans.

Relations between Western Europe and the United States have reached a kind of in-between stage. Some symptoms of this lie in the area of currency and trade affairs; others in the desire of the United States to lighten its burden; others in the wish of West European nations to establish closer political ties with each other besides their economic unity inside the Common Market; and, last but not least, in America's long-standing recommendation to speed such development, which today, however, is modified by her concern lest her own interests might suffer in the process. To be sure, these factors are somewhat contradictory, which only proves my point about this being a kind of in-between stage.

There is no predicting future developments; they may go in a variety of directions. Responsible forces—on both sides of the ocean—should realize that decisions will be expected from them in this crucial area of "Westpolitik." From my own point of view and considering my own responsibilities, I should like to specify in which direction we should move if we are to take our partnership seriously.

II

People in Europe, at least in Western Europe, are quite aware of the role America assumed at the end of World War II. It was the role of a world power and helpmate who made only limited distinctions between former and future friends. In other words, yesterday's wartime opponents were given aid along with the rest. This aid meant a great deal to them and—this I can say at least for my own country—they have not forgotten it. The twenty-fifth anniversary of the Marshall Plan, which we are going to commemorate this year, offers a special opportunity for remembering with gratitude what the United States has done for Europe.

It does not diminish this gratitude to point out that the position then taken by the United States also happened to suit its own interests; the reconstruction of Europe was a sensible thing for it to undertake from its own point of view. Not only then, immediately after World War II, but through succeeding years relations between America and Europe were marked to a large extent by the polarity between the United States and the Soviet Union. To be sure, there was much talk about bipolarity long after it had, in its original sense, ceased to exist. Now there is talk about tripolarity, when it should be obvious to anyone that both economically and politically there are more than three centers of power.

Here I should like to take up President Nixon's recent remark that the risk of war is declining while economic rivalry is increasing. If this is so, it must mean that the nations or groups of nations among which economic rivalry is increasing are not the same as those among which the risk of war is on the decline. One might also put it this way: if and because the risk of war is diminishing between the United States and the Soviet Union, limited rivalry has a chance of developing between America and Western Europe without the parties concerned having to regard this as a threat to their security I speak here of economic rivalry, in the sense of President Nixon's remark. This does not mean that we should overlook the danger stemming from the fact that no foolproof line can be drawn between economics and politics.

Nevertheless, it should be kept in mind that, on the whole, the existing situation regarding Western security, or security in the Atlantic area, has hardly changed at all in recent years. European security requires that it be actively geared to the American interest. In military potential, the gap between the American superpower and the West European nations is continuously widening. It is going to be a long time, if ever, before Europe will be in a position to guarantee her own security effectively. This is a fact well-informed Americans understand as fully as they do the possible consequences of disengagement within the Atlantic defense community. A role imposed by history cannot be shaken off except at one's peril even if, at times, it seems a burden. I can well understand isolationist trends within Europe, but I think they will not significantly influence the decision-making process. If, some day, there should be a fundamental change in the relationship between the superpowers, new questions will develop with regard to engagements inside the Alliance, which may then be easier to solve.

For the foreseeable future, Western Europe will have to remain militarily geared to the United States. This dependency will diminish as peace is made more certain and as tensions are reduced. This is another reason why both Europe and the United States must maintain a strong interest in efforts to decrease conflicts between East and West. For the benefit of some of our contemporaries who have refused to take note of this, it should be stressed once again that for the past five years the policy of the Atlantic Alliance has rested on two pillars: readiness for defense and an effort to decrease tensions. It is from these principles, demonstrated in the consultations of the Alliance, that what is called our *Ospolitik* has developed.

If, militarily, we speak of West Europe's dependency on the United States, the reverse is also true. It is dictated by U.S. interests. This needs no special explanation; since the play of interests which expresses itself in interdependence has not changed in many years even though many changes have occurred on the international scene. The United States is politically engaged in Europe, and regardless of incidental disputes in current affairs this fact has never for a moment been questioned, as was confirmed only recently in the form given in the Four-Power agreement on Berlin. The American engagement in Europe is essentially a result of World War II. The communist-governed countries of Europe recognize it as such and have dropped their objections against the United States and Canada taking part on equal terms in a European conference on security and cooperation.

There has been much discussion as to whether or not the unification of Western Europe might relieve the United States of the burden of its military guarantee. Certainly a more or less politically united Western Europe would wish—and be able—to organize its security. While we are on our way to that point, West European efforts within the Alliance as presently structured and European participation in certain American planning mechanisms may play an important part.

But nothing can change the fact that, as far as security is concerned, the United States and Western Europe will retain their close connection and remain dependent on each other. Moreover, only in a limited way can the U.S. burden be transferred to other shoulders. People who somewhat simplistically argue that Europe should now be rich enough to do more about her own security skip easily over the actual contribution made by the European partners within the Alliance; moreover, a readiness to make additional contributions has been shown, particularly in the past year. As is well known, NATO's "Euro-Group" has launched a program to reinforce European defense, and the participating members, including the Federal Republic of Germany, have allocated additional funds for defense and have started to cooperate more closely on joint projects. The foreign-exchange balance for the U.S. forces stationed in Germany has once again been regulated. Nobody will deny, however, that American troops leaving Europe can hardly be replaced by European forces, either with regard to their nuclear equipment or their political and strategic deterrent power. Moreover, repatriated forces stationed at home are not cheap either.

To be sure, one may argue about the number of American troops that it is advisable or necessary to maintain in Europe in the interest of mutual security. The German side has not shunned such a discussion, but on the contrary has taken an active part in a preliminary study of the complicated but important question of an even reduction of forces. However, this concept precisely does *not* mean only that joint burdens must find joint relief. It means, above all, that a reduction of the American armed presence in Europe must be a part as well as a result of decreasing tension between East and West. To my mind, a one-sided weakening of the West is foolish, and a substantial one-sided reduction of American forces—coupled with a request to restore the balance through an equal number of European substitutes—may easily turn out to be equally foolish.

From this point of view, Europe has no less interest than the United States in reducing the risks of conflict. For the future of Europe, the chances for her development, the opportunities to find her role in world affairs and to play it adequately, will take shape only when it becomes possible to view the security factor in a calmer way. Europe will be able to find her identity in a convincing and lasting manner only when peace becomes a fairly certain working hypothesis.

III

If we are to accept this working hypothesis that a destructive East-West conflict can be avoided, an interesting picture emerges. We now identify economic spheres of more and more equal potential strength; the much-discussed bipolarity between the United States and the Soviet Union widens into a quadrangle in which Western Europe and Japan have their place. And, obviously, China as an independent force of special potency must be included—though for the time being she remains a strange combination of the most populous nation, an underdeveloped country and a developing nuclear power.

There seem to be more or less equal opportunities for the participants, and herein lies the crucial point of the remark about a possible rivalry between Western Europe and the United States. Those who have followed the discussions of the past few months may almost have come to the conclusion that the working hypothesis mentioned above is more widely accepted in America than in Europe. For it is largely in America that concern has been voiced over an extension of the European Community to ten members—provided the plebiscites in Denmark and Norway have positive results—and that their joint trade policy might lead to angry rivalry, even to economic warfare. To my mind these concerns are understandable, in some instances even justified, but on the whole exaggerated. After all, experience has shown that the American economy has not suffered from the Common Market; quite the contrary. Nowhere have American exports increased more than in the Common Market countries. This is equally true of exports of capital. And perhaps it should be noted that this has something to do not only with the problem of the American balance of payments but also with the international currency crisis (which in essence, it is hoped, we may have overcome).

Those who remember how strongly Americans advised Europeans to unite, those who have not forgotten the statements of American statesmen that the political advantages would be well worth certain economic sacrifices, those who recall American annoyance at the slowness of these Europeans and who now, when the Community of the Ten is beginning to take shape, compare all this with some of the American voices we hear today, might ask themselves whether certain of our American friends have not lost their sense of success. Were it not for American policy over the past two decades Western Europe would never have reached its present point. The United States should actually congratulate itself, for it has helped Europe achieve what it recommended: West European unification has come within reach. And in view of the power relationship even in the economic area one is oddly tempted to say to American friends: "Don't worry! Europe is not as strong as some might think and, above all, she has no intention of making unfriendly use of here new possibilities."

So far we have seen that joint interests and rational thinking are strong enough to prevent any undue aggravation. For many years—and again since I became Chancellor in 1969—I have stressed that it would be desirable to give an organic form to the economic dialogue between the United States and the Common Market. On the American side this was not taken too seriously, probably because people had ceased to believe in an extension of the Market. In Europe, not least of all in Paris, there was concern lest an organized dialogue, meaning one that was held on a high level and with a certain regularity, might lead to a kind of American "co-regency" in the Common Market. I am convinced that we will be able to overcome misunderstandings and obstacles of this or any other sort.

After the disputes in the field of currency and trade policy which we have witnessed in the past months, I feel encouraged in my belief that luckily there is no question of a crisis or a threat of serious estrangement. The economic and currency warfare which the pessimists predicted has not taken place and will, I hope, never take place. There is agreement between the United States and Europe that questions of partnership with other powers—among them mainly Japan—must be settled. This can happen only on the basis of independence and responsibility.

The way to European unity is developing along lines different from those foreseen by perfectionists, including Americans. Everything goes more slowly and less systematically than they had thought. But it should have become clear over the past two years that there is vitality in the European Community. Since the summit conference at The Hague in December 1969, the process of unification has received a definite boost.

When the 12-year transitional phase of the Common Market terminated, as prescribed, at the end of 1969, the Community decided that the enlargement of it into an economic and currency union should be the central task of the seventies. Since January 1, 1971, a new financial constitution has been in force, under which the Community has its own income and, step by step, becomes independent from contributions of its members. The very desirable enlargement of the Community, as urged by the United States, to include Great Britain (as well as Ireland, Denmark and Norway, subject to their ratification) is an accepted fact; it will come about on January 1, 1973, after the governments have accepted the conditions negotiated at Brussels and have signed the Rome Agreements. Finally, and with all due modesty in view of previous results, the international cooperation which started last year and which has included the member candidates, is beginning to take firmer shape.

IV

All this goes to show that the process which will make Western Europe a more serious partner of the United States is fully under way. Past and present experiences warn that along the road snags and contradictions will be encountered. The project involves incorporating independent nations which have evolved over centuries and the social structures of which, despite many similarities, are on the whole quite different from one another, into a Community transcending national borders. The task is not going to become easier with the forthcoming enlargement of the Community from six to ten members. This is true not only of the development within the Community itself but also of the shaping of its relations with the rest of the world. On the other hand, enlargement should not necessarily slow down integration; in certain vital areas the new mixture of interests may very well provide an easier way to overcome some previous obstacles.

The members of the European Community basically agree that economic and political unification belong together. The rule still holds that whoever wishes to join the Com-

munity as a full member must, in principle, adopt its political aims. (To put it more precisely: must be able to adopt them, for, as we know, there are European nations whose status is respected by East and West—indeed, in some cases has even been determined by East and West—but which aim only for an associate relationship with the Community.) Among them is the concept that at some as yet unforeseeable point, a kind of European government should be established which would be able to take the necessary decisions on joint policy, subject to parliamentary control.

I am convinced that the community will gradually approach this goal if in the coming years we are interested in further developing the present beginnings of international cooperation. A step-by-step development of an economic and currency union is in itself a major political project. The realization of it will require continuing political decisions as well as further institutional development from which political unification as a whole will benefit.

The next objectives in West European unification will have to be defined at the summit conference of the heads of state or governments of the extended Community. This conference will probably meet in Paris in the fall and, I hope, will generate as much momentum as did the summit conference at The Hague in December 1969.

The Federal Republic of Germany ranks foremost among those who insist that the European Community must not encapsulate itself but should be turned outward to the world. We in Europe cannot integrate a number of important industrial nations without considering the consequences of this for the rest of the world. It would not only be irresponsible toward the others but also very short-sighted with regard to our own interests. One does not have to be an expert to recognize that such integration is bound to have a considerable impact on international trade. We must, therefore, strive for liberal world trade policies in order not to upset the entire international economy. This means that the European Community must remain open, above all, in its relations to the United States—and also to that other great "Western" power, Japan. Here it will not always be possible to avoid confrontations of economic interests. But I do not see any danger in this as long as we all take care that natural competition does not lead to angry rivalry.

Some American statements about the alleged protectionism of the Common Market strike me as unfounded, or at least exaggerated. I have already pointed out that American trade and export of capital to Western Europe have grown out of all proportion—if we go by value, even as regards agricultural products. I could with good reason add that the Community as a whole is less protectionist than the United States. Besides, I am not one of those who complain about foreign investment in Europe; but this does not change the fact that among certain Europeans its volume has aroused fear of "Americanization" in the economic and technical sectors. Many Americans understand the dangers to the U.S. balance of payments of an excessive accumulation of American investment interests in Europe without an equivalent counterflow. The warnings and steps taken by various American governments to safeguard the dollar were, after all, largely related to this.

Yet I would be the last to deny that there is room for improvement in the exchange between the United States and Europe. Here I do not exclude the agricultural area. On the other hand, our American friends are aware of the difficulties which extensive short-term changes may cause in this particular area. I mention these difficulties, although they deal with a worrisome chapter as far as the Federal Republic of Germany's interest and point of view are concerned. But there is no getting away from the fact that if the agricultural Common Market is jeopardized this threatens the Community's entire future development. This fact has to be taken into proper account, especially when it is a question of finding additional outlets for American agricultural products in Europe. A sensible joint policy on agricultural structure, as well as worldwide efforts for a more balanced exchange of agricultural goods, will in the long run change the situation.

I am aware of American criticisms of the Community's policy of forming, by means of associations, closer trade relations with their members' former colonial possessions, although here too we naturally try to abide by the rules of the General Agreement on tariffs and Trade. Totally apart from this, it seems to me that these associations have not had an adverse effect on American trade; on the contrary, they correspond to the need for economic progress and political support in the countries concerned. This is particularly true of Africa. To this I will quickly add that I am against an overcommitment of the European Community in this area and that I am in favor of having special arrangements with developing countries transferred to a worldwide system of preferences.

In view of their immediate geographical proximity and their historical, economic and, to some extent, political ties with the member states of the Community, West European countries which, for one reason or another do not wish or are unable to join the community still aim for a closer relationship with it. It would not be in the interest of political stability in Europe if the Community were to close its doors to these countries and pretend that they did not exist. They, too, have a right to contribute, within the limits of their possibilities, to European cooperation and unification. One must look to the coming negotiations to bring the agreements into accord with the requirements, if possible, of a liberal world trade.

The joint responsibility of the United States and Europe for a global economy developing on the basis of a stable currency system, which will also help growth and stability in the third world, makes inevitable the establishment of an organized alliance between the United States and the European Community in the not too distant future. I have already pointed out that hitherto the dialogue between America and Western Europe has been left too much to chance and has not always been conducted on a high enough level. It will be a priority of the near future to establish a system of information, consultation and definition of interests which takes the new partnership into account.

It is in the nature of things that even those countries in COMECON—the Soviet-East European economic bloc—will normalize their relations with the European Community as well as with Japan and probably also with the United States. We are dealing with realities. Obviously this, too, must come about on the basis of equality, *i.e.* of nondiscrimination with regard to markets and rights.

The possibilities of East-West cooperation in Europe are vast; the tasks involved are immense; the chances to realize them jointly are beginning to improve. Here a way may open to bridge a dangerous gap in a vital part of the world and make a peaceful contribution to the future.

The more this succeeds the more America should rejoice. Peace and welfare in Europe are always advantageous to the United States. In this connection I am reminded again of the twenty-fifth anniversary of the Marshall Plan. Without the support and protection of the United States, Western Europe would never have been able to develop into the prospering Community it has, on the whole, become today. Without this support and protection we would not have succeeded in building a democracy in Germany's Western portion. Without this support and protection it would not have been possible to safeguard Berlin. How could a long-time mayor of that city ever forget that!

Precisely because our partnership is based on common ideals and joint experiences it will continue to prove itself at a time when a mature Western Europe, confident of its newly acquired strength, sets out to assume an independent and responsible role in the efforts for peace and progress.

I have said on another occasion, and I should like to emphasize here especially: Western Europe will form a union beyond that of the economic community which will be able to take its share of international responsibility independently of the United States but in firm partnership with it. At the same time, there will be chances for all-European cooperation and security, perhaps even along the lines of something like a European partnership for peace.

And I should also like to emphasize that Europe and America, which in my opinion can hardly be separated in terms of objectives, should not let each other be separated subjectively either. They need one another as equals. As I said at Oslo in December 1971, the heavier the burdens America has to bear the stronger will become our friendship for that great country.

GOVERNMENT AGAINST LIFE—CONTINUED

HON. JOHN G. SCHMITZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. SCHMITZ. Mr. Speaker, the antilife campaign in the United States, slowed down last year by the vigorous resistance of prolife groups and individuals particularly at the level of State legislatures, will undoubtedly gain new impetus from the publication of the report of the special Commission on Population Growth and the American Future, set up by Congress in March 1970. Advance copies of parts of the report were released to the press and public officials last month. The full report is scheduled to be made available to the general public this month through the Government Printing Office.

The membership of this Commission was heavily stacked in favor of the antilife forces, beginning with its Chairman, John D. Rockefeller III, whose famous family and its foundation have long been very actively involved in population control programs, and whose article "The Hidden Crisis" in Look magazine more than 7 years ago just happened to prefigure almost exactly the final conclusions of the Commission of which he was made the head. Several other members, such as U.S. Senators PACKWOOD and CRANSTON, former Senator Joseph Tydings, Dr. Bernard Beasley and Bernard Berelson, are well known as national leaders in the antilife campaign, while not one prominent advocate or spokesman for the prolife position was included. The executive director of the staff—the man actually responsible for researching and preparing the report—was Dr. Charles F. Westoff of Planned Parenthood-World Population.

A careful reading of the Commission's

process report reveals unmistakably that its research and writing were done by persons who had already made up their minds on this issue. No awkward facts were allowed to get in the way of their conclusions. For instance, the report noted the sharp decline in the U.S. birth rate in the first 6 months of 1971 despite the predictions of many "population experts" that it would increase because of the larger number of women of childbearing age—see my Newsletter 71–38—and found this "somewhat surprising"—but did not let it change their minds.

The report almost totally ignores the experience of foreign countries. No mention is made of the destructive results of the estimated 40 million abortions in Japan since 1948 and the recent reversal of the Japanese Government's position so as no longer to favor population limitation, nor is anything said about the current French effort to restore the three-child rather than the two-child family so as to prevent a fatal weakening of their nation. Not even the elementary facts about the population density of Western European countries which enjoy a high standard of living appear in the report, which insists that we cannot maintain our way of life without a drastic reduction in our population growth. Yet the highest of the estimates of that growth made in this report would still leave this country 40 years from now with a population density considerably less than half that of West Germany, Holland, and Belgium today, whose economies are now in some respects stronger than our own. The population density of the United States, according to the U.N. Demographic Yearbook for 1969, was 22 persons per square kilometer; by comparison, prosperous Taiwan, which I recently visited, has 384 persons per square kilometer.

It is simply not true that we are an overpopulated nation, though we may well be too heavily congested in metropolitan areas.

Nevertheless this Commission has given us its preordained conclusions: that we should push sex education in the schools, enact the "women's lib" constitutional amendment, legalize the distribution of contraceptives to children without the knowledge or consent of their parents, permit abortion on demand everywhere, and, of course, give a great deal more tax money to groups like theirs. In its discussion of abortion, the Commission makes one argument that might have come straight out of an Orwellian nightmare: they actually say that one of the reasons for legalizing more abortions is to reduce infant mortality later on. The only possible reply is to remind the Commission that, after all, a baby—like the rest of us—only dies once.

The one bright spot in this report is the ringing dissent of the vice chairman, Grace Olivarez, executive director of food for all, to the recommendation on abortion. She says:

> To talk about the "wanted" and the "unwanted" child smacks too much of bigotry and prejudice. Many of us have experienced the sting of being "unwanted" by certain segments of our society . . . How often have ethnic minorities heard the statement: "If you don't like it here, why don't you go back to where you came from?" Human beings are not returnable items. Every individual has his/her rights, the least of which is the right to life, whether born or unborn. Those with power in our society cannot be allowed to "want" and "unwant" people at will . . . I believe that, in a society that permits the life of even one individual (born or unborn) to be dependent on whether that life is "wanted" or not, all its citizens stand in danger.

HEROIN BABIES GROW UP

HON. SEYMOUR HALPERN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. HALPERN. Mr. Speaker, last Sunday and Monday, the Long Island Press published a series of outstanding articles relating to drug addiction. Written by Marsha Kranes, the article vividly describes yet another problem caused by the horror of drug addiction.

We are all painfully aware of the more than 550 heroin babies born last year who had to go though withdrawal because their mothers were addicts. These articles go one step further and describe the plight of the children of those mothers who have the habit. The heartbreaking stories of mothers unable to care for themselves, much less dependent children, points to an urgent need for care of these children.

The Press article describes the broken lives of the children of addicted mothers who have, at best, a grim future ahead. Often an addicted mother out of frustration, fear, or inadequacy will abandon her child and leave them with relatives or friends. Others are not so lucky. Some children have been placed in foster homes, others have been put up for adoption, and yet others are left to fend for themselves at an incredibly early age.

I believe that these articles shed light on a drug problem that we have barely considered—what to do with children from heroin addicted families—I think my colleagues in the House would find the Press series most informative.

The articles follow:

CONGRATULATIONS, JUNKIE . . . IT'S A GIRL

(By Marsha Kranes)

Susie was born a loser.

She was born crying and convulsing, going through heroin withdrawal like an addict in need of a fix.

Her "habit" was her mother's. The drug that ruled her teenaged mother's life was sending tremors through Susie's tiny 4½-pound body, making irritable, hyperactive, diarrheic, hungry and dehydrated but unable to nurse.

It was easy for Susie to go through withdrawal. Her need for heroin wasn't great. A few weeks of phenobarbitol and paregoric and her "detoxification" was over.

But Susie's problems were far from over—they had just begun.

Susie's mother—Donna—had disappeared. She had checked out of the hospital two days after Susie was born, eager to return to the street and the drug she craved.

When Susie was still going through withdrawal—a caseworker was assigned to find Donna and see if she or a friend or relative would be able to care for the baby.

When Susie was five weeks old, her mother walked into the hospital unannounced. She wanted her baby.

When she was told an investigation would be necessary, she agreed. And then she disappeared again.

Then Susie was seven weeks old, Donna returned. She was told that she couldn't have her baby until the case was thoroughly evaluated.

This time Donna stayed. She told the caseworker she wanted Susie that she was going to get off drugs. "I can't take care of Susie right now," she said. "But my Aunt Beth will mind her till I get myself together."

After checking with Aunt Beth and finding her able and willing to care for the baby, the caseworker arranged for Susie's release from the hospital. She was eight weeks old.

The caseworker kept tabs on her and found everything working out well . . . for a while, anyhow.

When Susie was four months old, Donna took her from Aunt Beth: "I let her take the baby because she wanted her and she's the mother. And, anyhow, it was getting to be too much for me."

The caseworker tried unsuccessfully to locate Susie, but didn't have any luck. Donna had disappeared again.

Six months later a call came into the caseworker's office. A woman complained that a neighbor's child had been crying day and night. "I think she's all alone. The mother's an addict. She must have abandoned the child."

The caseworker went to the apartment with the police. They found Donna lying on a mattress near death from an overdose. Susie was in a crib, her face swollen and tear-streaked her body undernourished and covered with a rash.

Donna and Susie were taken to the hospital. After a few days, Susie was placed in short-term foster care. The caseworker tried to get Donna to put her baby up for adoption, but she refused. She said she'd enter a rehabilitation program: "I'm finished with drugs."

Aunt Beth once again was prevailed upon to take Susie. The caseworker okayed the arrangement after Aunt Beth promised she'd keep the baby until Donna was ready to provide a proper home.

And so Susie returned to Aunt Beth and Donna enrolled in a rehabilitation program.

The story doesn't end here—promises by Susie's mother and Aunt were not kept and Donna once again disappeared with her baby.

They may turn up in the caseworker's files again—and perhaps next time there'll be court action to place Susie in a foster home. Eventually she may be put up for adoption.

Whatever happens, however, Susie is destined to be a troubled child and a disturbed adult—one who quite likely will seek escape from reality the same way her mother did.

There is also a great unknown in Susie's future; will her withdrawal at birth have any long-term effect?

Unfortunately little is really known about withdrawal babies. They have only recently received recognition as a serious problem.

Statistics about their actual number and records about their physical and mental development are virtually non-existent.

According to the records, at least 550 babies came into the world in New York City last year crying and convulsing as Susie did.

Not counted by the statisticians are withdrawal babies born at home, those born to mothers who could afford to keep their addiction and their baby's withdrawal a secret, and those whose withdrawal symptoms were so slight they passed unnoticed or as some other malady of the newborn.

Data on the long-term effects of withdrawal at birth are even sketchier.

Doctors and social workers cite fears that heroin withdrawal might have serious effects on the baby's central nervous system. But because most babies "disappear" like Susie did, follow-up testing has been almost impossible.

Susie's story is typical of one of the two patterns most withdrawal babies fall into.

Bobby is another withdrawal baby whose story is a little different. He went through methadone withdrawal at birth.

His symptoms were similar to Susie's, but the life he faces may be better—depending on his mother's ability to stay away from drugs.

Bobby's mother, Sharon, is 24 and she admits that she's been around. She's tried "every drug imaginable" alone and in combination. She's been in trouble with the law "for grand larceny and forgery," she's gone into rehabilitation programs "to avoid jail," and she's gotten kicked out of the programs "for shooting dope."

Now, however, she says she is sold on methadone. She admits she's said it before and ended up back on dope and pills. This time, though, she says she is really "going to stay clean." She and her husband, Raymond, decided that after their best friend died last June "from a combination of methadone, heroin and sleeping pills."

Sharon had two children when she was on heroin—Jeff, now eight, and Keith, now seven.

She says now that she wouldn't have had them. She liked playing with them at times "like toys," but she couldn't really care for them.

It's not fair to have a kid if you're an addict. You can't care for yourself, how can you care for a baby?

"Babies need material things, they need care and affection. You can't provide them if you're high. You've got to worry about yourself, about your own physical needs. There's no way you can put your baby first."

But she refused to recognize this until recently.

The two boys lived through a lot—their father was jailed when they were infants. The man who replaced him in Sharon's life died of an overdose.

When they were still toddlers, the police came and took them away. A neighbor had called and said they had been abandoned. Drugs were found in Sharon's apartment and she chose to enter a resident rehabilitation program rather than face jail.

While she was in the program, her children were placed in foster homes. She was ousted from the program—then readmitted—a number of times for "shooting dope."

Two and a half years after her separation from her children, she agreed to put them up for adoption.

After quitting the program, Sharon married another resident of the facility and the two of them resumed their former drug habits.

When it started getting expensive, they entered a methadone program,. They took "goof balls" and sleeping pills to heighten their methadone highs, then they switched to dope. Her husband was thrown out of the program, got sick and was sent to a state addict rehabilitation facility. When he returned to Long Island, Sharon quit drugs "because he was clean."

Two months later their best friend died and they vowed to stay clean.

When Sharon discovered she was pregnant again, she decided to have an abortion. "I was afraid my baby would be taken away from me."

The day before her scheduled abortion, she changed her mind and entered a prenatal program.

"I never did that with the other two. I just went to the hospital and had them when the time came. This time I decided I would do it right."

And so Bobby was born, treated for methadone withdrawal and sent home with Sharon, who expects "he'll be a happy baby."

"It's easy to get high, but a lot of things are more important to me now," she said. "I have a husband who cares for me an adorable baby. It's different life style. I have things that are important to me and I don't want to lose them."

As sincere as he is, however, there are still some doubts that linger.

Her husband is out of work and frequently gets sick from methadone. He's 24 and he's quit drugs many times before, but they've dominated the last eight years of his life.

And Sharon's quit before too—many times in the 11 years she's been using drugs.

Both are hopeful, both want very much to lead normal lives.

They've wanted it before, though, and failed. Maybe this time will be different.

"It's thrilling to see a mother go through a program and succeed," a city social worker said during a recent interview.

Asked if she's seen it happen often, her answer was "it hasn't yet."

CONGRATULATIONS, JUNKIE . . . IT'S A GIRL—II

(By Marsha Kranes)

What can be done to prevent today's withdrawal baby from becoming tomorrow's addict?

A baby born crying and convulsing—in the throes of heroin withdrawal—has no known physical need for the drug that coursed through his mother's body into his.

"There's no evidence of craving for drugs in withdrawal babies," according to Dr. Saul Blatman, director of pediatrics at Beth Israel Hospital in Manhattan.

"From what we observe, the baby is not born to be an addict . . . but the environment is likely to lead to it."

Another doctor, Charles Rohrs of Odyssey House, agrees.

"We know most of our addicted come from homes with addiction or difficulties in other areas . . . from family backgrounds very detrimental to them, from homes with poor mothering . . ."

These are the homes most addict mothers have known and the homes they'll provide for their children, according to Rohrs.

Most withdrawal babies—an estimated 80 per cent of the 550 known to be born last year in New York City—go home after leaving the hospital. But home is a catch all phrase. It could mean with mother, with a relative, with a friend or with one of them today and another tomorrow.

"Any workable family arrangement is considered better than a foster home," reports caseworker Judy Fisher of Rego Park.

The Chit's Child Welfare Bureau, she explained, does all it can to place a baby with someone close to his mother—until she is able to take care of herself and her child.

"We have to be wary though," emphasized caseworker Steven Rosenstein of Rego Park. "We feel that as soon as we're not around, the child is returned to the mother. Unfortunately we don't have the manpower for surveillance and our follow-ups become less frequent when new cases, more pressing ones come up."

If a mother is unable to care for her child and arrangements cannot be made with a relative or friend, the baby is usually placed in a foster home.

Foster care—voluntary or court-ordered—is considered a "last resort." But it's where "most of the babies end up."

"It usually lasts a long, long time," Mrs. Fisher explained. "It doesn't solve problems, it helps postpone them. It's good because it means the child will be fed and warm. But the delay makes adoption later on more difficult. The older the child is the harder he is to place."

Adoption is agreed to by some mothers, but most are "completely unrealistic." They want to keep the baby to dress it up and play with it.

"They don't see that it has to be cared for. They have no understanding or concern about what will happen to the child in the future. They just want to take it home."

Often foster care is arranged while the mother enrolls in a residential rehabilitation program. But Mrs. Fisher has yet to see a mother come through one of these programs successfully.

Another solution—Methadone maintenance for the mother—also "doesn't seem to be the answer" according to Mrs. Fisher.

"It's okay if it's the only means, but methadone is another drug. It's not the answer."

Mrs. Fisher also pointed out that while the mother is participating in an addict treatment program she is separated from her child. When she's completed the program, if she does, she finds herself back in the real world with very real problems and responsibilities—including a strange year or year-and-a-half-old child to care for.

The solution, Mrs. Fisher suggested, is a program that keeps the mother and child together and helps the mother learn to conquer her addiction and care for her child at the same time.

This is similar to a suggestion made by Dr. Blatman and precisely what Odyssey House is attempting to do in one of its newer programs.

Dr. Rohrs claims that nothing is done for pregnant addicts.

"Male addicts get most of the attention. Women addicts are largely ignored, especially if they're pregnant."

"Where can a pregnant addict go?" he asked. "The jails put them back on the street. They want no part of them.

"Facilities for unwed mothers are reluctant to take them. If they do, they only provide shelter on a short-term basis.

"The only place to go is a hospital and the care there ends when the baby is born."

"If a woman wants to enter a program after her baby is born she usually has to give up her child. She either decides not to bother or she is separated from her child for a year or more and is not prepared to care for it when she's finished."

The Odyssey House Staff saw a need for continuity of services for pregnant addicts—services that would see women through pregnancy, delivery and early child care while they were living in a drug-free therapeutic community.

And so, last August, they established a special program for pregnant women in a brownstone on East 52nd Street in Manhattan.

The residents of the brownstone participate in the regular Odyssey House rehabilitation program while learning to be good mothers.

They care for their own children and those of fellow residents and staff members with help from a full-time pediatrician and a full-time nurse.

"By allowing a mother to come here with her child, we're helping her, her child and the relationship between both," said Rohrs.

So far, 20 women have moved into the brownstone. Some have come during the early stages of their pregnancy, some a few days before going into labor and others after giving birth.

"It's a very ambitious program, and it's not that expensive," notes Dr. Rohrs. "It's not as though we were like the typical hospital where everything is done for the individual. Here everyone participates in running the house and caring for the youngsters. Everyone in the program is involved and works as much as the staff."

Another feature of the program is its research potential.

Staff psychologist Pat Cucinotta said she hopes it will provide valuable information about the effects of withdrawal at birth on the development of children.

Dr. Rohrs believes strongly in the Odyssey House program:

"Without it and others like it we'll be raising future generations of drug problems."

SHARING THE BLAME

HON. STEWART B. McKINNEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. McKINNEY. Mr. Speaker, recently New York City Police Commissioner Patrick Murphy addressed the New York Bar Association and advanced what could best be described as a thoughtful discourse on one of our Nation's gravest and complex problems, crime and justice. The New York Times published a distillation of the commissioner's remarks and I would like to share that commentary with my colleagues at this time.

SHARING THE BLAME

(By Patrick V. Murphy)

I am here as Police Commissioner to talk to you, the leaders of the legal profession in this city, about our court system. You will not enjoy what I am going to say, but somebody has to say it.

There is more crime today than ever before. There are more criminals today than ever before. There are more victims today than ever before. But too many criminals are not going to jail, and their victims scream that the criminal justice system has broken down and they are right.

The victims scream that the police are at fault but this is not right, and it is not fair. We the police are far from perfect, but we have shouldered the entire blame long enough. We the police are more efficient today than ever. We pour arrested criminals into the wide end of the criminal justice funnel and they choke it up until they spill over the top, and when I say spill over they spill over into the street and commit more crime.

In today's courts everything is aimed at disposition of cases. Our courts have become totally committed to clearing the calendar. Partly this is due to the fact that there are no jail cells to put criminals into. I admit this. Corrections is still another sad story. I am told that the Bronx jails at present are at 272 per cent capacity.

The surest deterrent to crime is the knowledge by potential criminals that they are likely to get caught, and the certainty—the certainty, I said—that once caught they will be promptly prosecuted, convicted if found guilty, and jailed. There is no such certainty today. This idea has become a farce. Professional stickup men, narcotics pushers, gamblers, laugh at it.

In 1960, the New York City Police Department made 35,629 felony arrests. Last year we made 94,042 felony arrests, an increase of 165 per cent over a ten-year period. You ask what happened to last year's 94,000 felony arrests? Exactly 552 of them went to trial, 552 out of 94,000. The rest of them were disposed of. Disposed of means dismissed outright, reduced to misdemeanors via plea-bargaining, reduced to much lesser felonies via plea-bargaining. No doubt certain of the honest, dedicated policemen who made these 94,000 arrests last year came to the belief that conscientious police work is a waste of time, a waste of effort and a waste of devotion.

Let's look at some specific categories of crime. We did a study of every fourth arrest on gun charges. This amounted to 156 cases, of which 136 were felony arrests for criminal possession of hand guns. Not one of these 136 criminals was convicted of the original felony charge. Now is it a serious felony to carry an illegal hand gun or is it not a serious felony, according to law? If it is a serious felony how do we justify a record like this?

If they had been convicted on the original charges and sentenced to maximum terms, they could have gone to jail for over 952 years. In other words the law would have permitted 952 years of jail but the court system in its wisdom meted out five years and four months, an average of a little over one month per man. No wonder so many people of criminal intent carry hand guns in New York City. They know that the penalty for carrying a gun has become a joke. Over a thousand New Yorkers will be murdered before the end of this year, most of them by guns.

I will state emphatically that the court system must accept the giant share of the blame for the criminal rise in crime.

We in the criminal justice system realize that the courts have problems, that money and time are needed, that the system wasn't designed to cope with modern violence and modern crime, nor with the criminal subculture in drugs. Some improvements to the system have been made already. Yet they have been too few and too slow. We can't wait much longer.

If we need more courtrooms, can we not use schools, offices, any big room while new courthouses are being built? If we need more prosecutors, can we not enlist lawyers to serve as prosecutors on a part-time basis? It is up to you, the members of the legal profession, to get this job done. The Police Commissioner can't do it for you. No one can.

BRIEF FILED BY SENATOR GRAVEL IN CASE OF MIKE GRAVEL, U.S. SENATOR, VERSUS UNITED STATES, BEFORE THE SUPREME COURT OF THE UNITED STATES

HON. MIKE GRAVEL

OF ALASKA

IN THE SENATE OF THE UNITED STATES

Wednesday, April 12, 1972

Mr. GRAVEL. Mr. President, on April 11 the distinguished Senator from North Carolina (Mr. ERVIN) placed in the RECORD the Senate's brief on the pending case before the Supreme Court to which I am a party. Today I ask unanimous consent to have my own brief printed in the RECORD so that the entire Senate may have the benefit of this information.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[In the Supreme Court of the United States, October Term, 1971—No. 71-1017]

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Mike Gravel, United States Senator, Petitioner, v. United States, Respondent.

Robert J. Reinstein, 1715 N. Broad Street, Philadelphia, Pennsylvania 19122; Charles L. Fishman, 633 East Capitol Street, Washington, D.C. 20003; Harvey A. Silverglate, 65A Atlantic Avenue, Boston, Massachusetts 02110; Attorneys for Petitioner.

Of Counsel: Alan M. Dershowitz, Cambridge, Massachusetts; Norman S. Salkind, Roger C. Park; Zalkind & Silverglate, Boston, Massachusetts.

February 8, 1972.

[Footnotes will appear at end of relevant segments.]

Petitioner, Mike Gravel, United States Senator, respectfully prays that a writ of certiorari issue to review the opinions of the United States Court of Appeals for the First Circuit entered in this proceeding on January 7, 1972, and January 18, 1972, and the amended judgment of that Court entered January 18, 1972.

OPINIONS BELOW

The opinions of the Court of Appeals and the Protective Order (as modified) which was entered are not yet reported and appear in the Appendix hereto. The opinion of the District Court is reported at 332 F. Supp. 930 (D. Mass. 1971).

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on January 7, 1972. A timely petition for rehearing was denied on January 18, 1972, and this petition for certiorari was filed by February 10, 1972. The mandate of the Court of Appeals was stayed by Mr. Justice Brennan on January 24, 1972, pending the filing and disposition of the petition for writ of certiorari, provided that filing of the certiorari petition occur on or before February 10, 1972.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does the constitutional responsibility of a United States Senator to inform his constituents and colleagues about the workings of government require that his actions in publishing an official, public record of the Subcommittee of which he is chairman, containing documentary information critical of Executive conduct in foreign affairs, be accorded protection as legislative activity under the Speech or Debate Clause?

2. May a Federal Grand Jury at the request of the Executive Branch inquire into and investigate the legislative activities of a Senator by utilizing compulsory process to interrogate persons with whom a Senator dealt and to secure documents, about his planning and executing a Senate Subcommittee hearing and publishing the official record of that hearing?

3. May an otherwise impermissible inquiry be allowed because the legislative activity in question was carried out in a manner deemed by a Federal court to be irregular and contrary to the court's notions of germaneness and of the proper way for the Senate to internally allocate its functions?

CONSTITUTIONAL PROVISION INVOLVED

The Speech or Debate Clause of the Constitution Article I, Section 6, Clause 1, provides: ". . . and for any Speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other Place."

STATEMENT OF THE CASE

This case involves the claim of a United States Senator that the Speech or Debate Clause of the Constitution and the doctrine of Separation of Powers guarantee that he may engage in the unfettered discharge of his legislative privileges and duties without restraint and inquiry by the Executive and Judicial Branches, operating through the Grand Jury. The questions involved in this case are of the highest magnitude and the manner in which they are resolved will have a significant effect upon the ability and willingness of the members of Congress to carry out their legislative duties. The relevant facts giving rise to the issues in this case are as follows: [1]

On June 29, 1971, Senator Gravel convened a hearing of the Subcommittee on Buildings and Grounds of the Public Works Committee of the United States Senate. He stated at the outset of the hearings that the conduct of United States foreign policy in Indochina was relevant to his subcommittee, as to practically every subcommittee in the Congress, because of its effect upon the domestic economy and, specifically, the lack of sufficient federal funds to provide for adequate public facilities. During the course of this hearing, Senator Gravel read or inserted into the record portions of the so-called "Pentagon Papers", which examine the causes

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Footnote at end of article.

and history of the conflict in Indochina. In order to make the contents of the Subcommittee record widely available to his colleagues and the electorate, Senator Gravel arranged, without any personal profit to himself, for its verbatim publication by Beacon Press, a non-profit publishing division of the Unitarian Universalist Association.

In August of 1971, a Federal Grand Jury sitting in Boston, Massachusetts, and investigating the release of the Pentagon Papers to the press, subpoenaed Dr. Leonard Rodberg, an aide of Senator Gravel. The Senator moved to intervene and quash the subpoena on the grounds that the purpose of the proposed inquiry of his aide was to investigate his own activity which he asserted was immune from judicial inquiry by virtue of the Speech or Debate Clause. A subpoena was also served upon Howard Webber, Director of Massachusetts Institute of Technology Press, with whom the Senator and his aides had unsuccessfully negotiated for the publication [2] of the Subcommittee record. During the pendency of the appeal, two subpoenas were served upon officials of Beacon Press but were revoked due to the stay in effect.

The District Court granted the motion to intervene, and found, *inter alia*, that "the Government's interest in [Dr. Rodberg's] testimony pertains to his acts as Senator Gravel's assistant with regard to the Pentagon Papers and that the government attorneys plan to question him about them before the grand jury." 332 F. Supp. at 933. The Court denied the motion to quash Dr. Rodberg's subpoena, but issued a Protective Order barring inquiry of any witness into Senator Gravel's actions in holding the hearing and in preparing for it. The Court held, however, that the verbatim publication of the record "stands on a different footing" and is not protected by the legislative privilege. *Id.*, at 936–37. With respect to the Webber subpoena, the Government conceded in oral argument that its primary reason for calling him was to question him about conversations with the Senator's aides; the subpoena itself demanded production of all notes relating to Dr. Rodberg and the Pentagon Papers. Intervention was also allowed in this matter, but the motion to quash Webber's subpoena was denied.

Senator Gravel appealed to the United States Court of Appeals for the First Circuit, and the Government cross-appealed.[3] The Court of Appeals' opinion of January 7, 1972, noted that "important questions as to the extent of the legislative privilege" were raised by the appeal (App. 2A). The Court of Appeals concluded that Senator Gravel "has essentially lost his appeal," and affirmed the judgment of the District Court and entered a modified Protective Order (App. 13–15A). The Court held that the constitutional privilege of the Speech or Debate Clause did not extend to Senator Gravel's exercise of the informing function in publishing the Subcommittee record and therefore did not bar grand jury investigation into, for example, the Senator's communications with Webber and Beacon Press. The Court also held that the Grand Jury in conjunction with the Executive could interrogate all persons other than the Senator's aides about his actions in preparing for the Subcommittee hearing, as long as the questioning was not directed to the Senator's motives for holding the hearing.

The Court of Appeals issued a subsequent opinion denying a motion for reconsideration, in which it suggested that ordinary publication of a Subcommittee record might enjoy constitutional immunity but that the publication in question did not because it was done "privately" and because the Subcommittee had "no conceivable concern" with the documents entered into the record (App. 2C).

Footnotes at end of table.

REASONS FOR GRANTING THE WRIT

The issues which are presented for review are ones of first impression which have not but which must be decided by this Court. These are issues which must be faced and resolved definitively sooner or later, and this is an appropriate and indeed urgent case. What is now before the Court is a classic Separation of Powers problem, and if not decided here and now, it might lead to an embarrassing and perhaps dangerous confrontation between the Legislative Branch on the one hand and the Executive and Judicial Branches on the other. A United States Senator has squarely and clearly raised a claim that his privileges and protections under the Speech or Debate Clause have been infringed by a Grand Jury inquiry, led by the Executive Branch, into his activities and those of his aides and associates in carrying out his duty of informing his colleagues and the electorate about acts committed by the Executive and, specifically, with respect to Executive conduct in foreign relations.

Despite the fact that the Speech or Debate Clause must be, and has by this Court been, "read broadly to effectuate its purposes," *United States* v. *Johnson*, 383 U.S. 169, 180 (1966), the Court of Appeals has effectively denied the applicability of the Clause to the informing function of Congress. The Court thus permitted the Grand Jury to investigate into Senator Gravel's exercise of the informing functions through the interrogation of "third parties" [4] such as Howard Webber and the Beacon Press, with whom the Senator dealt in order to publish and disseminate the Subcommittee record to his colleagues, constituents, and to the public at large. Far from being a broad reading of the privilege, this reading so restricts the scope of the Senator's privilege that it makes it impossible (or, to be more precise, dangerous) for a member of the Senate or the House to enlist the assistance necessary in order adequately to perform his legislative task of informing his constituents and colleagues about vital matters concerning the operations of government. It is this informing function of a member of the Legislative Branch which this Court has viewed as his most important task:

"We are not concerned with the powers of Congress *to inquire into and publicize* corruption, maladministration and inefficiency in agencies of the government. This was the only kind of activity described by Woodrow Wilson in *Congressional Government* when he wrote: 'The informing function of Congress should be preferred even to its legislative function.' *Id.*, at 303. *From the earliest times in its history, the Congress has assiduously performed an 'informing function' of this nature.* See Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 153, 168–194. *Watkins* v. *United States*, 354 U.S. 178, 200, fn. 33 (1957) (emphasis added).

As much as speaking on the floor and voting, the informing function is an inherent part of the legislative process in representative government:

"[The Congressman's] duty is to acquire [knowledge about administration], partly for the purposes of further legislation, partly to satisfy his mind as to the adequacy of existing laws. Yet the ultimate basis for the duty is the broader presupposition of representative government that the legislator is responsible to his electorate for his actions. Responsibility means judgment, and judgment, if the word implies its intelligent exercise, requires knowledge. The electorate demands a presentation of the case . . . The very fact of representative government thus burdens the legislature with this informing function . . . .

". . . That duty, however, is not distinct from the legislative process, but implied and inherent in it." Landis, *supra* at 205–06 & n. 227.

This Court has consistently emphasized that the Speech or Debate Clause immunizes from judicial inquiry "legislative acts of . . . [a] member of Congress [and] his motives for performing them," *United States v. Johnson, supra* at 185. This standard has been variously expressed to encompass conduct which is "related to the due functioning of the legislative process," *id.*, at 172, or "in the sphere of legitimate legislative activity," *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951) or "generally done in a session of the House by one of its members in relation to the business before it," *Kilbourne v. Thompson*, 103 U.S. 168, 204 (1881). Far from indulging in "catch-phrases" (App. 8A), this Court has but recognized that the history and policy of the Clause can be satisfied only by a broad standard that immunizes a Member of Congress for actions taken in the discharge of his obligations as a representative of the electorate and prevents intimidation and harassment by a possibly hostile Executive and Judiciary.

It is for this reason that other legislative activities, such as obtaining material for committee hearings, *Dombrowski v. Eastland*, 387 U.S. 82 (1967), conduct at the hearings, *Tenney v. Brandhove, supra*, and committee resolutions and votes, *Powell v. McCormack*, 395 U.S. 486, 502–03 (1969), have been held entitled to protection. We think it evident that in our system of representative government, where "[l]egislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them," *Bond v. Floyd*, 385 U.S. 116, 136 (1966), direct communication by a Senator to the electorate through the publication and distribution of committee reports, is legislative activity which is entitled to like protection.[5]

The issue of the degree to which the informing function of Congress is encompassed within the scope of the Speech or Debate Clause is presented herein with striking clarity. What is now before this Court is a classic separation of powers case. There is no claim here, in contrast to some civil cases, that a Member of Congress used the authority of his office to violate willfully an individual's constitutional rights. That kind of situation draws into play the obligation of the Courts to protect individual rights, and there may very well be circumstances where no other means is available to safeguard the preferred constitutional rights of the individual, and where the judiciary will therefore be compelled to draw the balance on the side of the individual. Cf. *Hentoff v. Ichord*, 318 F. Supp. 1175 (D.D.C. 1970).

In this case, on the other hand, the judiciary is not being asked to balance the rights of individuals, including preferred constitutional rights, against the privileges of Members of Congress; to the contrary, the Executive Branch of government has come to the courts and claimed that it may determine what a Member of Congress may tell his constituents about matters of overwhelming public concern. It is no exaggeration to say that this claim challenges the fundamental character of our tripartite system of government.

The Executive's contention that it may investigate and indeed prosecute for the publication of legislative proceedings flies in the face of the historical purposes of the Speech or Debate Clause. The Clause was drafted to secure absolute freedom of speech for Members of Congress. It was the end product of a lineage of legislative free speech guarantees from the English Bill of Rights of 1689 to the first State constitution and the Articles of Confederation. See generally *Tenney v. Brandhove, supra* at 372–75. None of these provisions drew a distinction between a speech of a legislator directed at his colleagues and one to his constituents. On the contrary, the Court in *Tenney* stated that the Clause was designed to protect both. *Id.*, at 377 and fn. 6. This is consistent with

no less an authority than Thomas Jefferson. When a Federal Grand Jury protested against abuses by Congressmen who disseminated slanderous accusations to the public, Jefferson responded that the framers of the Constitution wrote the Speech or Debate Clause to allow Congressmen to inform the electorate without inhibition:

". . . that in order to give to the will of the people the influence it ought to have, *and the information which may enable them to exercise it usefully*, it was a part of the common law, adopted as the law of this land, that their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive. . . .

"That . . . for the Judiciary to interpose in the legislative department between the constituent and his representative, *to control them in the exercise of their functions or duties towards each other*, . . . to put the representative into jeopardy of criminal prosecution, of vexation, expense, and punishment before the Judiciary . . . is to put the legislative department under the feet of the Judiciary, is to leave us, indeed, the shadow, but to take away the substance of representation, which requires essentially that the representative be as free as his constituents would be . . . ; *and is the more vitally dangerous when it is considered that grand jurors are selected by officers nominated and holding their places at the will of the Executive.*" 7 *Writings of Thomas Jefferson* 158 (Ford ed. 1898), quoted in Luce, *Legislative Assemblies* 516–18 (1924) (emphasis added).

The privilege must be read to protect the publication and public distribution of speeches and committee records. This is a principal avenue relied upon by Members of Congress to provide the people with "the information which may enable them to exercise [their will] usefully."

The Constitutional evil which would result from denying the privilege's applicability to the informing function of Congress is magnified when this is done at the behest of the Executive and with respect to material which is critical of executive behavior. As this Court has emphasized, the central purpose of the Speech or Debate Clause is "to prevent intimidation by the Executive and accountability before a possibly hostile Judiciary."[6] *United States* v. *Johnson, supra* at 181. If the Executive Branch may, at will, institute Grand Jury proceedings and interrogate witnesses about Senators' publications of their speeches and committee reports which they send to the electorate, it will possess the power to isolate effectively all but the most courageous legislators from their constituents.[7] If such a rule applies, Congressmen will have to watch what they say to the people—in press releases, newsletters and anything spoken outside of the four walls of the Capitol—and they will inescapably be inhibited out of fear of harassment, Grand Jury inquisitions and even prosecutions. Yet if the Speech or Debate Clause means anything, it is that courts and prosecutors are not referees over what Congressmen may say to the people or how they may say it.[8]

The proper rule of Constitutional law was stated in *Methodist Federation for Social Action v. Eastland,* 141 F. Supp. 729, 731 (D.D.C. 1956) (three-judge court):

"Nothing in the Constitution authorizes anyone to prevent the President of the United States from publishing any statement. . . . Similarly, nothing in the Constitution authorizes anyone to prevent the Supreme Court from publishing any statement. We think it equally clear that nothing authorizes anyone to prevent Congress from publishing any statement."

The Court of Appeals placed reliance upon two early English cases 9 holding publication of legislative proceedings outside the Parliamentary privilege. This reliance is decidedly misplaced, for their underpinning has been repudiated and their holding has not survived. These cases had their genesis in a politically-motivated prosecution of the Speaker of the House of Commons, *Rex v. Williams,* 2 Show. K.B. 471, 89 Eng. Rep. 1048 (1794), and this decision was later declared to be "a disgrace to the country," *Rex v. Wright* 8 T.R. 293, 101 Eng Re. (King's Bench, 1799). At least since *Wason v. Walter,* L.R. 4 Q.B. 73 (1868), the settled law in England is that the Parliamentary privilege protects a member who publishes a speech "for the information of his constituents," and that the privilege applies derivatively to the publisher, because "such publication . . . is essential to the working of our Parliamentary system, and to the welfare of the nation." *Id.,* at 95. There is no reason in history or policy why the privileges of elected representatives in the United States should not be at least equal to those of their counterparts in England.

The confusion which was endemic in British law before final resolution by the highest court of England is now mirrored in our own country in conflicting decisions of the lower Federal courts. There are *dicta* in two prior cases which are consistent with the holding of the First Circuit. *Long v. Ansell,* 69 F.2d 386, 389 (D.C. Cir. 1934); *McGovern v. Martz,* 182 F. Supp. 343 (D.D.C. 1960).[10] On the other hand, there are two decisions which hold that the Speech or Debate Clause affords complete protection to Congressmen who publish committee records. *Hentoff v. Ichord, supra; Methodist Federation for Social Action v. Eastland, supra.*[11] Furthermore, the holding of the First Circuit conflicts in principle with the decision of the District of Columbia Circuit in *Hearst v. Black,* 84 F.2d 68 (D.C. Cir. 1936). This was an action to enjoin members of a Senate subcommittee chaired by then Senator (later Justice) Hugo L. Black from keeping, reproducing and distributing to his colleagues and to the public, documents which were alleged to have been obtained illegally. The court dismissed the complaint on principles of separation of powers:

"The prayer of the bill is that the committee be restrained from keeping the messages or making any use of them or disclosing their contents. In other words, that if we find that the method adopted to obtain the telegrams was an invasion of the appellant's legal rights, we should say to the committee and to the Senate that the contents could not be disclosed or used in the exercise by the Senate of its legitimate functions. We know of no case in which it has been held that a court of equity has authority to do any of these things. On the contrary, the universal rule, so far as we know it, is that the legislative discretion in discharge of its constitutional functions, whether rightfully or wrongly exercised, is not a subject for judicial interference.

"The Constitution has lodged the legislative power exclusively in the Congress. If a court could say to the Congress that it could use or could not use information in its possession, the independence of the Legislature would be destroyed and the constitutional separation of the powers of government invaded." *Id.,* at 71–72.

The recurring nature of this issue and the conflicting decisions in the lower courts are additional reasons for this Court to clarify the extent of the Congressional privilege. A clear decision by this Court is necessary so that Members of Congress, who routinely inform their constituents by issuing press releases and by circulating copies of their speeches and committee reports and records, will know precisely what their rights are. Similar considerations led this Court to take review in *Barr v. Matteo, supra,* and *Howard v. Lyons,* 360 U.S. 593 (1959), and to hold that the judicially-created doctrine of executive privilege protects the issuance and circulation of news releases by the thousands of subordinate officials of the Executive Department. The Court of Appeals has not explained why the constitutional privilege of elected Members of Congress should be narrower.

Perhaps out of recognition that its holding was at odds with the thrust of prior decisions of this Court and was inconsistent as well with the history and policies underlying the Speech or Debate Clause, the Court of Appeals suggested that ordinary publication of committee reports might well be constitutionally protected but that this particular instance was not. This was implied in the initial decision[12] and stated beyond doubt in the second opinion (on rehearing), where the Court of Appeals "dr[ew] a distinction between normal and customary republication of a speech in Congress and republishing privately all or part of 47 volumes of, we must presently assume, lawfully classified documents, through the device of filing them as exhibits to the records of a subcommittee to which they have no conceivable concern" (App. 2C).

The clarifying language in the opinion on rehearing indicates clearly that the Court of Appeals has thus taken upon itself the power of determining whether or not a procedure followed by a Senator in the performance of his legislative functions is sufficiently "regular" so as not to divest his protection under the Speech or Debate Clause. In so doing the Court of Appeals has departed drastically from settled principles. Even the District Court recognized in its Opinion that "[t]he courts have no right to dictate . . . the procedures for Congress to follow in performing its functions . . .", and that "[j]udging the applicability of the legislative privilege in the exercise of the functions of the legislator's office should be done 'without inquiring whether the exercise was regular according to the rules of the House, or irregular and against their rules,'" 332 F. Supp. at 936. How a House of Congress internally allocates its functions and prescribes and enforces its procedures is a political question which is beyond the cognizance of the courts.[13] The judiciary has no more authority to tell a Senator what is germane to the subcommittee which he chairs than to adjudicate the current jurisdictional dispute between the Foreign Affairs and Armed Services Committees.

It is equally clear that there is nothing in the nature of "private" publication which may defeat the privilege. Technological developments in printing have so persuaded Congressmen and other public officials to utilize private facilities to disseminate report and records in order to obtain the cheapest and most widespread distribution that it is now a dominant mode of publication. This Court may take judicial notice of the fact that, for example, every important commission report over the last decade has been printed privately,[14] as have transcripts of significant Congressional committee hearings.[15] And even before this development became so pronounced, the Public Printer, who is after all distinguished only by being subsidized by the taxpayer, has not had a status at all different, under either American or English Law, from private printers who publish legislative proceedings.[16]

By making the applicability of the privilege for publication turn upon judgments of "germaneness" and "regularity," the Court of Appeals has hardly provided a limiting principle. It has, to the contrary, supplied yet more uncertainty, for the privilege is "of little value," if Congressmen must depend upon the way of a court or jury later speculates upon such amorphous concepts. See *Tenney v. Brandhove, supra* at 377.

Footnotes at end of article.

Finally, the consequences of the decision of the Court of Appeals are not ameliorated by the fact that Senator Gravel and his aides will not personally be questioned before the Grand Jury. In allowing the interrogation of "third parties" into the legislative activities of a Congressman, so long as his "motives" are not attacked, the Court of Appeals misapprehended the holding of *United States v. Johnson, supra* at 173–76, where this Court barred inquiry of anyone not only into motives but also into *how* the speech was prepared and into its precise ingredients. The rationale of the Court of Appeals affords little, if any, protection to Congressmen, for in the course of their legislative activities they of necessity deal with innumerable people,[17] and questioning of them before the Grand Jury may accomplish by indirection precisely what the Court of Appeals recognized could not be done directly—the intensive breach of the sanctity of the legislative process. The Executive, with the assistance of the Grand Jury may, under this decision, investigate how a Congressman wrote a speech, what materials were in his possession, his conversations prior to voting or speaking out on controversial issues, how he prepared for a hearing, and how he made his speeches, reports and hearings available to his constituents—so long as the interrogators disclaim any intent to attack his motives. Aside from the clear violation of separation of powers thus effectuated, the intimidating potential of this approach and its possible effects on Congressional deliberations are awesome.

And surely there is nothing unique about the Grand Jury which justifies such a holding. Other investigative bodies, of at least equal stature and importance, have not been permitted to proceed unchecked when their investigations were perceived to have a similar impact upon First Amendment freedoms. See. *e.g., DeGregory v. Attorney General of New Hampshire,* 383 U.S. 825 (1966), and cases cited therein at 829. There is no reason why the Grand Jury, which is subject to the supervisory powers of the Federal Courts, should not be governed by like restrictions when it intrudes into an area of prime constitutional importance.

CONCLUSION

Only six years ago, in but the third case dealing with the Speech or Debate Clause decided by this Court, Mr. Justice Harlan observed that "[i]n part because the tradition of legislative privileges is so well established in our policy, there is very little judicial illumination of this clause." *United States v. Johnson, supra* at 179. Since then, the Court has been obliged to take review three more times.[18] An important provision of the Constitution, adopted at the Convention without debate and viewed as axiomatic for most of our history, is now the center of controversy and doubt. This is an appropriate case for this Court, as the ultimate interpreter of the Constitution, to enunciate definitively the extent of the Congressional privilege.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinions of the Court of Appeals for the First Circuit.

Respectfully submitted,

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Footnotes at end of article.

APPENDIX A

[In the U.S. Court of Appeals for the First Circuit—No. 71–1331 and 1332]

United States of America *v.* John Doe
Mike Gravel, United States Senator, intervenor, Appelant.

[No. 71–1335]

United States of America, Appellant, *v.* John Doe.

Appeals from the U.S. District Court for the District of Massachusetts.

Before Aldrich, *Chief Judge,* McEntee and Coffin, *Circuit Judges.*

David R. Nissen, Assistant United States Attorney, with whom *James N. Gabriel,* United States Attorney, and *Warren P. Reese,* Assistant United States Attorney, were on brief, for the United States.

Robert Reinstein and *Herbert O. Reid, Sr.* with whom *Charles L. Fishman* was on brief, for Mike Gravel, United States Senator.

Doris Peterson, Peter Weiss, James Rief, and *Morton Slaris* on brief, for Leonard Rodberg, Amicus Curine in case No. 71–1335.

January 7, 1972.

Aldrich, *Chief Judge.* These cross appeals raise important questions as to the extent of the privilege afforded by the Speech or Debate clause of the Constitution. This clause, the separate and concluding part of Article I, Section 6, Clause 1, provides that ". . . for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other Place." The issues arise in the context of a motion to limit the testimony that can be presented to a federal grand jury. The facts are these.

A copy of classified Defense Department documents, now widely known as the Pentagon Papers, containing hitherto unpublished facts concerning the background and conduct of the Vietnam War, found itself, unauthorizedly, in the hands of Senator Gravel, the junior senator from Alaska. The Senator was Chairman of the Senate Subcommittee on Public Buildings and Grounds. He called a meeting of the subcommittee, read to it a summary of the high points, and then introduced the entire Papers, allegedly some 47 volumes and said to contain seven million words, as an exhibit. Thereafter, he allegedly supplied a copy of the Papers to the Beacon Press, a Boston publishing house, owned by the Unitarian-Universalist Society, for publication.

These matters and the events preceding them have attracted the attention of a grand jury in the Massachusetts District. The court found, "The crimes being investigated by the grand jury include the retention of public property or records with intent to convert (18 U.S.C. § 641), the gathering and transmitting of national defense information (18 U.S.C. § 793), the concealment or removal of public records or documents (18 U.S.C. § 2071), and conspiracy to commit such offenses and to defraud the United States (18 U.S.C. § 371)." (Strictly, the court misused the word "public.")

Among other summoned witnesses were Leonard S. Rodberg, a legislative assistant to Senator Gravel, and Howard Webber, director of M.I.T. Press. Rodberg objected to testifying, on the ground of invasion of his First Amendment rights of freedom of association and freedom of the press, and in addition, on the ground that as a legislative assistant to the Senator, he is protected by the Speech or Debate clause. The Senator himself has not been called, and the Department of Justice has stated that it has no intention of calling him. The court, however, permitted the Senator to intervene in the proceedings for the purpose of arguing that his own privilege under the Speech or Debate clause requires that the subpoenas issued to Rodberg and Webber be quashed, and that a protective order be issued suppressing certain other testimony. The resulting order the Senator, as the present appellant, finds too limited, and the government, as cross-appellant, too broad.

Jurisdiction

The government, correctly, points out that if the subpoena that was sought to be quashed was directed to intervenor, there could be no appeal from the refusal to quash unless he took the further step of refusing to comply, and was adjudicated in contempt. *Cobbledick v. United States,* 1940, 309 U.S. 323; *United States v. Ryan,* 1971, 402 U.S. 530. Here, however, the subpoena was not addressed to intervenor, but to third parties, who could not be counted on to risk contempt in order to protect intervenor's constitutional rights. *See United States v. Ryan,* ante, at 533. Hence he was "powerless to avert the mischief of the order" unless permitted to appeal it. *Perlman v. United States,* 1918, 247 U.S. 7, 13. The government's effort to take the case outside the *Perlman* exception, by arguing that intervenor will not suffer irreparable injury if the grand jury hears the evidence, assumes the correctness of its claims that no injury is cognizable unless and until intervenor is indicted. *Perlman,* however, illustrates that, to the contrary, a court, in determining whether an intervenor will suffer irreparable injury unless allowed to appeal, should assume his claim to be correct. We hold, therefore, that the order denying intervenor's motion is appealable.

The issues

The court's order, so far as presently material, provided as follows:

"(1) No witness before the grand jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971 nor about things done by the Senator in preparation for and intimately related to said meeting.

"(2) Dr. Leonard S. Rodberg may not be questioned about his own actions on June 29, 1971 after having been engaged as a member of Senator Gravel's personal staff to the extent that they were taken at the Senator's direction either at a meeting of the Subcommittee on Public Buildings and Grounds or in preparation for and intimately related to said meeting.

This order was preceded by a comprehensive recitation of facts, some of which we do not repeat, and discussion of the legal principles. *United States v. John Doe, In re Rodberg,* D. C. Mass., 1971, 332 F. Supp. 930. By a subsequent order the court refused further relief, except for a brief temporary stay, which we extended.

The response of both parties is extreme. Intervenor's brief suggests that the entire inquiry is improper.

"There probably is no clearer case of the prostitution of the grand jury process than is daily evidenced [here] . . . . This Court is thus presented by the government with a flagrant misuse of the subpoena power of the grand jury . . . [by the executive]. This represents a fundamental perversion of the function of the grand jury. . . ."

The government does not make the rejoinder that intervenor's own action in disclosing documents which were, in his own words, "critical of Executive conduct in foreign affairs," had no conceivable relevance to the functions of the Subcommittee on Public Buildings and Grounds; a matter which would seem self-evident.[19] While recognizing that that claim would be (at least largely, see post) irrelevent, it does take the extreme position that while legislators may not be questioned "for" their speech or debate, in the sense of being held accountable, they may be freely questioned "about" them.

"Speech or Debate"—The scope of the privilege

The areas in which intervenor objects to questioning are three—speech or debate itself, or publication; preparation, or pre-publication, and, finally, republication. We will consider them in that order.

(a) Publication

For what he says or does on the floor of the Senate, or before the subcommittee, intervenor is concededly protected by an absolute privilege from all criminal and civil liability. *See United States v. Johnson,* 1966, 383 U.S. 169; *Tenney v. Brandhove,* 1951, 341 U.S. 367. It is equally clear that this protection extends to any written reports of the committee proceedings addressed to Congress, including material unspoken at the hearing but inserted directly into the record. *See Kilbourne v. Thompson,* 1880, 103 U.S. 168, 204; *McGovern v. Martz,* D.D.C., 1960, 182 F. Supp. 343, 347. The privilege protects against a claim of irrelevancy, *see Cochran v. Couzens,* D.C. Cir., 1930, 42 F. 2d 783, 784, as well as of falsity and malice. The government would argue that intervenor could be questioned "about" his conduct for this very reason, drawing the analogy that one who is immune from prosecution cannot claim the protection of the Fifth Amendment.

In our view this misconceives the scope and purpose of the Speech or Debate clause, which is not principally to protect the person and pocketbook of legislators, but, rather, is to ensure freedom of debate. *United States* v. *Johnson,* ante, at 180–82. Intimidation of a legislator, harassment, embarrassment with the electorate, all may be achieved short of obtaining a criminal or civil judgment. *Cf. United States* v. *Johnson,* 4 Cir., 1964, 337 F. 2d 180, 191, *aff'd,* 383 U.S. 169. Since these consequences can flow from mere inquiry, the possibility of judicial inquiry could itself serve as an effective deterrent to speaking out against executive policy. *Id.* Further, although it seems to us relatively less important, the time required to respond to such an inquiry would be inconsistent with another purpose of the Speech or Debate clause, which is "to insure that legislators are not distracted from or hindered in the performance of their legislative tasks." *Powell* v. *McCormack,* 1969, 395 U.S. 486, 504; *see Tenney* v. *Brandhove,* ante, at 337. We cannot accept the government's distinction between questioned "for" and questioned "about." [20] Nor do we think that the place of questioning, whether it be before the grand jury or before a petit jury, determines its palatibility. The legislator need not answer questions anywhere.

(b) Pre-publication

Turning to the pre-publication period, we note that we are concerned not with whether a legislator may be protected from prosecution for illegal conduct in obtaining information for use in a congressional proceeding, but only with the extent to which the constitutional privilege bars grand jury questioning. Different considerations may well apply. Effective debate presupposes access to facts. *See generally* Cella, The Doctrine of Legislative Privilege of Freedom of Speech and Debate: Its Past, Present and Future as a Bar to Criminal Prosecutions in the Courts, 2 Suffolk L. Rev. 1, 36 (1968). Since the scope of the privilege should be as broad as is necessary to achieve its purpose of assuring full and free debate, *see Stockdale* v. *Hansard,* 1839, 9 Ad. & E. 2, 150, 112 Eng. Rep. 1112, 1169, we include therein inquiries which would restrict acquisition of information. It seems manifest that allowing a grand jury to question a senator about his sources would chill both the vigor with which legislators seek facts, and the willingness of potential sources to supply them. *Cf. Caldwell* v. *United States,* 9 Cir., 1970, 434 F. 2d 1081, *cert. granted* 402 U.S. 942. Whatever the accommodation that must be made with respect to the public interest in prosecuting crime, *cf. Dombrowski* v. *Eastland,* 1967, 387 U.S. 82, we cannot accept that it is to be drawn in favor of permitting direct inquiry of a legislator.[21] To what other persons this protection may extend we will consider later. All government action cannot be frozen in the name of chilling speech. *Cf. United States* v. *O'Brien,* 1968, 391 U.S. 367.

(c) Republication

Intervenor in his appeal contends that the clause comprehends not only the delivery of a congressional speech and conduct antecedent thereto, but also conduct subsequent to the speech aimed at its wider dissemination, including private republication. Apart from republication such as in the news media or the Congressional Record, which is the natural consequences of a speech and is necessarily protected, *see McGovern v. Martz,* ante, at 347, no American court appears to have decided this question.[22] *But cf. id.; Long* v. *Ansell,* D.C. Cir., 1934, 69 F.2d 386, 389, *aff'd* 293 U.S. 76. In urging us to resolve it in his favor, intervenor acknowledges that it will not affect his freedom to speak, since the speech has already been made, but argues that republication is essential to the "due functioning of the legislative process," *United States v. Johnson,* ante, 383 U.S. at 172, and is "generally done" by members of Congress.[23] *Kilbourne v. Thompson,* ante, at 204. *See also Stockdale v. Hansard,* ante, at 150, 1169. The difficulty is that the term "legislative process" is no more self-defining than "Speech or Debate." The language and history of the Speech or Debate clause is a surer guide to the scope of the privilege than catch-phrases, and we find in both a focus upon matters occurring in the course of deliberation. This had been the English concept upon which our privilege had been patterned.[24] Two English cases, decided shortly after the enactment of the American constitution, held that the parliamentary privilege did not immunize members from civil liability for libels contained in privately published reproductions of their parliamentary speeches. *Rex v. Creevey,* 1813, 1 Maule & Selwyn 273; *Rex v. Lord Abington,* 1795, 1 Esp. N.P. Cases 228. See generally T. E. May, Treaties on the Law, Privileges, Proceedings and Usage of Parliament 48–66 (16th ed. E. Fellowes & T. G . B. Cocks 1957); C. F. Wittke, The History of English Parliamentary Privilege 23–32 (1921). Our courts have expanded the privilege beyond the act of debating within Congress a proposal before it only when necessary to prevent indirect impairment of such deliberations. *See Kilbourne v. Thompson,* ante: *Coffin v. Coffin,* 1808, 4 Tyng (Mass.) 1.

We do not find private republication within that category. The fact that it may be customarily done by members of Congress is not the answer.[25] Only those acts by which a congressman ordinary expresses to the House his views on matters before it come within the Supreme Court's extension of the privilege to "things generally done . . . *in relation to the business before [Congress]*." *Kilbourne v. Thompson,* ante, at 204. (Emphasis supplied)

Intervenor's argument that communicating with the electorate is essential to effective deliberation because it elicits responses to guide its legislative decisions and because it helps to put pressure upon other legislators (n. 5, ante, ¶ 4) proves too much. If accepted, it would bring within the privilege not only republished congressional speech, but speeches delivered anywhere. But even restricted to repeating what has once been said in a legislative context, the consequences of an unlimited absolute privilege would be staggering. We do not believe intervenor has struck such gold in a field previously thought to be barren.[26] The fact that some repetition may be inevitable does not means that there should be immunity to add to it. *Cf. Murray v. Brancato,* 1943, 290 N.Y. 52 (no privilege for judge to circulate privately a calumnious opinion); see Annot., 146 ALR 913. We will not hold that there is a constitutional privilege to print privately what, we must assume for present purposes, were classified documents simply because intervenor had first disclosed them to a Senate subcommittee whose function was totally unrelated thereto.[27]

The fact that republication is not within the constitutional privilege does not exclude consideration of other protection. To the extent that a congressman has responsibility to inform his constituents, his performance of that responsibility may be protected from liability by a common law privilege, as is an executive official's. A news release about the speech may well be as protected as the speech itself. *Cf. Barr v. Mateo,* 1959, 360 U.S. 564 (absolute immunity given executive officer for libel contained in news release). How far this immunity should go will depend upon the facts of the particular case. An even more difficult question is whether the measure of the grand jury's right to make personal inquiry of the legislator follows the immunity. Arguably, it may go further, or not so far. Because we do not consider this a matter of present substantial importance, and partly because the court is not in total agreement, we presently resolve it, without binding ourselves for future purposes, if the matter is more sharply put, that he may not be questioned at all as to republication.[28] We do not, of course, mean by this that we are ruling, even tentatively, on the limits of criminal liability.

Witnesses precluded

It may be wondered why, since under *Cobbledick v. United States,* ante, until he has been held in contempt we apparently have no jurisdiction to advise intervenor as to the measure of his immunity from testifying, we have nevertheless been answering that question. The reason is that such answer is a necessary condition to passing upon the immunity of others, such as Rodberg, who intervenor claims in this appeal to come under his legislative protection. We now turn to this.

Legislative Aides

It is not only accepted practice, but, we would think indispensable, for a legislator to have personal aides in whom he reposes total confidence. This relationship could not exist unless, during the course of his employment, the aide and the legislator were treated as one. To the extent, if any, that there might be exceptions, again, for present purposes, we do not inquire. We note, however, that this synomymity is founded upon the relationship, not on the fact of employment. Rodberg, for example, is not protected from inquiry as to events unconnected with intervenor at the time of occurrence. We reject intervenor's contention that the fact of hiring insulated him from all inquiry as to prior events related to the Papers, but not to intervenor. *See Heine v. Raus,* 4 Cir., 1968, 399 F. 2d 785, 190–91.

(b) Third Parties

United States v. Johnson, ante, holds that any person who dealt with a legislator with respect to speech or debate can not be inquired of if the object is to attack the legislator's motives in speaking. Specifically, it could not be shown that the defendant's speech was written by a constituent, or that the defendant was paid to deliver it. The Court did not suggest that a legislator was free in all respects from criminal prosecution. *But see id.,* at 185. Indeed, were it to be thought so, one need only turn to the other portions of the Clause, which regulates, procedurally, criminal trials. With respect to third persons, provided that the principles of *Johnson* are observed, we can

Footnotes at end of table.

see no reason for them to be free of inquiry as to their own conduct regarding the Pentagon Papers, including their dealing with intervenor or his aides. We have already spoken as to Rodberg, pre-employment. At the other end, so far as intervenor's privilege is concerned, we hold that no immunity was conferred upon Beacon Press simply because, if he did, intervenor delivered the Papers to it for private publication. Indeed, we would hold, if his appeal can be thought to raise that question,[29] that whatever Beacon Press did is freely inquirable even to the extent, if any (it has not presently been suggested), that it may have made payments to intervenor or others in connection with the Papers subsequent to their introduction into the subcommittee records. Payment for delivering a copy, by a post-speech agreement, is not comparable to a payment for initially delivering the speech. Similarly, the district court's refusal to include Webber in its order was correct.

Procedure

Intervenor has presented us with a request covering the type of witnesses he believes should be excluded altogether, and an elaborate procedure for the court to employ as to testimony the government proposes to introduce through other witnesses. Much of this request goes by the board with our rejection of some of his basic premises. As to the rest we find such procedure unnecessarily cumbersome, and suggest a simpler solution. Intervenor may supply a list of his personal aides, and the dates of their employment. Upon the court's being satisfied as to the correctness of the list it shall order that no questions be asked of any of them relating to the Pentagon Papers or to intervenor's legislative activities during the period of their employment. It shall further order that no questions be asked of any other witness as to communications with intervenor regarding legislative activities, including the furnishing of information, or with his aides during such periods, directed to intervenor's motives or purpose in introducing the Papers into the subcommittee records. We believe the contempt power of the court will be a sufficient guarantee of enforcement without the need of adopting intervenor's extraordinary request that every question be submitted to him for approval before it is asked.

Except to the extent that it is modified herein the order of the district court is affirmed. Even though intervenor has essentially lost his appeal, we do not believe this an appropriate case in which to award costs.

APPENDIX B

(In the United States Court of Appeals for the First Circuit, Nos. 71-1331 and 71-1332.)

United States of America, *v.* John Doe, Mike Gravel, United States Senator, Intervenor, Appellant.

Judgment Entered: January 7, 1972.

These causes came on to be heard on appeals from the United States District Court for the District of Massachusetts, and were argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The orders of the District Court of October 28, 1971, are affirmed, except that the Protective Order of that date is modified to read as follows:

(1) No witness before the grand jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971, nor, if the questions are directed to the motives or purposes behind the Senator's conduct at that meeting, about any communications with him or with his aides regarding the activities of the Senator or his aides during the period of their employment, in preparation for and related to said meeting.

(2) Dr. Leonard S. Rodberg may not be questioned about his own actions while being interviewed for, or after having been engaged as a member of Senator Gravel's personal staff to the extent that they were in the course of his employment.

No costs on these appeals.

The court does not propose to stay mandate beyond the statutory period except upon motion, which must be shortly made, showing substantial cause.

By the Court:

DANA H. GALLUP,
Clerk.

APPENDIX C

(United States Court of Appeals for the First Circuit, No. 71-1331 and 71-1332.)

United States of America, v. Mike Gravel, United States Senator, *Intervenor, Appellant.*

Appeals from the United States District Court for the District of Massachusetts.

Before Aldrich, *Chief Judge.*

McEntee and Coffin, *Circuit Judges.*

On Petition for Rehearing, etc. January 18, 1972.

Robert J. Reinstein and Charles L. Fishman for appellant.

David R. Nissen, Assistant United States Attorney, for appellees.

Aldrich, *Chief Judge.* Intervenor has filed a petition for "reconsideration." The word is accurately used; intervenor is arguing the same points he made before. His proffered excuse is that the "expedited schedule . . . severely constricted . . . research." If this was so, it is the first we have heard of it. No pre-argument protest of lack of time was raised; no protest was made at the argument; no request was made for permission to file a further brief, either then, or during the eight weeks we had the matter under advisement. Nor should it be forgotten that petitioner sought intervention in August 1971. We would have thought he had ample opportunity to do his research. F.R.A.P. 40 was not promulgated as a crutch for dilatory counsel, *Cross Baking Co.* v. *NLRB,* 1 Cir., 12/30/71,— F.2d—, nor, in the absence of a demonstrable mistake, to permit reargument of the same matters.

We pass this, in view of the importance of the case. More difficult to overlook is the fact that, with our views and reasoning now fully before him, intervenor, in rearguing the republication issue, fails to address himself to our specific "attempts to reconcile fundamentally antagonistic social policies" (*Barr* v. *Mateo,* 1959, 360 U.S. 564, 576). Further generalities about "legislative activity in the classic and historic sense" do not indicate to us why we are wrong in drawing a distinction between normal and customary republication of a speech in Congress and republishing privately all or part of 47 volumes of, we must presently assume, lawfully classified documents, through the device of filing them as exhibits to the records of a subcommittee to which they have no conceivable concern. In repeating the familiar arguments why he should be absolutely protected with respect to introducing the exhibits before the subcommittee—a matter no one questions—and talking broadly about his duty to inform the public, intervenor does not answer our analysis of what should be the subsequent limits of protection.

The petition for reconsideration is denied.

Alternatively, petitioner seeks clarification of our order. We do not, however, understand how he can think the order permits inquiry of third persons directed to his motives. We see no need of clarification here. His further inquiry, whether the questions could be asked of third parties about "preparation for the hearing if that *relates* to his motives for holding it," (emphasis supp.) perhaps calls for comment. During oral argument we posed a hypothetical, not repeated in our opinion, but to which intervenor now returns. Suppose that the President's private diary is stolen, and thereafter a Congressman introduces it into the legislative record. Petitioner's present brief suggests that since this would be an exercise of "the informing function of exposing Executive behavior," the only answer he would have to make would be to the "House and . . . the people," unless he participated in the theft. His point is put best in the form that preparation is part of speech, and that if inquiry may be made even as to third parties as to the sources, he will be inhibited. Here, it seems to us, some adjustment of competeing interests must be made. We believe that if a document shown to be improperly at large is sought to be traced, it may be traced by inquiry of third parties even if the effect may be to lead to a legislator. In *United States v. Johnson,* 1966, 383 U.S. 169, the prosecution was barred from questioning third parties about their role in preparing a congressional speech only because the questions were directed to proving that the speech itself was part of a criminal conspiracy. This should not mean that all illegal activity is insulated from inquiry, apart from prosecution, simply because it could be characterized as preparation for a speech. The introduction of the document into the subcommittee records, like Thetis' immersion of Achilles, cannot effect universal protection.

Intervenor has a valid point with respect to the portion of the order relating to Rodberg. This is clarified by inserting after the phrase "his own actions" the words "in the broadest sense, including observations and communications, oral or written, by or to him, or coming to this attention."

This brings us to the government's motion to revoke our stay, which was granted broadly, pending appeal, to cover all facets of intervenor's contentions. With a limit of time on the grand jury proceedings, we amend the stay by substituting the order called for by our opinion, and contained in the judgment, but as presently clarified as to Rodberg. This amendment and substitution is, in turn, stayed until January 26, 1972, to permit intervenor, if he sees fit, to apply forthwith, prior to Friday of this week, to the Circuit Justice.

APPENDIX D

(In the U.S. Court of Appeals for the First Circuit—No. 71-1331 and 71-1332)

United States of America, *v.* John Doe, Mike Gravel, United States Senator, *Intervenor, Appellant.*

Before Aldrich, Chief Judge McEntee and Coffin, Circuit Judges.

Order of court entered January 18, 1972.

Pursuant to opinion of instant date, the broad stay granted on October 29, 1971, as modified, is hereby revoked and there is substituted the order contained in the judgment of January 7, 1972 as clarified by the explanatory clause contained in our opinion defining "actions" as "in the broadest sense, including observations and communications, oral or written, by or to him or coming to his attention."

The present order of revocation and substitution is stayed until January 26, 1972.

The motion for clarification is otherwise denied.

The motion for reconsideration is denied.

By the Court.

DANA H. GALLUP,
Clerk.

FOOTNOTES

[1] Due to the expedited schedules which have been set by both the Court of Appeals and by this Court, and transcription delays by the District Court reporter, the complete record of proceedings in the District Court is not yet available for certification. However, as the District Court noted, the facts are not

in dispute and have formed the basis of the legal submissions of all parties. 332 F. Supp. at 933 n. 3.

[2] The publication by Beacon Press has variously been referred to in the opinions and papers below as the "publication" and as the "republication." Inasmuch as the Beacon Press edition was the first occasion on which the Subcommittee record was printed after its compilation, we use the term publication.

[3] There was jurisdiction over the appeal under 28 U.S.C. § 1291, because Senator Gravel had no other means of obtaining review and consequently the denial by the District Court of his motion to quash was, as to him, a final appealable order. *Perlman v. United States*, 247 U.S. 7 (1918). See *United States v. Ryan*, 402 U.S. 530, 533 (1971). The Court of Appeals therefore properly held that it had jurisdiction over the appeal (App. 3A). Similarly, this Court has jurisdiction.

[4] The Court of Appeals, admitting that "the court is not in total agreement" on this point, nevertheless "presently" held that the Senator and his aides could not personally be questioned as to "republication," "without binding ourselves for future purposes." (App. 11A). More exactly, the Court of Appeals found that the Speech or Debate Clause privilege did not extend at all to the "republication," but that the Senator and his aides may be protected from direct interrogation by a common law privilege (App. 10–11A).

[5] See Woodrow Wilson, *Congressional Government* (1885):

> The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration . . . (at 303).
>
> Quite as important as legislation is vigilant oversight of administration; and even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body [Congress] which kept all national concerns suffused in a broad daylight of discussion (at 297).

Even if, as the Court of Appeals believes, focus should be confined exclusively to Congress' deliberative processes—which we submit is too narrow a view—it is clear that the colloquy between a congressman and the electorate is a prime determinant in influencing him in his decisions on pending legislation. The Court of Appeals did not rebut this argument, but rejected its consequences as "staggering," with reference to speculative examples of virtualy unimaginable abuses (App. 10A, particularly n. 9). Identical "parade of horribles" arguments have been consistently rejected by this Court, even when the possibility of abuse was much less speculative. See, *e.g. Barr* v. *Matteo*, 360 U.S. 564, 576 (1959).

[6] One of the most notorious events crystalizing the struggle for the Parliamentary privilege was the vindictive action of Charles I against Sir John Eliot and other Members of Parliament who vocally opposed funding a needless and bloody war overseas. 3 How. St. Tr. 294, 332. See *Tenney* v. *Brandhove*, *supra* at 372.

[7] Compare Woodrow Wilson, *Congressional Government* (1885), at 303:

> It is the proper duty of a representative body to look diligently into every affair of government *and to talk much about what it sees*. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; *and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct* (emphasis added).

[8] See II *Works of James Wilson* (Andrews ed. 1896) at 38:

> In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offense.

This Court has made it abundantly clear that the "powerful" of whom Wilson spoke, refers primarily to the Executive Branch. *United States v. Johnson*, *supra* at 180–81.

[9] *Rex* v. *Abington*, 1 Esp. 226, 170 Eng. Rep. 337 (1795); *Rex. v. Creevey*, 1 M.&S. 273, 105 Eng. Rep. 102 (1813).

[10] *Long* was not even a Speech or Debate Clause case; it involved a claim of a Senator that he was immune from service of process because of the privilege from arrest in Article I, Section 6. The only reference to the Speech or Debate privilege was in a brief final paragraph. On review, the Supreme Court did not refer to the Speech or Debate Clause. 293 U.S. 76 (1934). In *McGovern*, the comments in "republication" were *dicta* because there was no publication except in the *Congressional Record*.

[11] The Court below distinguished these cases because they involved requests for injunctive relief to prevent the publication of defamation, which "although actionable, may not be enjoined" (App. 8A). Yet in neither case is there so much as a hint that this factual distinction entered into the decision. Moreover, *Hentoff* was not a defamation case; the plaintiffs sought relief on First Amendment grounds. The court held that the Speech or debate Clause deprived it if jurisdiction to consider a complaint "seeking any remedy" against the Congressmen for publication, 318 F. Supp. at 1179, and the court indicated quite clearly that the only reason it had jurisdiction to grant any relief against the Public Printer was because the publication would infringe the protected First Amendment rights of the plaintiffs. *Id.* at 1180.

[12] "We will not hold that there is a constitutional privilege to print privately what, we must assume for present purposes, were classified documents simply because intervenor [Senator Gravel] had first disclosed them to a Senate subcommittee whose function was totally unrelated thereto" (App. 10A).

[13] Of course, as with other variants of the political question doctrine, when a committee infringes upon an individual's constitutional rights, the courts may be obliged to examine enabling legislation in order to determine whether there is an overriding governmental interest. *E.g., Watkins v. United States*, 354 U.S. 178, 205 (1957). Here, no such claims made by the Government, and the matter is "peculiarly within the realm of the legislature." *Ibid.* See also *Yellin v. United States*, 374 U.S. 109, 121–22 (1963), which drew this distinction precisely.

[14] See *Violence in America, Historical & Comparative Perspectives* (Graham and Gurr et als., Task Force on Historical & Comparative perspectives, Report to the National Commission on the Causes and Prevention of Violence) (New American Library, N.Y. 1969); *To Establish Justice, To Insure Domestic Tranquility* (National Commission on the Causes and Prevention of Violence, introd. by Reston) (Bantam Books, N.Y. 1970) ("Eisenhower Commission Report") (also published by Award Books, N.Y. 1969); *The Challenge of Crime in a Free Society* (President's Commission on Law Enforcement and Administration of Justice, introd. by Silver) (Avon Books, N.Y. 1968); *Rights in Conflict: The Violent Confrontation of Demonstrators and Police in the Parks & Streets of Chicago During the Week of the Democratic Convention of 1968* (Report to the National Commission on the Causes and Prevention of Violence, introd. by Max Frankel) (E.P. Dutton & Co., N.Y. 1968) ("The Walker Report") (also published by New American Library, introd. by Donovan, N.Y. 1968); *Report by the U.S. National Advisory Commission on Civil Disorders* (Bantam Books, N.Y. 1968) ("The Kerner Commission Report"); *Report of the Commission on Obscenity and Pornography* (introd. by Barnes, Bantam Books, N.Y. 1970).

[15] See, *e.g.*, Senate committee hearings, republished as *The Vietnam Hearings* (copyright and introd. by J. W. Fulbright) (Random House (paperback ed. Vintage Books), N.Y. 1966).

[16] See *Hentoff v. Ichord*, 318 F. Supp. 1175, 1180 (D.D.C. 1970); The Parliamentary Papers Act, §§ I and II (3 & 4 Vict., c. 9 (1840)); *Wason v. Walter*, 4 Q.B. 73 (1868). It should be noted that in this case, Beacon Press made its paperback edition available to the public in sufficient quantity at a price of $20. for the set, while the Government Printing Office made available a limited printing of a censored edition, with unnumbered pages (making the work less useful as a research and reference tool) at a price of $50.

[17] It is difficult to imagine, for example, a Congressman being able to perform the informing function without the assistance of "third party" printers. Questioning Webber and Beacon Press officials about how Senator Gravel published the Subcommittee record would disclose precisely the same information about his legislative activities as if he and his aides were called.

[18] *Dombrowski v. Eastland, supra; Powell v. McCormack, supra; United States v. Brewster*, No. 1025, jurisdiction postponed 401 U.S. 935, No. 70–45 (restored to the calendar for reargument) —— U.S. ——, 40, U.S.L.W. 3351.

[19] Nor does the government point out that intervenor, although relying elsewhere on the public's "right to know" (*see* n. 5, post) basically is seeking to block exposure of how he exposed what, in turn, the Executive did not wish to have exposed.

[20] On the other hand, while we are discussing terminology, except insofar as his hyperbole quoted ante may so suggest, we do not believe intervenor contends that his constitutional protection against questioning means that the government cannot prove aliunde wrongful acts by others which, by implication, may bring his own conduct "into question." There could be no merit in such a claim.

[21] In *New York Times v. United States*, 1971, 403 U.S. 713, the Court accommodated related free speech interests in holding that the newspaper's conduct could not be enjoined, although, as pointed out in Mr. Justice White's concurring opinion, it may have been criminal. *Id.*, at 730–41.

[22] We put to one side cases refusing an injunction, as involving different considerations. *See Hentoff vs. Ichord*, D.C.C. 1970, 381 F. Supp. 1175; *Methodist Federation for Social Action v. Eastland*, D.D.C., 1956, 141 F. Supp. 729; *cf. New York Times v. United States*, n. 3 ante. In the more common situation, it has long been settled that the publication of defamation, although actionable, may not be enjoined. *E.g., Crosby v. Bradstreet Co.*, 2 Cir., 1963, 312 F.2d 483, 485, *cert. denied* 373 U.S. 911; *Kidd v. Horry*, C.C. E.D.Pa., 1886, 28 F. 773.

[23] "The Framers presuppose[d] the maximum amount of communication between the citizens and their elected representatives."

"The people must be informed fully of the workings of government."

"The heart of representative democracy is the communicative process between the people and their agents in government."

"Informing the electorate is a 'legislative act' since it is clearly 'related to the due functioning of the legislative process.' *United States v. Johnson*, *supra* at 172. In fact, it is not exaggeration to say that direct communication between a Member of Congress and the electorate is an essential bedrock of the legislative process, for it insures that the

people will inform *him and his colleagues* [sic] of their well-considered views on pending and future legislation—an indispensable prerequisite for each Congressmen deciding how to cast his own vote."

[24] "[I]t may be reasonably inferred that the framers of the Constitution meant the same thing by the use of language borrowed from that source." *Kilbourne v. Thompson*, ante, at 202.

[25] *Cf. United States v. Johnson*, ante, at 172. There the Court observed that an attempt to influence the Department of Justice in favor of a constituent was unprotected, yet assisting constituents is just as customary a function as communicating with them. See generally V. O. Key, Politics, Parties and Pressure Groups (3d ed. 1952); R. Davidson, The Role of the Congressman 99 (1969).

[26] Those with long memories may recall the frequent, but unaccepted, challenges to a former junior senator from Wisconsin to repeat outside the walls of Congress the calumnies he often expressed within their protection. If intervenor is correct, we would see no reason for distinguishing between the types of legislative speech that could be repeated.

[27] Examples might be multiplied. If an unpublished manuscript was taken by parties unknown and subsequently was introduced into the records of a Congressional committee, could it be thought that the common law copyright was lost by reason of the Speech or Debate clause? Or, in the case of a published work, that the statutory copyright would thereby be extinguished?

[28] In part we do this because we propose, so far as possible, to make a practicable decision that avoids unnecessary or doubtful points that might burden the Supreme Court.

[29] We take it that intervenor believes it does, in the light of a contempt proceeding he instituted when he erroneously believed the United States Attorney was using a subpoena to examine the Beacon Press' bank records during the processing of this appeal.

[In the Supreme Court of the United States, October Term, 1971—No. 71-1026]

BRIEF IN OPPOSITION TO GOVERNMENT'S PETITION FOR A WRIT OF CERTIORARI

United States, *Petitioner*, v. Mike Gravel, United States Senator, *Respondent*.

The primary issue which the Government seeks this Court to review is whether the Speech or Debate Clause protects a Senator against Grand Jury interrogation of his aides about his legislative activities. While conceding that the Senator himself cannot personally be interrogated (Govt. Pet. 10), the Government urges nevertheless that the Court of Appeals erred in holding that an identical inquiry into his legislative conduct, pursued by the questioning of his aides, is similarly unconstitutional. While this issue is obviously a significant one, the Court of Appeals' disposition of it is clearly correct and is in harmony with the views of other courts; therefore, we respectfully submit that this issue does not warrant Supreme Court review at this time.

1. Except for the instant case, the Government has consistently and successfully argued that the Congressional privilege, to be viable, must be held to extend to aides who assist Congressmen in the performance of their legislative duties. In the recent decision of *Doe v. McMillan*, No. 71-1027 (decided January 20, 1972),[1] The District of Columbia Circuit agreed with and relied upon the First Circuit's holding that aides like Dr. Rodberg, who act within the sphere of legislative activity, are within the umbrella of the Speech or Debate Clause:

"In this day of complex public problems, where assignment of authority by legislators to legislative assistants is an absolute necessity if Congress is to be able to perform its constitutional functions, it would indeed be hollow to afford immunity to the Congressmen, but not to their assistants, for these aides might be hesitant to undertake the full performance of their lawful duties if they had to face the threat of possible lawsuits. Such an inconsistent result would impossibly hinder congressional activities, and effectively prevent the attainment of the objectives underlying the Speech or Debate Clause." (Slip Op., pp. 17–18).

Similarly, in two other cases in the District Courts, the Government has argued vigorously this same proposition. *United States Servicemen's Fund v. Eastland*, Civ. No. 1474–70 (D.D.C., decided October 21, 1971); *McSurely v. McClellan*, Civ. No. 516–69 (D.D.C.). In the *Servicemen's Fund* case, the court barred the deposition of Sourwine, counsel for the Internal Security Subcommittee, about its legislative activities, on the grounds that—

"A full-scale examination, by the attempted deposition of the Subcommittee's counsel [about] the Subcommittee's judgment[s] . . . would be an invasion of the prerogatives of the legislature and a serious interference with Congressional investigations and with Congressional privilege." [2]

Likewise, in the analogous area of Executive privilege, this Court has held that the privilege encompasses the thousands of subordinate administrative officials.

"The privilege is not a badge or emolument of exalted office, but an expression of a policy . . . designed to aid in the effective functioning of government. The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions, and we cannot say that these functions become less important simply because they are exercised by officers of lower rank in the executive hierarchy." *Barr v. Matteo*, 360 U.S. 564, 572–73 (1959).

And for the past three years the Executive has invoked his privilege to prevent the appearance of Dr. Henry Kissinger and other aides who were called to testify before Congressional committees.

Such cases as *Kilbourne v. Thompson*, 103 U.S. 168 (1881) and *Powell v. McCormack*, 395 U.S. 486 (1969) are clearly distinguishable. There the Sergeant-at-Arms was held liable for acting as a law enforcement official in enforcing coercive orders of the House which violated individual rights, and he was held accountable so as not to forestall judicial review of unconstitutional actions. These decisions follow necessarily from the principles of *Marbury v. Madison*, 1 Cranch 137 (1803). Here, on the other hand, we deal with aides whose role is to assist a Senator in speaking out on controversial issues. Compare *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (the privilege is "less absolute, *although applicable*, when applied to officers or employees of a legislative body").[3]

2. Nor has the Government offered in its Petition any cogent reasons why the position it has consistently and successfully argued in other cases is suddenly rendered erroneous. The Government should not be heard to assert the privilege as a shield for the invasion of a citizen's constitutional rights and then to deny its applicability to a classic separation of powers case.[4]

The insubstantiality of the Government's singular position on this issue is further revealed by the arguments in its Petition. It is far too late in the day to suggest (Govt. Pet. 11) that a narrow, literalistic reading of the Speech or Debate Clause governs this case. Since "the privilege has been recognized as an important protection of the independence and integrity of the legislature," *United States v. Johnson*, 383 U.S. 169, 178 (1966), the rule from the earliest decisions has been that the Clause must be "read broadly to effectuate its purposes." *Id.*, at 180.

The central purpose of the Clause is, of course, to insure that a Congressman is able to act fearlessly in the discharge of his official duties, with the guarantee that his freedom of action will be respected by the coordinate branches of government. The central, incontrovertible fact is that no Congressman could even attempt to meet his official responsibilities without the assistance of aides. In preparing a speech on controversial issues, in informing the electorate, and in determining how to cast his vote, a Congressman of necessity must rely in part on the assistance and advice of trusted aides. Given the realities of modern government, the compelled testimony of a Congressman's aides before the Grand Jury about his legislative activities would intrude *precisely* the same degree into the activities of Congress as if the Congressman himself were called, and carries with it precisely the same potential for intimidation and harrassment. By stressing only that a Congressman's time will not be expended while his aides are interrogated about his protected conduct (Govt. Pet. 11),[5] the Government simply ignores that these far more serious consequences will deter any conscientious Congressman from properly representing his constituents and will thereby jeopardize the central purpose of the Congressional privilege.

The Government poses the issue as requiring this Court to strike a balance between "whatever minimal added protection against harassment the legislator would receive" and "the strong public interest in unimpeded grand jury investigation of crime" (Govt. Pet. 11). The effects of interrogation of necessary assistants can by no stretch of the imagination be deemed "minimal",[6] and

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[1] A copy of this opinion has heretofore been furnished to the Court.

[2] Memorandum in Support of Defendant's Opposition to Plaintiff's Motion for Order Compelling Answers, pp. 7–8.

[3] (Emphasis added.) Although the Subcommittee counsel in *Dombrowski* claimed that he did nothing more than help the Subcommittee issue subpoenas, there was a disputed issue of fact as to whether he actually conspired with State officials to conduct an illegal raid, and this Court remanded that issue for trial. If such a dispute of fact had not existed, the complaint would have been dismissed as to him.

[4] We have been informed by counsel for the plaintiffs in *Doe v. McMillan* that they intend to file a petition for writ of certiorari on or before March 13, 1972. One may properly wonder whether the Government intends to argue in favor of the applicability of the privilege for aides in that case and argue directly against it in the instant case.

[5] We confess to being amazed at the Government's assertion that the Congressman will not be "distracted [from] the performance of his legislative duties" (Govt. Pet. 11) while his aides are subpoenaed by the Grand Jury and interrogated about how the Congressman wrote his speeches, cast his votes and held his committee hearings—a matter to which he will hardly be oblivious.

Equally remarkable is the Government's assertion that the conduct of aides cannot be restrained "[by] the judgment of the electorate nor [by] the imposition of criminal penalties or discipline by Congress" (Govt. Pet. 13). We have been unable to find authority for such a sweeping statement.

[6] The Government's *de minimis* argument is reminiscent of arguments of the Crown in support of prosecutions of printers of parliamentary proceedings. The Parliamentary Papers Act of 1840 was enacted because Parliament found that "it is essential to the due and effective Exercise and Discharge of the Functions and Duties of Parliament . . . that no Obstructions or Impediments should exist to the Publication of . . . Reports, Pa-

the basic flaw in the Government's position is that it refuses to recognize that the appropriate balance was struck long ago by the Framers when they decided to immunize legislative acts, so that, to borrow from the language of the English Bill of Rights, "the freedom of speech or debates, or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." Obviously, every time the privilege is invoked the Executive believes that a "public interest" is impeded.[7] The Framers realized that on occasion this would be true but believed that this was the price to pay for the independence of the people's elected representatives.[8]

The Government also seeks review of the Court of Appeals' holding with respect to the permissible scope of inquiry of "third parties" about a Congressman's legislative activities. We agree that this ought to be reviewed, and have presented it in Question 2 of our Petition, but for reasons quite different than the Government's.

The Government suggests that the Court of Appeals, by barring questioning about a Congressman's motives,[9] has created "a vague and unworkable standard" (Govt. Pet. 13). In fact, the only extent to which the First Circuit's standard is unworkable is when it seeks to protect the Senator's privilege by assuming that questioning of persons concerning matters other than the Senator's motives will leave a sufficient protective "fence" around the Senator's legislative activities. Yet it is difficult to see how any court could enforce this "motives" standard, since almost any act committed by the legislator in pursuance of his official duties can with equal cogency be said to reflect or not to reflect upon his motives to one extent or another.

In order to be workable *and effective*, the standard has to be expanded, not contracted.

Finally, if the Court agrees that there is a constitutional privilege under the Speech or Debate Clause or the doctrine of Separation of Powers, see *Doe v. McMillan, supra*, pertaining to aides, then it would be unnecessary for the Court to grant certiorari covering the question of whether there is a common law privilege protecting such persons. Only if the Court finds that there is no constitutional privilege covering aides, or that there is a constitutional privilege covering only some activities of aides but not others, then the Court has to consider the question of the common law privilege.

CONCLUSION

Petitioner respectfully submits that the Court should grant Senator Gravel's Petition for Writ of Certiorari and deny the Government's Petition.

Respectfully submitted.

Robert J. Reinstein, Temple University Law School, 1715 N. Broad Street, Philadelphia, Pennsylvania 19122; Charles L. Fishman, 633 East Capitol Street, Washington, D.C. 20003; Harvey A. Silverglate, Zalkind & Silverglate, 65a Atlantic Avenue, Boston, Massachusetts 02110; *Attorneys for Senator Gravel.*

Of Counsel: Alan M. Dershowitz, Cambridge, Massachusetts; Norman S. Zalkind, Roger C. Park, Boston, Massachusetts.

[In the Supreme Court of the United States, October Term, 1971—Nos. 71-1017, 71-1026]

JOINT APPENDIX

Mike Gravel, United States Senator, *Petitioner,* v. United States, *Respondent.*

In the United States District Court for the District of Massachusetts, Civil Division.

In re the matter of Leonard Rodberg, Civil Action No. EBD-71-172-G.

MOTION TO INTERVENE

Comes now Movant, United States Senator Mike Gravel and moves this Honorable Court for leave to intervene in the above captioned cause and as reasons therefore states:

1) Leonard Rodberg is a personal servant of the Movant.

2) As Movant's personal servant, Leonard Rodberg has performed acts which are now the subject of an inquiry by a Federal Grand Jury.

3) The aforesaid Federal Grand Jury has subpoenaed Leonard Rodberg to appear and give testimony with respect to the aforesaid acts on Friday, August 27, 1971 at 10 A.M.

4) All of the aforesaid acts performed by Leonard Rodberg for the Movant were under the Movant's direction and control.

5) All of the acts performed by Leonard Rodberg upon orders from the Movant are immune from judicial inquiry by virtue of Movant's constitutional privileges and constitutional duties.

6) The question presented herein raises serious and substantial constitutional issues which have not but should be decided by this Court.

7) No other party to the above captioned cause can adequately represent the interest of Movant.

8) The granting of this motion would best serve the interest of Justice.

Wherefore, Movant respectfully requests that this Honorable Court grant the above captioned Motion to Intervene.

Robert Reinstein, Temple University School of Law, Philadelphia, Pennsylvania, 215-787-8576.

Charles Louis Fishman, Attorney for Movant, 633 East Capitol Street, Washington, D.C. 20003, 202-546-0520.

Of Counsel: Herbert O. Reid, Sr.

MOTION FOR SPECIFICATION

Comes now movant, United States Senator Mike Gravel, and respectfully moves this Court for an Order requiring the Government to specify in detail the purpose, scope and exact nature of the questions to be asked of Dr. Leonard Rodberg by the Federal grand jury. Movant submits that absent such specification, the appearance of Dr. Rodberg before the grand jury will violate movant's Congressional privilege to be immune from judicial inquiry of acts done by him and his personal staff in the discharge of his duties as a United States Senator, said privilege secured to movant by the Speech and Debate Clause of the Constitution, Article I, Section 6, Clause 1.

In support of this Motion, movant states as follows:

"1. Dr. Rodberg was served with a subpoena on Tuesday, August 24, 1971, which seeks to compel Dr. Rodberg's appearance before a Federal grand jury sitting in this District, to wit, in Boston, Massachusetts.

"2. Dr. Rodberg is a personal servant of movant and assisted movant in the discharge of his duties as a United States Senator, and in so doing has acted under movant's direction and control.

"3. In his aforesaid capacity as personal assistant to movant, Dr. Rodberg assisted movant in preparing for disclosure and subsequently disclosing to movant's colleagues and constituents, at a hearing of the Senate Subcommittee on Public Buildings and Grounds, the contents of the so-called "Pentagon Papers," which were critical of the Executive's conduct in the field of foreign relations.

"4. It is believed that the questions to be asked of Dr. Rodberg by the grand jury will concern the acts of movant and of Dr. Rodberg set forth in paragraphs 2 and 3.

"5. All of the said acts performed by movant and by Dr. Rodberg are immune from judicial inquiry by virtue of movant's constitutional privileges and constitutional duties."

Respectfully submitted,

ROBERT J. REINSTEIN,
PHILADELPHIA, PA.

CHARLES L. FISHMAN,
WASHINGTON, D.C.

Attorneys for Senator Gravel.

MOTION TO QUASH GRAND JURY SUBPOENA

Comes now movant, United States Senator Mike Gravel, and respectfully moves this Court for an order quashing a subpoena served upon Dr. Leonard Rodberg on Tuesday, August 24, 1971, which seeks to compel Dr. Rodberg's appearance before a Federal grand jury sitting in this District, to wit, in Boston, Massachusetts.

Movant submits that the subpoena served upon Dr. Rodberg should be quashed because it violates movant's Congressional privilege to be immune from judicial inquiry of acts done by him and his personal staff in the discharge of his duties as a United States Senator, said privilege secured to movant by the Speech and Debate Clause of the Constitution, Article I, Section 6, Clause 1.

In support of this Motion, movant states as follows:

"1. Dr. Rodberg is a personal servant of movant and has assisted movant in the discharge of his duties as a United States Senator, and in so doing has acted under movant's direction and control.

"2. In his aforesaid capacity as personal assistant to movant, Dr. Rodberg assisted movant in preparing for disclosure and subsequently disclosing to movant's colleagues and constituents at a hearing of the Senate Subcommittee on Public Buildings and Grounds, the contents of the so-called "Pentagon Papers," which were critical of the Executive's conduct in the field of foreign relations.

"3. It is believed that the questions to be asked of Dr. Rodberg by the grand jury will concern the acts of movant and of Dr. Rodberg set forth in paragraphs 1 and 2.

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pers, Votes, or Proceedings of either House . . . as such House . . . may deem fit or necessary to be published." The Parliament further found that civil and criminal proceedings taken against the printers of such reports was just such an obstruction to the workings of Parliament, and as a result an absolute privilege was extended to such printers, both public and private. 3 & 4 Vict., c. 9 (1840).

[7] Cf. *Myers* v. *United States,* 272 U.S. 52, 293 (1926) Brandeis, J., dissenting):

"The doctrine of the separation of powers was adopted by the convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy."

[8] The Government poses two hypotheticals in support of its arguments. First, it asks whether "all questioning [is] barred which might develop facts of [a] Congressman's complicity" in a conspiracy to bribe a Congressman (Govt. Pet. 13). The answer, as made clear in *Johnson, supra,* is to prohibit only questions about the Congressman's legislative activities. Second, the Government proposes that the Court of Appeals' decision might insulate from Grand Jury inquiry aides who were bribed by third parties to insert material in the speech of an innocent Congressman (Govt. Pet. 15). Here, too, the bribe could be investigated, but not the preparation of the Speech. *Ibid.* Moreover, since the privilege must be asserted by the Congressman himself, he might be able to waive it entirely in such a situation.

[9] Since the Court of Appeals held that Senator Gravel's actions in obtaining the publication of the Subcommittee records were not constitutionally protected, it allowed the Grand Jury to question third parties (*e.g.,* Webber and Beacon officials) about them whether or not these questions bore on the Senator's motives.

movant and by Dr. Rodberg are immune from judicial inquiry by virtue of movant's constitutional privileges and constitutional duties.

"5. The appearance of Dr. Rodberg before the grand jury would violate movant's constitutional privileges."

Respectfully submitted.

ROBERT J. REINSTEIN,
PHILADELPHIA, PA.
CHARLES L. FISHMAN,
WASHINGTON, D.C.
Attorneys for Senator Gravel.

MOTION TO QUASH GRAND JURY SUBPOENA AND TO STAY GRAND JURY APPEARANCE PENDING DISPOSITION OF THIS MOTION.

Dr. Leonard S. Rodberg respectfully moves this Court for order quashing a subpoena served upon him on Tuesday, August 24, 1971, which seeks to compel his appearance before a federal grand jury sitting in this district, to wit, in Boston, Massachusetts, on Friday, August 27, 1971 at 10:00 a.m. Alternatively, Dr. Rodberg moves for the entry of a protective order limiting the questioning of movant before the grand jury to a scope consistent with law. Further, Dr. Rodberg respectfully requests that his subpoena be adjourned and his appearance before the grand jury be stayed pending disposition of this motion and that he be permitted time in which to prepare and submit to this Court substantial affidavits and other documentary material in support of this motion.

Movant submits that his subpoena should be quashed upon, *inter alia*, each of the following independent grounds:

"a. That it violates Congressional privilege, separation of powers and the Speech and Debate Clause;

"b. That it abridges movant's rights to freedom of the press, freedom of expression and freedom of association in violation of the First Amendment."

In support of paragraphs (a) and (b), movant alleges as follows:

1. On June 29, 1971 Mike Gravel, United States Senator from the State of Alaska, in the course of a meeting of the Senate Subcommittee on Public Buildings and Grounds read publicly a portion of the so-called "Pentagon Papers," and inserted the rest of the papers in his possession into the record of the subcommittee.

2. Immediately after that reading and at the express direction of Senator Gravel, aides and assistants to the Senator distributed to members of the press and others copies of the papers from which Senator Gravel had read.

3. On the night of June 29, 1971, movant was and continues to be, down to the present date, a member of Senator Gravel's staff.

4. On Wednesday, August 18, 1971, it was reported and alleged in the *Washington Post* that Senator Gravel had turned over copies of the "Pentagon Papers" to a Boston, Massachusetts, publisher for publication as a book. It was further alleged that movant here had arranged on Senator Gravel's behalf the transfer and publication of these papers. It was further alleged that movant here had made previous unsuccessful efforts to arrange publication of the papers in Senator Gravel's possession. See *Washington Post* article attached hereto as Exhibit "A."

5. On Tuesday, August 24, 1971, it was reported and alleged in an article in "Boston After Dark," a weekly newspaper, that, after several earlier unsuccessful attempts, movant had, at Senator Gravel's behest, arranged the publication of the papers in Senator Gravel's possession. See the article attached hereto as Exhibit "B."

6. On the evening of that same day, Tuesday, August 24, movant was served at his home in Silver Spring, Maryland, by an agent of the Federal Bureau of Investigation with the instant subpoena which seeks to compel his appearance on Friday, August 27 at 10:00 a.m. before a federal grand jury here in Boston. See subpoena attached hereto as Exhibit "C."

7. It is believed (as shown in the affidavit attached hereto) that the questions to be asked of movant before the grand jury will concern the June 29 meeting of the Subcommittee on Public Buildings and Grounds and the distribution of papers that occurred immediately thereafter.

8. It is further believed that the questions to be asked of movant before the grand jury will concern the allegation made in the newspaper articles attached hereto as Exhibits "A" and "B" that he has been involved in an effort to publish as a book the documents in Senator Gravel's possession.

9. Movant believes that an appearance for the purpose of questioning him regarding these matters raises substantial and fundamental issues concerning the scope of Congressional privilege and of the Speech and Debate Clause, and the distribution of governmental authority among the separate and distinct branches of government.

10. Movant further believes that such questions raise important and delicate issues regarding First Amendment freedom, particularly freedom of the press, freedom of expression and freedom of association.

11. Movant therefore sought to retain legal counsel in connection with his appearance before the grand jury.

* * * * *

GOVERNMENT OPPOSITION TO INTERVENOR'S MOTION FOR SPECIFICATION

Intervenor, United States Senator Mike Gravel, requests the Court for an Order requiring ". . . the government to specify in detail the purpose, scope and exact nature of the questions to be asked of Dr. Leonard Rodberg by the Federal Grand Jury." The motion is totally without precedent. The Federal Rules of Criminal Procedure certainly do not provide for such an unusual motion. The Federal Rules of Civil Procedure.

On the merits, a witness need not be apprised of the subject matter under inquiry by a Grand Jury. *In Re Meckley*, (D.C.M.D. Penn. 1943), 50 F. Supp. 274; *affd.* 137 F.2d 310; *cert. den.* 320 U.S. 370.

Further, a witness can neither question nor control the scope of a Grand Jury investigation. *Blair v. United States*, 250 U.S. 273.

Wherefore, this motion should be denied.

Respectfully submitted,

PAUL C. VINCENT,
Attorney—U.S. Department of Justice.
JON H. MARPLE,
Attorney—U.S. Department of Justice.

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO LEONARD S. RODBERG'S MOTION TO QUASH A GRAND JURY SUBPOENA

* * * * *

Should legislators succeed in disrgarding the judicial powers of inquiry into criminal conduct by refusing compliance with a Grand Jury subpoena, they would have elevated themselves above the criminal law virtually by their bootstraps. No testimony sought here will seek to review a Congressman's political views, his motives or any exercise of legislative discretion. In responding to a subpoena, Senator Gravel would only fulfill his own duty as a citizen to assist the Executive branch in its own Constitutional obligation to enforce the laws of the United States. Should questioning prove self-incriminating, the Senator would retain his own Fifth Amendment privilege, in this regard. To withhold testimony on the basis of exemption would frustrate the separation of powers doctrine by interfering in executive proceedings, and in this case to forswear Senator Gravel's own vested duty to uphold the Constitution and laws of the United States.

* * * * *

The Government neither affirms nor denies that this proceeding is brought to investigate the disclosure of the so-called "Pentagon Papers". Yet assuming *arguendo*, that such be the case the Senator could not claim further that the grand jury cannot lawfully inquire into the business of reading and publishing the Pentagon Papers" as it constitutes privileged legislative business. The speech and debate clause has been construed to protect not only speeches given on the floor of Congress, as in *Johnston, supra*, but also to protect debates and speeches in committee hearings, as well as reports, resolutions, the act of voting and "in short, to things generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880). Yet the action of Senator Gravel which he assumes has led to the subpoena of Dr. Rodberg stands in no such footing. The Senator convened a special, unauthorized, and untimely meeting of the Senate Subcommittee on Public Works (at midnight on June 29, 1971), for the purpose of reading the documents and thereafter placed all unread portions in the subcommittee record, with Dr. Rodberg soliciting publication following the meeting. (See news articles attached to motion of Dr. Rodberg). The Congress does not enjoy uncurbed power to conduct business; excursions of committee hearings into private lives unconnected with a legitimate legislative purpose have long been held unconstitutional. *Kilbourn v. Thompson, supra; Marshall v. Gordon*, 243 U.S. 531 (1917). The power of the judiciary to reject unauthorized legislative activity stands upon no less a precedent than *Marbury v. Madison*, 1 Cranch (5 U.S.) 87 (1803). The prerogative of Judicial review has been exercised often in recent years to curb extra-legislative excursions by Congressional committees. *Watkins v. United States*, 354 U.S. 178 (1957); *McGrain v. Daughtery*, 273 U.S. 135 (1927); *Hentoc v. Ichard*, 318 F. Supp. (D.C. 1970). The reading of the paper in question can have no possible relationship to the legislative business with which Senator Gravel has sought to cloak himself

* * * * *

Not being engaged in official subcommittee business, his actions cannot be above scrutiny by those charged to enforce the criminal statutes.

* * * * *

Such a privilege, being derivative in nature, cannot be claimed where it would not protect the Senate member concerned; here, Senator Gravel can himself claim no exemption. The Speech and Debate clause was enacted in its present form specifically to insure that Senators would remain subject to obligations and sanctions of the criminal law and it has been applied in precisely this fashion for over 170 years. Accordingly, legislators have been deemed subject to subpoena and have occasionally been prosecuted. Under the "privilege" provision, Congressmen and their servants have always been subject to judicial limitations upon their actions where, even though garbed in the trappings of Congressional propriety, they have issued subpoenas or ordered imprisonment which transgressed their Constitutional powers. Thus, this court has complete powers to find that the activities in which the Senator and Dr. Rodberg were engaged were far removed from legitimate Congressional business and cannot therefore claim the protection of the privilege clause.

* * * * *

AFFIDAVIT OF MIKE GRAVEL

I, Mike Gravel, being first duly sworn, do depose and say that Dr. Leonard Rodberg is, and has been since June 29, 1971, a member of my personal staff in the United States Senate.

MIKE GRAVEL.

Commonwealth of Massachusetts, Suffolk, ss. Subscribed and Sworn to before me this 10th day of September, 1971. Margaret M. Flaherty, Notary Public. My Commission expires: 11/6/75.

AFFIDAVIT OF ROBERT G. DUNPHY

Robert G. Dunphy, Sergeant at Arms, United States Senate, Washington, D.C. 20510, being duly sworn, deposes and says:

1. By letter to me dated June 29, 1971, Senator Gravel designated Dr. Leonard Rodberg as a member of his personal staff. Senator Gravel's letter is set forth below:

"Mr. Robert G. Dunphy, Sergeant at Arms, United States Senate, Washington, D.C.

Dear Mr. Dunphy: Effective this date please add to my personal staff roll the name of Dr. Leonard Rodberg.

Dr. Rodberg will serve as a special assistant to me, with full access to my office, performing duties I assign and under my direct supervision.

Sincerely,

MIKE GRAVEL".

Robert G. Dunphy, Sergeant at Arms, United States Senate.

Subscribed and Sworn to before me this 10th day of September, 1971. My Commission expires on the 14th day of Dec. 1971.

WM. R. LUIRS,
Notary Public.

MOTION FOR FURTHER RELIEF

Comes now Movant, Mike Gravel, United States Senator, and respectfully moves this Court for an order granting further relief to prevent the abridgement of Movant's constitutional rights under the Speech and Debate Clause of the Constitution, Article I, Section 6, Clause 1.

In support of this Motion, Movant states as follows:

1) This Court has under consideration Movant's Motion for Reconsideration and/or Stay Pending Appeal of this Court's Memorandum of decision and Protective Order entered on October 4, 1971 in the above captioned cause.

2) The United States has subpoenaed certain witnesses for the purpose of inquiring into matters protected from inquiry by Article I, Section 6, Clause 1 and the Protective Order issued by this Court on October 4, 1971. Specifically, the government wishes to inquire into how and from whom Movant received certain material commonly referred to as the Pentagon Papers.

3) The United States has subpoenaed certain other witnesses for the purpose of inquiring into Movant's publication of the official transcript of the Senate Subcommittee on Building and Grounds. The constitutional permissibility of such an inquiry is now before the Court for reconsideration in the above captioned cause.

4) Movant has no control over the willingness of those subpoenaed to answer questions prohibited by this Court's Protective Order of October 4, 1971 or Article I, Section 6, Clause 1.

5) Movant has no control over the willingness of those subpoenaed to answer questions concerning Movant's publication of the official transcript of the aforesaid Senate Subcommittee.

6) If this Court decides that publication of the official record of a Senate Subcommittee is constitutionally protected the grand jury will be barred from questioning anyone about his conduct with respect thereto.

7) If this Court decides that publication of the official record of a Senate Subcommittee is not constitutionally protected Movant has asked for a stay of this Court's decision pending appeal. To permit any witness to testify with respect to the publication of the aforesaid transcript would moot the constitutional claim of Movant prior to the final resolution of the important and complex constitutional issues presented herein.

8) If the United States seeks answers to questions prohibited by this Court's Protective Order of October 4, 1971, Movant has no procedure with which to object and to secure a ruling from this Court.

9) If the United States seeks answers to questions concerning publication of the aforesaid official record of a Senate Subcommittee now under submission to this Court, Movant has no procedure with which to object and to secure a ruling from this Court.

10) If this Court permits inquiry into the aforesaid areas and others before the grand jury Movant's constitutional right will have been irreparably violated.

Wherefore, Movant respectfully requests this Honorable Court to grant the following further relief:

1) To require a listing from the United States of all those who have been subpoenaed or are to appear before the grand jury to give testimony.

2) To hold a hearing to determine which of the listed witnesses has privileged information which, constitutionally, cannot be inquired into, or should not be inquired into pending final determination on reconsideration.

3) To require the United States to specify all questions to be asked each witness, covered by Paragraph 2 above, and to rule on the constitutional permissibility of each said question.

If this Court should deny this Motion, Movant requests this Court to grant a stay of all subpoenas now outstanding or to be issued, pending appeal to the United States Court of Appeals for the First Circuit.

Charles Louis Fishman, 633 East Capitol Street, Washington, D.C. 20003, 202–546–0520, *Attorney for Movant.*

Robert J. Reinstein, Temple University School of Law, Philadelphia, Pennsylvania, 215–787–8576.

Howard O. Reid, Sr., Howard University School of Law, Washington, D.C., 202–636–6671.

[In the United States District Court for the District of Massachusetts, Civil Division, Civil Action No. E.B.D. 71–209–G]

Mike Gravel, United States Senator, v. John Doe.

In re the matter of Howard Webber.

MOTION TO INTERVENE

Comes now Movant, United States Senator Mike Gravel and moves this Honorable Court for leave to intervene in the above captioned cause and as reasons therefore states:

1) Howard Webber is the editor of M.I.T. Press.

2) As the editor of M.I.T. Press, Mr. Webber has contact and discussions with members of Movant's personal staff which contacts and discussions are now the subject of an inquiry by a Federal Grand Jury.

3) The aforesaid Federal Grand Jury has subpoenaed Mr. Webber to appear and give testimony with respect to the aforesaid contact and discussion on Wednesday or Thursday, October 27 or 28, 1971.

4) All of the aforesaid contacts and discusions between Mr. Webber and members of Movant's personal staff relate to the publication of the June 29, 1971 official transcript of the United States Senate Subcommittee on Buildings and Grounds.

5) All of the aforesaid contacts and discussions between Mr. Webber and Movant's personal servants are immune from judicial inquiry by virtue of Movant's constitutional privileges and duties.

6) The question presented herein raises serious and substantial constitutional issues which have not but should be decided by this Court.

7) No other party to the above captioned cause can adequately represent the interest of Movant.

8) The granting of this motion would best serve the interest of Justice.

9) Movant has no information upon which to determine if Mr. Webber plans to appear before the Grand Jury and give testimony in violation of Movant's constitutional rights.

Wherefore, Movant respectfully requests that this Honorable Court grant the above captioned Motion to Intervene.

Charles Louis Fishman, 633 East Capitol Street, Washington, D.C. 20003, 202–546–0520, *Attorney for Movant.*

Robert Reinstein, Temple University School of Law, Philadelphia, Pennsylvania, 215–787–8576.

Howard O. Reid, Sr., Howard University School of Law, Washington, D.C., 202–636–6671.

MOTION TO QUASH OR STAY GRAND JURY SUBPOENA

Comes now Movant, United States Senator Mike Gravel, and respectfully moves this Court for an order quashing or staying a subpoena served upon Howard Webber which seeks to compel Mr. Webber's appearance before a Federal grand jury sitting in this District, to wit, in Boston, Massachusetts.

Movant submits that the subpoena served upon Mr. Webber should be stayed because it violates Movant's Congressional privilege to be immune from judicial inquiry of acts done by him and his personal staff in the discharge of his duties as a United States Senator, said privilege secured to Movant by the Speech and Debate Clause of the Constitution, Article I, Section 6, Clause 1.

1) The United States has subpoenaed Mr. Webber for the purpose of questioning him about the publication of the official Senate Subcommittee transcript involved in the case of *Mike Gravel, United States Senator v. United States* (Docket No. EBD 71–172).

2) This Court has under consideration Movant's Motion For Reconsideration in the case of *Mike Gravel, United States Senator v. United States* (Docket No. EBD 71–172).

3) If this Court decides that publication of the official record of a Senate Subcommittee is constitutionally protected the grand jury will be barred from questioning anyone, including Mr. Webber, about his conduct with respect thereto.

4) If this Court decides that publication of the official record of a Senate Subcommittee is not constitutionally protected Movant has asked for a stay of this Court's decision pending appeal. To permit Mr. Webber to testify with respect to the publication of the aforesaid transcript would moot the constitutional claim of Movant prior to the final resolution of the important and complex constitutional issues presented herein.

5) No substantial injury will result to the United States from the granting of this Motion.

Wherefore, Movant respectfully requests that this Honorable Court grant the above Motion to Quash or Stay the subpoena served upon Howard Webber pending final disposition of the case entitled *Mike Gravel, U. S. S. v. United States* EBD 71–172.

Charles Louis Fishman, 633 East Capitol Street, Washington, D.C. 20003, 202–546–0520.

Robert Reinstein, Temple University School of Law, Philadelphia, Pennsylvania, 215–787–8576.

Howard O. Reid, Sr., Howard University School of Law, Washington, D.C., 202–636–6671.

UNITED STATES V. JOHN DOE

Stephen Parkhurst, Vice-President and Cashier, New England Merchants Bank, Prudential Center, Boston, Mass.

You are hereby commanded to appear in the United States District Court for the District of Massachusetts at P.O. & Courthouse Building, in the city of Boston on the 10th day of November 1971 at 10 o'clock A.M. to testify before the Grand Jury and bring with you the records of the checking accounts, both special and regular, maintained by the Unitarian Universalist Association, Inc., and Beacon Press, Inc., 25 Beacon Street, Boston, Massachusetts from June 1, 1971

through October 15, 1971, such records to include, but not limited to, all deposits and withdrawals during the aforementioned period of time, and copies of all deposit slips and checks drawn on each account, and items deposited, in the amounts of $10,000 and above.

This subpoena is issued on application of the United States.

Please report to: Richard E. Bachman, assistant U.S. Attorney, Chief, Criminal Division, Room 1107, P.O. & Courthouse Building, Boston, Mass.

Date, October 28, 1971.

MEMORANDUM AND ORDER DENYING MOTION FOR FURTHER RELIEF, OCTOBER 29, 1971

(United States of America v. John Doe; in the matter of a grand jury subpoena served upon Leonard S. Rodberg).

By memorandum of decision and protective order issued October 4, 1971, the court prohibited a grand jury inquiry into the legislative acts of intervenor United States Senator Mike Gravel. By motion for further relief the Senator seeks a further order requiring the government to list the names of prospective grand jury witnesses and to specifiy all questions to be asked each witness and moves that the court by a hearing in advance of a witness's appearance determine whether a witness has privileged information which may not be the subject of inquiry consistently with the Speech or Debate Clause of the Constitution of the United States, Art. I, § 6, cl. 1* At a hearing on the motion counsel for the intervenor submitted that, unless further relief of the type requested is ordered, the court and the intervenor have no way of assuring that the court's protective order of October 4, 1971 is being observed and that questions which may arise during the grand jury proceedings regarding the applicability of the protective order will be properly decided. The court denied the motion from the bench and stated that this memorandum and order would subsequently be filed.

Intervenor's motion is denied on the following grounds: (a) The court has no reason to doubt that its protective order will be obeyed. At the hearing, government counsel stated that it would be. Attorneys are officers of the court on whose good faith the court customarily relies and there is no reason why an exception should be made in this case. (b) The court believes that its protective order issued October 4 is unambiguous. The purport of the order is explained at length in the memorandum accompanying it. (c) The relief sought by the intervenor in his motion for further relief would impede the grand jury's investigation. A balance must be struck between the intervenor's right not to be intimidated by the Executive by an inquiry into his legislative acts, *United States v. Johnson*, 1966 383 U.S. 169, 181, and the grand jury's right not to be hobbled by a daily dissection of its activities.

In connection with the court's staying the enforcement of subpoenas on witnesses Leonard Rodberg and Howard Webber, the court has today issued a supplemental protective order prohibiting for a ten-day period inquiry into Senator Gravel's arranging for publication of the so-called Pentagon Papers. At the hearing counsel for the intervenor urged that the same further relief be granted for the purposes of implementing any such supplemental protective order. For the same reasons the court also denies the intervenor's motion as applied to the supplemental protective order.

* The intervenor filed a separate motion that he be furnished with a transcript of the grand jury proceedings to date. By separate order endorsed on the motion it was also denied.

[United States District Court, District of Massachusetts, E.B.D. No. 71–172–G, E.B.D. No. 71–209–G]

SUPPLEMENTAL PROTECTIVE ORDER, OCTOBER 29, 1972

(United States of America versus John Doe in the matter of a grand jury subpoena served upon Leonard S. Rodberg, in the matter of a grand jury subpoena served upon Howard Webber)

Garrity, J. In its memorandum of decision dated October 4, 1971 the court rejected the contention of the witness Rodberg and the intervenor Senator Gravel that private publication of the so-called Pentagon Papers may not be inquired into consistently with the Speech or Debate Clause of the Constitution of the United States, Art. I, § 6, cl. 1. However, the arguments urged on behalf of the witness and intervenor are substantial and by no means frivolous. In order that the intervenor's position may be preserved on appeal, the court orders that the following Supplemental Protective Order be entered and remain in effect for ten days: **

No witness before the grand jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct in arranging for the private publication of the Pentagon Papers nor about Dr. Leonard S. Rodberg's conduct in arranging for said publication to the extent that what he did was in his capacity as a member of the Senator's personal staff.

United States District Judge.

[United States Court of Appeals for the First Circuit, Nos. 71–1331, 71–1332]

United States of America v. John Doe.

Mike Gravel, United States Senator, Intervenor, Appellant.

Before McEntee and Coffin, Circuit Judges.

Memorandum and order entered October 29, 1971.

Hearing having been held on Intervenor's motion for stay pending appeal from the district court's denial of his motion for further relief and, it appearing that: (1) the integrity of the processes of a grand jury must not be lightly regarded; (2) the grand jury here convened is not restricted to investigation of the specific crimes described below; (3) the allegations of possible infringements of the rights of the Intervenor under Article I, Section 6, Clause 1, of the Constitution of the United States as well as allegations of violation of the doctrines of separation of powers, raise important issues of substance, the harm of any such alleged infringements being irreparable; (4) an expedited schedule for hearing appeals on related issues has been adopted, such hearing to be held on November 4, 1971, and it being contemplated that speedy disposition of these issues including those raised by the instant motion, may be forthcoming.

It Is Hereby Ordered that until further order of this court, the grand jury shall not pursue its inquiry into the retention of public property or records with intent to convert (18 U.S.C. § 641), the gathering and transmitting of national defense information (18 U.S.C. § 793), the concealment or removal of public records or documents (18 U.S.C. § 2071), or conspiracy to commit such offenses or to defraud the United States (18 U.S.C. § 371) insofar as these or any other crimes may relate to the so-called "Pentagon Papers," in whatever form. However, it shall be empowered to continue its investigation into any other crimes.

** This period corresponds with the duration of the stays ordered on October 28, 1971 staying enforcement of subpoenas on witnesses Leonard Rodberg and Howard Webber on application of the intervenor.

It is further ordered that the parties be excused from reproducing the records on appeals in appendix form, that appellants' brief is to be filed on or before five p.m., Monday, November 1, 1971, and that appellee's brief is to be filed on or before five p.m. Wednesday, November 3, 1971. It is further ordered that the parties are granted leave to file four copies of their briefs in reproduced form to comply with Rule 5(d) and that service of said briefs is to be made in hand.

By the Court:

/s/ DANA H. GALLUP, *Clerk.*

STIPULATION, NOVEMBER 5, 1971

It is hereby stipulated between the parties hereto that until the termination of the restraining order entered by the United States Court of Appeals for the First Circuit on October 29, 1971, no representatives of the United States shall seek to obtain documents relating to the so-called "Pentagon Papers" within the District of Massachusetts for their own examination or for the use of a grand jury by the force or use of a subpoena.

/s/ CHARLES LOUIS FISHMAN,
Counsel for Appellants.

/s/ WARREN P. REESE
Counsel for Appellees.

MOTION

The United States of America moves the court for an order modifying its order entered October 29, 1971, in cases Nos. 71–1331 and 71–1332, *United States v. John Doe—Mike Gravel United States Senator, Intervenor,* restraining the grand jury from pursuing its inquiry into crimes relating to the so-called "Pentagon Papers," to permit investigation by the grand jury into such crimes, provided that no witness shall be subpoenaed to appear or testify before the grand jury in the District of Massachusetts concerning the acquisition, use or publication of the "Pentagon Papers" by Senator Mike Gravel or any member of his staff, or any matter related thereto.

This motion is based on the attached affidavit of Warren P. Reese and the files and records of the case.

Dated: November 26, 1971.

Respectfully submitted,

JAMES N. GABRIEL,
U.S. Attorney.

WARREN P. REESE,
Assistant U.S. Attorney.

[United States Court of Appeals for the First Circuit, No. 71–1331]

United States of America, v. John Doe.

Mike Gravel, United States Senator, *Intervenor, Appellant.*

No. 71–1332, United States of America v. John Doe, Mike Gravel, United States Senator, *Intervenor, Appellant.*

Before Aldrich, *Chief Judge.*

McEntee and Coffin, *Circuit Judges.*

MEMORANDUM AND ORDER, ENTERED NOVEMBER 29, 1971

It is ordered that the grand jury may pursue its inquiry into crimes relating to the so-called Pentagon Papers, provided that neither Senator Mike Gravel nor any member of his staff or of the staff of the subcommittee on Buildings and Grounds shall be subpoenaed to testify, and no witness shall be questioned concerning the acquisition, use, publication, or republication of the Pentagon Papers by Senator Mike Gravel or by any member of the staff as above defined, until further order of this court. The restraining order entered October 29, 1971 shall remain in full force in all other aspects until further order of this court.

By the Court:

/s/ DANA H. GALLUP, *Clerk.*

Enter /s/ Aldrich, Ch. J., [cert. cc: Clerk U.S.D.C., Mass.; cc: Messrs. Fishman, Reid Reinstein and Reese.]

[United States Court of Appeals for the First Circuit, No. 71-1331]

United States of America v. John Doe.

Mike Gravel, United States Senator, Intervenor, Appellant, No. 71-1332.

Before Aldrich, Chief Judge, McEntee and Coffin, Circuit Judges.

ORDER OF COURT, ENTERED JANUARY 18, 1972

Pursuant to opinion of instant date, the broad stay granted on October 29, 1971, as modified, is hereby revoked and there is substituted the order contained in the judgment of January 7, 1972 as clarified by the explanatory clause contained in our opinion defining

"actions" as "in the broadest sense, including observations and communications, oral or written, by or to him or coming to his attention."

The present order of revocation and substitution is stayed until January 26, 1972.

The motion for clarification is otherwise denied.

The motion for reconsideration is denied.

By the Court:

/s/ DANA H. GALLUP, *Clerk.*

Enter: /s/ Aldrich, Ch. J. [cc: Messrs. Fishman, Reid, Reinstein and Nissen.]

[Volume 1, United States District Court, District of Massachusetts, EBD 71-172-G]

United States of America v. John Doe.

Proceedings had in the above entitled cause before the Honorable W. Arthur Garrity, Jr., Judge of said court, in Court Room No. 2, Federal Building, Boston, Massachusetts, on Friday, August 27, 1971.

APPEARANCES

Paul Vincent, Esq., and John Marple, Esq., Attorneys, Department of Justice, appeared for the government.

James Reif, Esq., and Doris Peterson, Attorney, appeared for Leonard Rodberg.

Robert Reinstein, Esq., and Charles L. Fishman, Esq., appeared for Senator Mike Gravel.

PROCEEDINGS

The CLERK. Emergency Business Docket Number 71-172, United States versus John Doe.

The COURT. I see government counsel here, Mr. Vincent. Is there anyone with you representing the government?

Mr. VINCENT. Yes, your Honor, my associate, John Marple.

The COURT. Oh, yes. I see Mr. Marple. Now here is an application for a stay by Dr. Rodberg. Is he present?

Dr. RODBERG. Yes, sir.

The COURT. I see. And then counsel for Dr. Rodberg are Miss or Mrs. Peterson.

Miss PETERSON. Miss Peterson.

The COURT. And Mr. Reif. Well, I simply have another matter scheduled, a hearing on a temporary restraining order, for eleven o'clock and I have not yet read these papers as carefully as I should, and would suggest a hearing at twelve o'clock, but I want especially to ask Mr. Vincent whether that is going to—

Mr. VINCENT. That will be convenient, yes, your Honor.

The COURT. —maybe create a problem. Will that be suitable, a hearing at twelve o'clock?

Mr. VINCENT. Twelve o'clock will be fine, your Honor.

The COURT. Well, we will have a hearing here at twelve o'clock. In this connection, before I pick up these papers this morning, a gentleman whom I see here in the court room [3] delivered to my chambers a letter addressed to me from the office of Senator Gravel. I was working on other matters when this letter came in, and I was unable to read it. I thought it might have to do with, if you will pardon the expression, an application for employment or something of that nature. I had not even picked up these papers at that point, and I just set it aside, but then I commenced reading this motion to quash the subpoena served on Dr. Rodberg and I have deduced, still without having opened the letter, that it must pertain to this matter.

Mr. FISHMAN. That is correct, your Honor.

The COURT. Now I would like, please, for you—because I don't see or haven't heard of your appearing for a party here—to state your name and also your interest.

Mr. FISHMAN. If I may, my name is Charles Lewis Fishman. I reside at 63 East Capitol Street in Washington, D.C. I am the senator's private counsel, and a member of the bar of the District of Columbia, Superior Court of the District of Columbia, United States District Court for the District of Columbia, a member in good standing.

The COURT. Well, I am happy to meet you and have you here. The question which comes to mind with respect to this communication which I have not yet opened is whether in your judgment it isn't the type of information that should be disclosed to [4] the parties to this matter simultaneously with disclosure to the Court. I am obviously reluctant to receive ex parte communications in any matter.

Mr. FISHMAN. I have no objection to making the letter available to the government also. My instructions from the senator were to deliver the letter to you, since it states the limited purpose for which I appear.

The COURT. Well, I am happy to have the letter, I am happy to receive it and will consider it, but on the condition that I have stated, that it be made available, or copies, not only to government counsel but to defense counsel as well.

Mr. FISHMAN. I will be happy to do that, your Honor.

The COURT. Well, on that understanding, between now and twelve o'clock I will read this communication which I have received, and I will look for you to attend the hearing if you wish.

Mr. FISHMAN. At this point, your Honor, may I introduce cocounsel, Mr. Robert Reinstein of Philadelphia, the Temple University School of Law.

The COURT. And does he represent Senator Gavel also as associate counsel?

Mr. FISHMAN. Yes, your Honor.

Mr. REINSTEIN. Yes, I do, your Honor.

The COURT. And could you state Mr. Reinstein's bar affiliations?

[5] Mr. REINSTEIN. I am a member of the bar of the Court of Appeals of Maryland, your Honor, and I am admitted to the Federal District Court of Maryland, United States Court of Appeals for the Fourth Circuit, and the United States Court of Claims.

The COURT. And I take it that you are in good standing and that there are no disciplinary proceedings against you.

Mr. REINSTEIN. That is correct, your Honor.

Mr. FISHMAN. For the record, it is Reinstein, R-e-i-n-s-t-e-i-n.

The COURT. All right. Thank you. Well, we will see you all at twelve o'clock, unless there is something additional to be mentioned at this time.

Mr. REIF. Perhaps we ought to mention one thing, your Honor. That is that Miss Peterson and I are members of the bar of the state of New York and the United States Court of Appeals for the Second Circuit.

The COURT. Members in good standing?

Mr. REIF. Yes, sir.

The COURT. And there are no disciplinary proceedings pending against either of you?

Mr. REIF. No, your Honor.

The COURT. That is true of you both. Well, I will welcome you all again at twelve o'clock.

Mr. REIF. Thank you, your Honor.

[6] Mr. VINCENT. Thank you, your Honor.

[The hearing was resumed at twelve o'clock noon.]

The CLERK. Emergency Business Docket Number 71-172, United States versus John Doe.

The COURT. I think it would be helpful again to have counsel state their names and the parties whom they represent. I have noted them but I don't know whether the stenographer did, and it should be done in connection with this hearing. So please, I will start again with Miss Peterson and Mr. Reif.

Mr. REIF. Right. My name is James Reif, R-e-i-f, and I along with Miss Doris Peterson represent Dr. Leonard Rodberg.

The COURT. All right. And I understand that Dr. Rodberg is seated at counsel table with you.

Mr. REIF. That is correct, your Honor.

The COURT. This gentleman here. Thank you. And then we have Mr. Vincent for the government, please.

Mr. VINCENT. Yes, your Honor. My name is Paul C. Vincent, Attorney with the Department of Justice, Washington, D.C., and this is my colleague, Mr. Marple.

Mr. MARPLE. John Marple, M-a-r-p-l-e.

The COURT. Now I don't know whether Mr. Fishman wishes to appear or just be in the capacity of an observer at this juncture.

Mr. FISHMAN. At this juncture, your Honor, my instructions [7] are simply to be present and observe the proceedings. Should the need arise, as indicated in the letter, I would then move to intervene. If you wish, I will enter the name in the record now.

The COURT. It is strictly your option, Mr. Fishman. I am happy for you to do so or not, as you prefer.

Mr. FISHMAN. Well, let me enter my name in the record now, your Honor.

The COURT. Fine.

Mr. FISHMAN. And hope that I won't have to proceed any further. My name is Charles Fishman, attorney in Washington, D.C. I am a member in good standing of the bar of the District of Columbia and accredited before the Superior Court of the District of Columbia, United States District Court for the District of Columbia, and the United States Court of Appeals, District of Columbia.

The COURT. Whom do you represent?

Mr. FISHMAN. I represent United States Senator Mike Gravel.

The COURT. And your associate is Mr. Reinstein. Fine.

Well, I think at the outset I should mark as a hearing exhibit, Exhibit Number 1, Senator Gravel's letter to the Court dated August 26th, which you have shown to other counsel in the case, and that will be filed with the papers. The question I am considering at this juncture is whether to grant the petitioners' alternative request that they be afforded time [8] within which to file affidavits and memoranda of law. If that leave is granted, I would plan tentatively, that is, subject to the positions stated by counsel, to have the hearing following the one on the 10th of September, which has been scheduled with respect to the application of the witness Dr. Falk.

I think I might first ask Mr. Vincent whether such a postponement of resolution of the questions raised would handicap his presentation of this matter to the grand jury.

Mr. VINCENT. If your Honor please, the government would oppose any stay, basically because I think a pattern is now being set by this. This is the second witness who has come in, or the third witness, petitioning for the same relief, and I think that these stays, your Honor, if the pattern continues, starting with the one last week, will unnecessarily impede and delay the investigation now being conducted by the grand jury.

I might note also, your Honor, that the issue here I think is so simple. It is to quash a subpoena. It has nothing to do yet with proceedings before the grand jury. This is merely an attempt to prevent an appearance. I believe, your Honor, that the proper forum for the determination of any of these questions must start inside the grand jury room. If there is any privilege to be claimed, whether it be the First Amendment, the Fourth Amendment, the Fifth Amendment, legislative privilege, as apparently is being done here, I do not think that briefs, affidavits, and memos of law can possibly anticipate particular [9] questions, and I think what would happen, your Honor, is, it would delay the proceedings indefinitely, witness after witness getting a stay, pushing this into the winter and the early part of next year, if the pattern continues. I am assuming that, your Honor. That is an assumption. Then we get into the grand jury room: if a question is asked and the privilege is taken, we would be back before your Honor on the very same point.

I believe, your Honor, that ad mimine the witness should and must appear before the grand jury for any intelligent determination as to whether or not any privilege claim is properly taken.

The COURT. Well, now I will hear Mr. Reif.

Mr. REIF. Thank you, your Honor. Addressing myself to Mr. Vincent's remarks, first of all, I am not familiar with any pattern to which he refers. We represent only Dr. Rodberg in this matter. I am familiar with Mr. Falk's position, and that is as far as we are familiar with the grand jury proceedings.

As to raising questions subsequent to appearance, it is our position that it is the appearance itself which should be avoided, not merely answering specific questions, so that we do not feel that appearing and declining to answer certain questions will in any way deal with that specific problem.

As to the particular matter in this motion, we raise at this time four questions, one of which is, as far as I know, [10] quite different from any of the points raised by Mr. Falk, and that is, I am specifically referring to the question of Dr. Rodberg's relationship with Senator Gravel. As to that question, I believe it raises substantial questions, as we have tried to show briefly in our moving papers, and I do believe that a memorandum of law would be quite helpful in resolving the issue.

As far as I can determine from what research I could do in the last day, the number of cases on the scope of the speech and debate clause is quite limited and the questions as to its scope are at this point quite undefined. I believe further that it will be necessary, in providing the Court with a precise notion of what claim it is that is before the Court, that an affidavit from Senator Gravel would be quite helpful in defining that relationship.

As to your Honor's suggestion as to September 10th, which I believe is two weeks from today, although I am forced to go to Maine next week for a few days. I do believe that we would be able to be prepared at that time, both with the affidavits and with the memorandum of law.

The COURT. Let me ask you a question, Mr. Reif, about one aspect of the motion, and that has to do with the allegation that the subpoena and any questions that would be addressed to Dr. Rodberg in the grand jury would be the product of an unlawful electronic surveillance. I have already ruled in the [11] first of these three cases to come before me, which had to do with the application of a witness named Popkin, that a bare allegation, in my opinion, of a violation of the laws dealing with wiretapping and electronic surveillance is insufficient to occasion an Alderman type hearing.

I see here a paragraph in Dr. Rodberg's affidavit about his information and belief that he has been the subject of unlawful electronic surveillance. If this ground of your motion is to be preserved, you will have to elaborate on that allegation at this time. I will follow the same procedure in this case as I did in this regard in the case dealing with Dr. Falk. His counsel elaborated on the allegation and outlined the type of evidence they anticipate producing, but in affidavit form. Papers in that matter I think are to be filed on the 8th of September. What do you have in mind, if anything?

Mr. REIF. At this time, your Honor, we are not prepared to submit an affidavit which would show, say—

The COURT. I don't mean an affidavit. What do you think you will establish, if anything, by way of unlawful electronic surveillance?

Mr. REIF. At this point, your Honor, we are entirely uncertain as to that, and at this point it is substantially merely the allegation.

The COURT. Well, do you know what if anything Dr. Rodberg had in mind in Paragraph 10 of his own affidavit when he says [12] on information and belief he had been the subject of unlawful electronic surveillance?

Mr. REIF. Well, as I say, at this point it is a suspicion that we have based upon our knowledge as to certain people with whom Dr. Rodberg has been in contact, but as to specific facts, we cannot point to any at this point.

The COURT. Well, let me just make it a little clearer. What I am contemplating doing is restricting the stay, if I grant it, to a consideration of specific points, and I will exclude this allegation of unlawful electronic surveillance unless you have something that at least you are going to—unless you have something now in mind. I am not looking for proof now. I am just endeavoring to ascertain whether the allegation is not so much on information and belief but just a suspicion.

Mr. REIF. Well, I think, to be frank, that there is, as I say, no concrete fact which we can point to. Our belief is founded upon the fact that Dr. Rodberg has been in telephone communication with certain people and has used the phone of certain people whom we believe their phones have been—

The COURT. Whom you suspect.

Mr. REIF. Right. That is correct.

The COURT. If you wish, you may talk to Dr. Rodberg right now to see if he has anything in mind specifically, because he says here is his affidavit, "Upon information and [13] belief, I have been the subject of unlawful electronic surveillance," so if he has, I would like to determine the extent of his information and belief if it is different from what you have just stated. So why don't you talk to him for a moment and see whether he has more in mind than you have stated.

Mr. REIF. Thank you, your Honor.

[Counsel conferred with Dr. Rodberg.]

Mr. REIF. Your Honor, at this time we have nothing beyond what I have just stated.

The COURT. Well, the subpoena calls for Dr. Rodberg's appearance this morning before the grand jury, and I will, over the government's objections, grant a stay until after the hearing on September 10th. However, I do not grant the stay in order that there may be additional information filed with respect to unlawful electronic surveillance. That will not be the subject of the hearing on the 10th of September. Having no more than a mere general suspicion, that is not a proper basis for a stay of this subpoena, in my view, and that issue is eliminated from this application, and that is my ruling. I deny the motion for a stay to the extent that it is based upon a general, unspecified allegation of unlawful electronic surveillance.

I do, however, grant the motion in order that the parties may file affidavits and memoranda of law on the other points raised in the motion, that it, the First Amendment rights of [14] the prospective witness and the other First Amendment rights, and other rights, including any right of congressional privilege, which may be here involved. So that those other aspects of the motion are the basis for the Court's order, but only those aspects.

Mr. REIF. Would your Honor entertain a brief argument on the surveillance question?

The COURT. Well, I am aware, let me say, of the cases in the District of Columbia and in the Third Circuit and the California cases. I went into this in some detail in connection with the Poplin matter. Counsel furnished the Court with copies of the lengthy opinions in the Third Circuit and the District of Columbia cases, and I have read them, so if you think there is something that should be added to that, I will hear you briefly.

Mr. REIF. Well, no. I was not aware that your Honor had been made aware of those opinions.

The COURT. Yes. You see, this problem has been written about so comprehensively by the judges in the other circiuts that I really made up my mind on the basis of studying those opinions.

Mr. REIF. In light of that, I—

The COURT. So I think that my ruling will stand on that aspect of it.

Mr. REIF. All right.

[15] The COURT. Now let me state why I feel that I should order this stay over the objections of Mr. Vincent. I believe that the grounds asserted in this motion are different from the ground asserted in the applications heretofore filed on behalf of the witnesses Popkin and Falk, and that therefore, there is no real basis for believing that there is a sort of a pattern followed here, or sought to be followed, by the witnesses and by their attorneys. Mr. Reif apparently was unaware of these prior applications.

I think also that while the issue at the moment is simply the grand jury's right to compel the presence of the persons before the grand jury, the briefs that will be filed and the affidavits that will be filed and the argument made on September 10th will apply almost equally to questions that may arise during the course of the grand jury interrogation, so that I think it is best to get briefs from the parties at this juncture so as to be able to rule without protracted delay should disputes arise during the course of their testimony. So that it seems to me that time within which to brief these questions is positively required at some stage, and I would rather that these matters be briefed at this juncture rather than at some possible later time.

Please have in mind that the issue at the moment is the power of the grand jury merely to compel the presence of Dr. Rodberg before the grand jury, but in your briefs, please [16] cover the law, to the extent that you can find it, on the right of the grand jury to put to the witness the questions that you anticipate will be put. In other words, make your briefs somewhat broader than the narrow issue that is faced at this juncture. I assume that you had that in mind, in any event.

As far as the time is concerned, I think I ordered the briefs in the Falk matter to be filed on the 8th of September. I am not sure of that. It was either the 7th or the 8th. I believe it was the 8th.

Mr. VINCENT. It was the 7th.

The COURT. Was it the 7th?

Mr. VINCENT. Yes, your Honor.

The COURT. Well, here we will make it the 8th, because you won't have quite as much time, and this hearing will not be joined with the hearing on the Falk application, but it will follow immediately thereafter. There are separate questions. The Falk hearing is set for the 10th, at ten o'clock, and this would follow immediately thereafter, probably at 11 or 11:30, or whenever. So affidavits and briefs on the law in this matter are due

on or before September 8th and the hearing will be on the 10th.

Now does anyone wish to be heard further? I will be with you in a moment. Mr. Fishman. But first, do counsel for either of the parties wish to be heard further or ask any—

[17] Mr. VINCENT. I have no questions, nothing further, your Honor.

Mr. REIF. We have nothing further, your Honor.

The COURT. Well, now I think Mr. Fishman wished to address the Court.

Mr. FISHMAN. If I may for just a moment, your Honor. We are obviously in a bit of a quandary here in the sense of determining what role we would want to play on the 8th. As the senator indicated to you in his letter—

The COURT. Could I see that letter again, please?

[Exhibit handed to the Court.]

The COURT. Thank you.

Mr. FISHMAN. Particularly in the third and fourth paragraphs, if the purpose for which Mr. Rodberg has been subpoenaed involves violation of anyone of potential federal law, whether it be bank robbery or anything else, his interests are not involved and he would not wish to participate. If, on the other hand, the issues to be raised and decided at that hearing and before the grand jury related to his activities in the performance of his duties as a United States Senator and those of his personal entourage, he then obviously has a very substantial interest of his own which he wishes to assert.

The subpoena in this matter is totally devoid of any information to indicate the issue before the grand jury or the purpose or purposes for which they are calling Dr. [18] Rodberg. It therefore leaves us in the position where we are totally without any intimation at all to make a determination or even a guess as to whether or not we should be prepared to participate, and, if so, to what extent.

There apparently is some assumption on the part of counsel here that it may relate to these matters. I prefer not to engage in such guessing games, and I believe that as a matter of due process, the senator has a clear right to know at this point, so that he may prepare and may make that decision, just what the issue is before the grand jury and what the general nature of the questions are going to relate to in terms of subject matter.

The COURT. Well, it would seem to me, although this is for you and the senator to decide, that you will have to either—well, you will have to file some sort of motion in the case. You have got to file some sort of pleading directed to protect the interests of the senator which you described. I am happy to have you here as an observer, but I am not prepared to and will not rule on any requests or motions or other points that you raise unless they are based upon some sort of written application or some participation as a party.

I don't think this is a type of matter that invites participation of anyone that says he is an amicus curiae. You are here with a specific interest to protect. Perhaps you feel that it will be protected by counsel for Dr. Rodberg, [19] perhaps you don't, but I won't rule in the course of just discussing the problems or possibilities in general terms. You have got to decide whether to intervene or not, or whether to seek to intervene.

Mr. FISHMAN. I might say, your Honor, that we were pained all day yesterday trying to ascertain just what our role should be, and I had several discussions with the senator at the time, and I go back to the problem that I suggested at the beginning of my remarks. If we should, for instance, move to intervene and then it is determined that the issue before the grand jury for which Dr. Rodberg has been subpoenaed has nothing to do with the senator, then we have no interest or right to be there. If, on the other hand, the questions for which the grand jury has subponaed Dr. Rodberg do relate to the senator's activities, then we want to be very vigorous in our representation.

I therefore find myself in a position where I am not sure which is the cart and which is the horse, to know which to put before the other, should I move to intervene at this point, which I have the papers before me to do if necessary, and I am in the position of intervening before I know what I am intervening in.

The COURT. Well, really, I cannot help you in the matter beyond what I have said. I will be happy to pass on anything that you decide to file, or to rule on motions or applications [20] of any sort, but it is up to you. And let me say this, or suggest this: that this is something you might wish to give further consideration to. I have already indicated that there are no final rulings in these matters to be made today. The Clerk's Office is happy to receive whatever you have, but I would think that you might give the matter further consideration. There is no compulsion on you, as I see it, to act or decide what to do today.

Mr. FISHMAN. Well, except that, your Honor, if we do decide to intervene, would your Honor be disposed to rule and order the District Attorney, or the U. S. Attorney, rather, to disclose the purpose for which the grand jury has subpoenaed Dr. Rodberg, so at that point we can determine whether or not we wish to participate on the 8th?

The COURT. That is not before me now. That is too iffy. You have got to make the first step here, either by intervening or not intervening, and when you have made up your mind. I will head the matter.

Mr. FISHMAN. In which case, your Honor, I will now move to intervene in the matter.

[Document tendered to the Court.]

The COURT. Thank you. You have got to hand copies to—

[Documents tendered to counsel.]

The COURT. Do you wish, Mr. Vincent, to be heard with respect to this motion to intervene?

[21] Mr. VINCENT. Your Honor, the government objects to the motion to intervene, primarily on the grounds that the senator is not under subpoena, the grand jury has not called him as a witness before this grand jury. This motion is based on pure supposition that Senator Gravel and I might say, through the eyes of any other senator, any other Congressman—would intervene at will when any witness has testified before a grand jury. I say that the time for the senator to raise his privilege and protect his rights is when he is under subpoena if he is in fact ever under subpoena before this or any other grand jury.

I think here again, your Honor, that this is a motion made certainly in good faith, and, with all due respect to counsel for the senator, I do not think it is properly taken. The witness who is subpoenaed has alleged that he is a member of the staff of Senator Gravel. I notice that the senator uses the term that Mr. Rodberg is a perosnal servant of the senator. Now, if a senator or a congressman has the right in any case to interterm that Mr. Rodberg is a personal servant or his staff member has been issued a subpoena, I am afraid that we would definitely clog the wheels of justice in grand jury proceedings and in any court proceedings.

I think we need more than suspicion and conjecture that interests of Senator Gravel are involved.

The COURT. Let me ask whether you have any authority on this proposition.

[22] Mr. FISHMAN. Yes, I do, your Honor.

The COURT. I am considering taking this motion for leave to intervene under advisement and looking at some cases myself. Have you had an opportunity to prepare any sort of memorandum in support of this motion?

Mr. FISHMAN. Your Honor, I returned to Washington—

The COURT. I can see that you haven't. Now query, I don't know whether I would take this—well, I am thinking that you might submit a brief memo of law on this point unless you have all the cases before you that you wish to rely on.

Mr. FISHMAN. Well, if I may make a point or two, your Honor.

The COURT. Yes.

Mr. FISHMAN. The motion clearly lays forth the fact that the rights being asserted here are not those of Dr. Rodberg but those of the senator. The privileges which we are asserting under the speech and debate clause are those of the senator as well as those of Dr. Rodberg. Indeed, I cite your Honor to Jefferson's Manual, which, of course, is the guilding light for interpretation of these matters, at Section 287, which deals with the privileges of members of Parliament, and it notes specifically there that the privilege extends to the member, that they are at all times exempt from questioning elsewhere for anything said in their own houses, and that during the time of privilege, neither a member, his staff, [23] nor his servants for any matter of their own may be arrested, and it goes on to point out other things, nor impleaded, cited, nor subpoenaed in any court. I will leave that to your Honor to take a look at. But it clearly delineates the distinction of the privilege between a senator or a member of the Congress and his servants. Each has the privilege, each to assert for himself.

[Book tendered to the Court.]

Mr. FISHMAN. Also, in the case of United States versus Johnson, at 383 U.S. at page 173 through 177, the court notes there that in a criminal prosecution, that the evidence which the government introduced, which eventually was the reason that the court threw out the charges, because the evidence was protected by the speech and debate clause, extensive questioning concerning how much of the speech was written by Johnson himself, the congressman, how much by his administrative assistant, and how much by outsiders representing the loan company, and the court went on there to suggest that the pervasiveness of the questions with respect to both the congressman and his assistants, and his assistants, violated the speech and debate clause, so the right we are asserting here is clearly that of the senator. That right is not adequately protected, we maintain, by Mr. Rodberg or by the government.

The COURT. Well, I am just not going to rule on this aspect of it at this time.

[24] I will hear Mr. Vincent briefly. I saw you half rise as if to respond, but I think that I wish to consider this matter further. I think that Mr. Fishman and associate counsel should file a brief memo in support of this right. I think it would be helpful. I don't think you need until the 8th of September, however. When do you think you could have it in my hands, a memo discussing some of these principles to which you allude?

Mr. FISHMAN. One moment, your Honor.

[Mr. Fishman conferred with Mr. Reinstein.]

Mr. FISHMAN. One week, your Honor?

The COURT. Well, let's see.

Mr. FISHMAN. We are right back, of course, in the same box again.

The COURT. Excuse me. What we will do is make it the same day, because I won't be here a week from today, so I won't see it before the 8th.

Mr. FISHMAN. When will your Honor be leaving? Maybe we can get it to you before then.

The COURT. On the second. In other words, the day before. However, I would need to see it—it would have to be filed on the first of September, Wednesday, for me to consider it, and at that it would have to be before two o'clock.

Mr. FISHMAN. We will file it. We will make every attempt to file it before then, your Honor.

[25] The COURT. All right. And I will take that aspect of this under advisement until then.

Mr. VINCENT. If I may.

The COURT. Yes.

Mr. VINCENT. If I may, if your Honor please, does the government have the right to or do you desire the government to file a memo at the same time on September first before two o'clock?

The COURT. Yes indeed.

Mr. VINCENT. Even though we cannot reply directly to the citations and cases and law which will be in Mr. Fishman's brief, but the government will file an opposition, your Honor.

The COURT. Fine. Yes.

Mr. REIF. I should like to state for the record, your Honor, that Dr. Rodberg does not oppose the motion by Senator Gravel. Actually we welcome it, and we think it will be helpful.

The COURT. Well, I think—Yes, Mr. Fishman.

Mr. FISHMAN. If I may raise one more point, your Honor, if it is possible for your Honor to hear argument on Wednesday, in the early afternoon or late morning.

The COURT. Well it would be possible, but I would rather read your cases than hear you talk about them, actually.

Mr. FISHMAN. What I was thinking of, your Honor, is the need for some ruling so we could ascertain the purpose for [26] which the grand jury has called Dr. Rodberg, in time to prepare a second memo that your Honor has asked for for the eighth.

The COURT. Well, I think they are distinguishable. The question of whether the senator can intervene is the one raised by this motion. If he is permitted to intervene, of course he will participate in the hearing through you, in the hearing on the tenth. You will have between the first and the tenth of September in which to prepare.

Mr. FISHMAN. What I am suggesting, your Honor, is that preparing, as far as we are concerned, requires some knowledge as to the purpose and scope of the grand jury, which is not disclosed in the subpoena.

The COURT. But there is a distinction. Let's assume you are permitted to intervene, hypothetically.

Mr. FISHMAN. Yes, your Honor.

The COURT. You then seek a court order requiring the government to, let's say, outline the subject matters of the grand jury interrogation, but the fact that you seek it is no different from the request of the witness here, that is, the prospective witness, Dr. Rodberg; he is seeking the same thing. So that issue is going to be considered on the tenth, whether it is sought on behalf of your client or on behalf of the witness. That is one of the principal points raised by Mr. Reif and Miss Peterson in their motion.

So I surely will not previous to the 10th of September order the government to make any specification of what the subject matters will be. That is going to be one of the questions debated on the 10th of September, whether the Court should enter such an order, so you won't get that, in any eventuality, until the 10th of September.

Perhaps there are still some matters that are not a hundred percent clear, but that may be in the nature of the problem.

We will recess in this case at this time.

[Thereupon the hearing was concluded.]

[Volume 2: United States District Court, District of Massachusetts]

United States of America v. John Doe—EBD 71-172-G.

Proceedings had in the above entitled cause before the Honorable W. Arthur Garrity, Jr., Judge of said court, in Court Room No. 2, Federal Building, Boston, Massachusetts, on Friday, September 10, 1971.

Appearances:

Paul Vincent, Esq., Attorney, Department of Justice, appeared for the government.

James Reif, Esq., Doris Peterson, Attorney, and Martin Stavis, Esq., appeared for Leonard Rodberg.

Joseph Bartlett, Esq., Herbert Reid, Esq., Robert Reinstein, Esq., and Charles Fishman, Esq., appeared for Senator Mike Gravel.

PROCEEDINGS

The CLERK. Emergency Business Docket No. 71-172, United States Versus John Doe.

The COURT. The Court will take under advisement the motion filed on behalf of Professor Falk, and I will reserve decision on that at least until after hearing the arguments in this matter, perhaps over the weekend.

I will ask, please, that counsel begin this hearing similarly as did counsel in the prior hearing, by identifying themselves and associates seated at counsel table with them for the purposes of the record.

Yes.

Mr. BARTLETT. If your Honor please, my name is Joseph Bartlett. I am a member of the law firm of Ely, Bartlett, Brown and Proctor, in Boston, Massachusetts. I act on behalf of Senator Mike Gravel in the matter as local counsel.

Reading from my left, Senator Mike Gravel, Senator from Alaska; Professor Herbert Reid, a member of the bar of the Commonwealth of Massachusetts, Professor of Law at Rutgers; Professor Robert Reinstein, a member of the Maryland Bar; and to my immediate right, Attorney Charles Fishman, of the District of Columbia Bar. Prof. Reinstein and Prof. Reed will be arguing the matter on behalf of our client, your Honor.

The COURT. Well, will they both argue for the same client or—

[3] Mr. BARTLETT. With your Honor's permission, I would like Prof. Reinstein to explain.

The COURT. All right.

Prof. REINSTEIN. Our intention, your Honor, is that I would make the initial argument and Prof. Reed will give the rebuttal argument.

The COURT. Are there any other counsel?

Mr. REIF. Your Honor, my name is James Reif, and along with Doris Peterson and Martin Stavis, we represent Dr. Leonard Rodberg in the matter. At a previous hearing, your Honor granted leave for us to present Martin Stavis ad hoc. He is a member of the bar of the states of New York and New Jersey and the Supreme Court of the United States. He is a member in good standing of those bars, and there are no disciplinary proceedings pending against him.

The COURT. What is his name?

Mr. REIF. Martin Stavis. He will be here shortly.

The COURT. And then will you please do it again for the government.

Mr. VINCENT. Yes, your Honor. Paul Vincent, Department of Justice, Washington, D.C. My colleague is John Marple, also of the Department of Justice.

The COURT. All right. I think—will it be Mr. Reif who will be speaking on behalf of Dr. Rodberg?

Mr. REIF. Your Honor, it is our intention that I will [4] argue in chief and Mr. Stavis will handle any rebuttal.

The COURT. Well, being the moving party here, I think I should hear you on behalf of Dr. Rodberg before hearing counsel on behalf of the senator, because the senator is intervening here, you see.

Mr. REIF. I understand that.

The COURT. Unless you have a preference. If you have worked it out among yourselves, I am happy to abide by any order that you have agreed on.

Mr. REIF. The attorneys for Senator Gravel have expressed preference in their going first, and we believe, in view of the fact that they raise primarily one issue before the Court, we raise the second and additional issue that they would be—in the best interests of efficiency that they proceed first.

The COURT. Well, that is certainly agreeable, and I will hear counsel.

Mr. VINCENT. If your Honor please, before counsel begins, I would like to hand up some papers to the Court and give copies to opposing counsel.

The COURT. All right.

Mr. VINCENT. The first document, your Honor, is the government's written opposition to the intervenor's motion to quash the subpoena. The second document is a certification from the Financial Clerk of the United States Senate. The third item, your Honor, is an extract from Public Law 601.

[5] (Documents tendered)

The COURT. All right.

Mr. REINSTEIN. Your Honor, at this time we have filed with the clerk two affidavits, one of Senator Gravel and one of Robert G. Dunphy, who is Sergeant at Arms of the United States Senate, both of these affiadvits testifying to the employer-employee relationship of Senator Gravel and Dr. Rodberg. Copies have heretofore been given to Mr. Vincent.

The COURT. All right. I am happy to receive all of those papers.

Mr. REINSTEIN. May it please the Court. Senator Gravel has intervened in this proceeding in order to protect his constitutional rights under the speech and debate clause. We filed a motion to quash the subpoena to Dr. Rodberg on the basic ground that any interrogation by the federal grand jury of a personal staff assistant of a member of Congress which inquires into the legitimacy of the official conduct of that member is unconstitutional and prohibited by the speech and debate clause.

The COURT. Excuse me, right at the very outset. Let me get one thing clear. I wasn't absolutely clear from the briefs and so forth whether Prof. or Dr. Rodberg was a member of the senator's personal staff or a member of the staff of a subcommittee.

Mr. REINSTEIN. Your Honor, Dr. Rodberg is a member of the [6] personal staff of Senator Gravel.

The COURT. All right.

Mr. REINSTEIN. Dr. Rodberg's affidavit has already testified towards that. We filed Senator Gravel's affidavit in which Senator Gravel deposes and says: "That Dr. Leonard Rodberg is and has been since June 29, 1971 a member of my personal staff in the United States Senate."

The COURT. All right.

Mr. REINSTEIN. The affidavit of the Sergeant at Arms or the United States Senate, Mr. Dunphy, says: "By letter to me dated June 29, 1971, Senator Gravel designated Dr. Leonard Rodberg as a member of his personal staff." Mr. Dunphy then goes on to quote the letter from Senator Gravel.

The COURT. Well, thank you, What was on the 29th of June? Was that the day before, the day after, or the evening of, or do you know, what, the senator's quoting from the so-called Pentagon Papers?

Mr. REINSTEIN. The letter was sent on the same day. It was many hours prior to the senator's disclosing the Pentagon papers at a subcommittee hearing.

The COURT. All right. Thank you.

Mr. REINSTEIN. That was also on June 29th.

There are, your Honor, we think, two basic facts which really can't be disputed in this proceeding, and those facts form the basis of our contentions here. The first fact is [7] Dr. Rodberg is a personal assistant to Senator Gravel. We have supported that in Dr. Rodberg's affidavit, the affidavit of Senator Gravel, and the affidavit of the record keeper of the United States Senate, the Sergeant at Arms, Mr. Dunphy. We see for the first time a notation on the letter from the Financial Clerk of the United States Senate claiming that "The above listed individual is not employed on the rolls of the Senate."

With due respect—of course, putting to one side the fact that this letter is not in affidavit form—with due respect, the Sergeant at Arms and not the Financial Clerk is the official record keeper of the United States Senate, and it is clear that any financial conditions which the senator has with his personal staff are set by the senator himself and cannot be inquired into by the Senate itself, and especially by the judiciary. I suppose in essence what the government is claiming, if it wishes to dispute this fact, is that Senator Gravel comes here and is practically attempting to impose a fraud on this Court.

The COURT. Well, let me say this, please: I haven't even seen the document you refer to filed by the Clerk. Did you hand it up to me?

It must be here. It was just handed up.

Mr. REINSTEIN. Your Honor, I have additional copies.

The COURT. No. There is no need for another copy if it [8] is here.

Oh yes. Mr. Dunphy's affidavit. Here is Senator Graval's affidavit, and then for the government we have a letter from Deputy Assistant Attorney General Holtzman and an extract from the Public Law. I don't see the reply.

Oh, I am sorry. The reply is in the stamp.

Mr. VINCENT. Yes, your Honor.

The COURT. Oh, yes. And here is the stamp of the Financial Clerk. Well, at least I know to what you are referring, so please resume.

Mr. REINSTEIN. Yes, your Honor. The only other point I would like to make is that when we filed our motion to intervene, we alleged in our motion that one of the bases for it is that Dr. Rodberg is a personal staff assistant of Senator Gravel. That was not challenged at that time by the government. Instead, the government proceeded in its arguments upon the assumption that he was instead a staff assistant—

The COURT. Let me say this at the very outset: The Court will proceed on the assumption and on the finding that Dr. Rodberg has since June 29th been a member of the personal staff of Senator Gravel, so that is that.

Mr. REINSTEIN. Fine, your Honor. The second undisputed fact on the record of these prcoeedings is that the grand jury has called Dr. Rodberg in order to interrogate him about the legality of Senator Gravel's actions in disclosing to his [9] colleagues in the Senate and to his constituents the Pentagon Papers during the hearing of the subcommittee and subsequent thereto. This is undisputed because the government, first of all, has not denied it. In its brief, the government says it will neither affirm nor deny it.

The government then proceeds to make arguments which take up the bulk of its brief on the speech and debate clause points on the assumption that this allegation is indeed true.

The only statutes which the government has referred us to were in its brief in opposition to our motion to intervene, and those statutes are, of course, the so-called Espionage Act, which was used to indict Dr. Ellsberg with respect to the Pentagon Papers.

Not only is the fact that the grand jury intends to interrogate into the legitimacy of Senator Gravel's action undisputed by the government; it is also uncontradicted in that sense, and that is the premise which forms the legal basis of all the government's arguments.

The basic argument of the government is that Senator Gravel himself can be subpoenaed by the federal grand jury and interrogated concerning what he did on June 29th in disclosing the Pentagon papers. This was also the legal premise underlying the opposition of the government to our motion to intervene, in which they said that Dr. Rodberg had adequate protection.

[10] Finally, I think it is not an exaggeration to say that the necessary message of the government's brief is that there is a strong possibility that the next subpoena will be issued to Senator Gravel himself. I say this because of the comments in the brief concerning Senator Gravel's so-called obligations as a citizen to cooperate with the grand jury and, if he has anything to hide, to exercise his Fifth Amendment privilege.

Given all of those arguments, I think that Justice Harlan's apt description of another case is applicable. On the basis of these undisputed facts, we do not see how it can be legally maintained that the disclosure of the Pentagon papers by Senator Gravel was not part of the official conduct of a member of Congress for which he is immune from any criminal proceedings and any judicial inquiry in criminal proceedings under the speech and debate clause.

The COURT. Let me just interrupt to say, setting the question and framing the issues, I don't consider this as a subpoena directed to the senator. You say there is this possibility. Well, I just don't know one way or another about any such possibility of a subpoena being directed to Senator Gravel. There is certainly nothing in the record that would indicate that that is contemplated, beyond what you have mentioned. We have, however, before us this morning a particular motion with respect to a particular subpoena, so please focus on the subpoena to Dr. Rodberg, I know that there are many similar [11] factors and arguments involved, but I certainly cannot treat the matter as a motion to quash a possible subpoena directed to the senator.

Mr. REINSTEIN. I am sorry, your Honor, if I didn't make our position clear. I was addressing myself to the subpoena towards Dr. Rodberg.

The COURT. Right.

Mr. REINSTEIN. It is our contention that one of the single undisputed facts is that not only was Dr. Rodberg Senator Gravel's staff assistant, but also that this subpoena is designed to interrogate Dr. Rodberg concerning official actions of Senator Gravel in disclosing the Pentagon papers. We are protecting Senator Gravel's privilege to be immune to judicial inquiry by the interrogation of a staff assistant.

The COURT. Let me just ask one or two questions to narrow it even further. Suppose hypothetically that questions put to Dr. Rodberg had to do only with matters previous to June 29th. Suppose they related to events ending the 28th of June. Would your position be different in respect to those questions?

Mr. REINSTEIN. Certainly, your Honor.

The COURT. In other words, your position, if I understand it, relates to matters that happened on and after the 29th of June. Is that correct?

Mr. REINSTEIN. Yes, your Honor. Our position is that [12] Dr. Rodberg has been a staff assistant of Senator Gravel since the 29th, and as a staff assistant he necessarily engaged with Senator Gravel in privileged communications, and that these matters cannot be inquired into by the federal grand jury.

The COURT. Do you draw any distinction between the types of activities of Dr. Rodberg? And here it seems we have three types of activities: First, the senator's quoting from the papers and his placing them in the subcommittee file, and then, I gather from the affidavits and briefs, his arranging for their possible publication. I don't know quite how to characterize that last aspect of the matter, but it is implicit here in some of the papers or exhibits attached to affidavits that Dr. Rodberg may have negotiated with possible publishers of some other papers, or something of that nature.

Do you draw a distinction in your own mind between the applicability of the Senator's privilege to those three types of activities, or are they all on a similar footing as you see it?

Mr. REINSTEIN. We think, your Honor, that they are all covered by the speech and debate clause, and that any actions of Dr. Rodberg which were taken at the direction of Senator Gravel and in assistance of Senator Gravel in those activities are therefore also privileged under the clause. We say that because the Supreme Court has emphasized from the beginning that the speech and debate clause is to be construed broadly. [13] It does not simply apply to a speech or debate on the floor of Congress.

As your Honor knows from the case law, as early as 1881, Kilberg versus Thompson, the Supreme Court held that the clause also covers resolutions, votes taken, actions done in committee, and, finally, the broadest category anything generally done in a session of one of the houses by its members in relation to the business before it.

Essentially what we have here, your Honor is a speech by the senator given in committee critical of executive conduct in foreign policy. The speech was given in order to inform his colleagues and his constituents of how this country became involved in a rather disastrous chapter of American foreign policy and what lessons could be drawn to terminate this involvement. It was all part and parcel of a continuing debate that has been going on in the Senate over the foreign policy of the United States, and in particular how to terminate the conflict in Indo-China.

We see no distinction at all between the committee hearing putting it in the record, and the subsequent republication, because all of those fit into the category of things which are generally done by a member of the house in relation to the business before it.

The COURT. Please elaborate a little on what you mean by the subsequent publication, because I was reluctant to state what you believe to have been done. You can state as much or as little as you wish, but what do you have in mind? We are talking about what, the arrangement with the publisher for publication, or what?

Mr. REINSTEIN. Well, first, placing the Pentagon papers in the official record of the subcommittee.

The COURT. That I am clear on. I am talking about this, what I call the third phase of the—

Mr. REINSTEIN. And then, arranging for the printing of the record of the subcommittee to be distributed to the public at large.

The COURT. And this is not now through the Congressional Record obviously, it is through private publishers.

Mr. REINSTEIN. Yes, your Honor, just as most of us in this courtroom, of course, are on the mailing list of congressmen and very frequently we get mailings from congressmen which contain republication of speeches they made in Congress. It is the traditional method of disseminating what the congressman did.

Congressional Quarterly has very limited distribution, as does with all due respect to Senator Gravel, the record of the subcommittee. The Executive Branch makes what we consider to be a highly unusual suggestion in their brief that no privilege attaches to Senator Gravel and therefore, of course, no privilege attaches derivatively to Dr. Rodberg, because they [15] make an unsupported allegation in their brief that the committee hearing that was held was somewhat defective.

We think, your Honor, with all due respect, that this suggestion from the Executive cannot be entertained for three fundamental reasons: First of all, there has been no proof at all offered of any irregularity in the committee hearing. No resolution was taken by the main committee holding the hearing illegal. No resolution was introduced, no resolution was passed by the Senate doing so. Furthermore, the only action that I know of that occurred in the Senate, if this Court is going outside the door, is that Senator Dole, who is, incidentally Chairman of the Republican National Committee, moved that an investigation be held of Senator Gravel's subcommittee hearing, with the possibility of censure or other disciplinary action, and that

this motion failed for want of a second so far as the Senate is concerned.

The COURT. Well, before you leave that, I would like to turn—I thought there was a somewhat broader statement made in the government's brief on that. I thought there was some reference to the action of the subcommittee being in some fashion disavowed by the Senate, something along that line.

Mr. REINSTEIN. That has never occurred. There is no proof in this record that it did.

The COURT. Well, maybe that isn't what was stated, but there is something here along those lines, and I would like to know what it was if you can put your finger on it.

Mr. REINSTEIN. Perhaps your Honor is referring to page 1 of the government's brief.

The COURT. Well, let's see. Yes, it was at the very bottom of the page. It says the Senate has disclaimed official sanction for this action. I wondered what the nature of this disclaimer was.

Mr. REINSTEIN. Your Honor, I know of no disclaimer. I can say with absolute reliability on this statement that the main committee issued no disclaimer of Senator Gravel's action and the Senate itself has taken no action against him. All I can see here in reference to it is a clipping from the Washington Post of August 18th, which I believe referred to the comment, the alleged comment, of the senator that he was dissatisfied with what Senator Gravel did.

The COURT. All right. Well, please resume.

Mr. REINSTEIN. Yes. Secondly, your Honor, even if the hearing itself were somehow illegal, we think the case law makes clear that this would not defeat the congressional privilege. In the Kilbourne case itself, the Supreme Court found that the hearing and the resolution of the congressional committee were not only illegal, they were without jurisdiction, they were unconstitutional. Nevertheless, the Supreme Court held that the congressional privilege means what it says. Similarly, in Tenney against Brantove, you have a situation of [17] unconstitutional action taken by the committee, and those members were also held in—The same is true of Dombrowski and Eastland, and Powell versus McCormack. Those are the only four cases to come up to the Supreme Court in the context of committee hearings.

In each case, there was a finding of illegality of the hearing or the action by the committee, and in each case the senators were found immune. Obviously the immunity provisions would mean nothing if they only applied to illegal acts.

Thirdly, your Honor, even if the subcommittee hearing were viewed in the worst possible light, and that is an unofficial press conference, we think the Supreme Court has made clear that that too would be covered by the congressional privilege. We think this is settled by the two cases of Barr versus Matteo and Howard versus Lyons. As your Honor will recall, those cases involve subordinate officials of the Executive Department issuing press releases in one case and in another case, the Howard case, circulating those released and republishing them, and these press releases defamed certain friends of the official, and in one case their names were referred to Senator Joseph McCarthy for possible action.

The Supreme Court held that communications of that sort in the form of press releases to the public and to Congress itself was part of the official duty of subordinate officials [18] in the Executive Department. That being settled, surely if Mr. Barr and Captain Howard, only a captain in the United States Navy, had an executive privilege, which is judicially created and not even set out in Article II of the Constitution for the issuance of press releases, it seems clear that a United States senator, one of whose primary obligations is to communicate with his constituents and his colleagues over matters of national concern, must have the identical privilege.

The COURT. I am not sure that that, though, is directly on point with what we are considering in this motion. Would you think that a grand jury could not have inquired into the activities of the Employees of the executive who made these critical statements? In other words, we are going beyond that. We are not concerned here with whether there was a privilege that could be invoked in a civil action or in defense of a criminal case, but whether persons can prevent a grand jury from inquiring about it. What would you say if there had been a grand jury convened and it sought to learn the circumstances of the statements that were made by those two employees of the Executive? Do you think a grand jury could properly look into the matter?

Mr. REINSTEIN. Well, your Honor, it probably could, but not in a way that is relevant to this.

The COURT. Well, in other words—

Mr. REINSTEIN. Executive privilege itself is not in the [19] constitution. It has been judicially created to apply to civil tort actions.

The COURT. So really those cases aren't too helpful one way or the other.

Mr. REINSTEIN. They are, your Honor, because we think they limit the scope of the privilege. It is true that in the context of certain deterring acts by individuals, that is, private torts, the executive privilege applies to, for example, press releases. The congressional privilege itself was peculiarly directed, as your Honor is aware from the United States versus Johnson, to criminal proceedings. The difference is, the Executive has no privilege to be free from criminal prosecutions. Indeed, the president himself can be impeached by the House of Representatives and tried by tne Senate, and Congress at its will can eradicate either executive privileges or judicial privilege. For that reason, the Executive can be held to answer in the grand jury, but these cases nevertheless do delimit the scope of the privilege.

The only question then is in what cases is it applicable. We submit that if it applies to the Executive Branch, it applies to Congress.

Perhaps a closer analogy to your Honor's question would be the consistent position that has been taken by the Executive that it can disobey a request by Congress to appear and testify before Congress. This was first set out by President Jefferson in the early 1800's and has been followed since.

Furthermore, in the present day, for at least the last two and one half years, President Nixon has invoked this privilege on behalf of staff assistants and said they do not have to accede to the wishes of Congress and appear to testify. Indeed, staff assistants have refused to appear.

I think that is possibly the analogy we are drawing now, because the distinction is whether a coordinate branch of government can forcibly abridge a privilege when the Executive prosecutes itself. We have no such problem of separation of powers. The congressional privilege was peculiarly aimed at curbing the power of the Executive to institute grand jury proceedings.

The COURT. I think we have agreed that there are some matters about which a grand jury could inquire of a member of the Senator's personal staff, such as things that happened before he became a member.

Mr. REINSTEIN. Or bank robberies.

The COURT. Or bank robberies. There is another example. So doesn't the privilege as asserted by Dr. Rodberg and by you on behalf of his employer, the senator, hinge on the subject matter of the questioning? And what we are dealing with here obviously is the mere appearance of Dr. Rodberg, and we would agree, as I understand it, that were questions to be confined to matters that happened previous to the 28th of June, then [21] there would be no objection, at least on behalf of the senator, if I understand your point correctly.

Mr. REINSTEIN. That is right. Dr. Rodberg, of course, would have his own objections on the free speech ground and so forth.

The COURT. Well, that is true, but I am talking now about this very special privilege which attaches to the senator's activities.

Mr. REINSTEIN. That is right, your Honor.

The COURT. So if that is the case, why don't you have to wait until you see what the questions put are?

Mr. REINSTEIN. I think, Your Honor is suggesting that our motion to quash the subpoena is premature.

The COURT. Well, that is no more than what the government suggested.

Mr. REINSTEIN. I think our answer is, Senator Gravel has no right to be present in the grand jury room. Senator Gravel, in order to protect his privilege, must find out in advance what questions are to be asked. The decision of whether or not to ask the questions and whether or not to object has to come from Senator Gravel and not from Dr. Rodberg.

Indeed, your Honor, we think it would be clearly unconstitutional for the grand jury to inquire into the action of a United States Senator by breaching a constitutional privilege even if the staff assistant were willing to go along with it, [22] just as it breaches the attorney-client relationship for the grand jury to ask questions of the attorney regardless of whether or not he wishes to cooperate. Therefore, it is essential, for Senator Gravel to protect his own interests, that we know precisely what the scope of the inquiry is to be.

The problem on this record is there appears to be no dispute, and the government's entire legal argument is addressed to the proposition that the grand jury intends to investigate into the official conduct of a United States Senator, and we claim that is barred by the speech and debate clause.

Another factor which your Honor might consider is that the Executive Branch is coming to this Court and asking this Court to use its judicial powers to compel the appearances of Dr. Rodberg. Under the state of this record, we think that for this Court to do it may work unconstitutional ends and may put this Court in the position of being a party to the violation of the speech and debate clause. It seems to me that when a prima facie case of this sort has been made that a senator's aide is being interrogated, and the government not only refuses to deny that the questioning will relate to the legitimacy of the official actions of the senator but goes farther and argues the legal position that it may do so, that this Court must first assure itself that no such questions will be asked, or else this Court may become a party to the violation of the Constitution.

[23] We think, your Honor, that this perhaps is clear by United States versus Johnson. Johnson did not just deal with the testimony of Congressman Johnson on the stand. Also called were his administrative assistant and his assistant, and they were interrogated as to how the congressman performed his official acts, initially, how a certain speech was prepared which the government claimed was the result of bribery.

The Supreme Court held that no testimony could be taken of not only Congressman Johnson in this respect but of his administrative assistant as well. Furthermore, the Supreme Court went further and said that the official acts of a member of Congress did not form the basis of even a charge of criminal liability.

A member of Congress does not have to be exposed to possible intimidation by a grand jury and possible violation of privilege communications between him and a staff mem-

ber. If he were, he could not function adequately as a senator and fulfill his constitutional responsibilities. Every senator has to rely on his staff.

The COURT. I am getting back to something I asked you about before, and that was the analogy that you drew to a congressman's sending newsletters back to his state, or congressional district, as the case may be, and you suggested that publication of the Pentagon papers would be analogous to that. Do you consider that, for example, every speech a [24] congressman may make, whereever it is made, is part also of his official responsibility? Is there any conduct on his part, that is, any speech on behalf of the congressman, which you consider to be outside the privilege?

Mr. REINSTEIN. Well, if the congressman were speaking as purely a private citizen.

The COURT. No. Let's suppose that he attends a fundraising dinner for a fellow congressman, which is a very frequent and customary practice, and he makes a speech on a matter of public interest to the gathering. Do you think that that would be embraced by the privilege?

Mr. REINSTEIN. Yes, your Honor. Yes, I do. The question is whether it is part of the ordinary duties and functions of a member of Congress. The reason we think Darby and Matteo case is so important is that the same question arose there, whether press releases communicating with the public were part of the official duties of a member of the Executive Department—a subordinate official, by the way. We think, your Honor, yes, the answer is a congressman has a high obligation to speak on matters of public concern to his constituents, and he cannot rely simply on the assumption that his constituents will perhaps find out about what he says on the floor of the Senate itself.

Since the beginning of this country, we have seen congressmen campaigning in their own districts. It is always [25] thought of as a virtue for a congressman to go back to his district and find out what his constituents think about important issues. There is a necessary colloquy between a congressman and his constituents. We think he would be violating his constitutional duty to his constituents if he did not inform his constituents of the workings of government and considerations of important policy. Otherwise they will be left in the dark as to how to exercise their franchise.

We think, your Honor, also that under the undisputed facts of this case, another reason why the subpoena should be quashed is the historical context in which it appears. The Supreme Court has emphasized in many cases that the prosecutions, the institutions of criminal proceedings, that is, by the Crown against members of Parliament who are critical of executive behavior, is the taproot of the speech and debate clause, and that this clause must be construed in any given case with this history in mind. Under the undisputed facts of this case, what we seem to have is the institution—or what we do have is the beginning of the institution of criminal proceedings. And the grand jury, of course, your Honor, I would like to emphasize is an arm of the Judiciary which begins criminal proceedings. That is its function. Its function is to inquire into the legitimacy of an individual's conduct to decide whether or not an indictment should be issued against him. It differs in no respect, in that context, from testimony taken in court itself.

[26] In any event what we have here is the institution of criminal proceedings as a result of the disclosure by a member of Congress of material highly critical of Executive conduct in the field of foreign relations. I pointed out in my brief that one of the most notorious cases which led to a constitutional crisis in England almost exactly like this was when King Charles prosecuted Sir John Elliot and others who were critical of the War of the Seas. He said it was a violation of law and subversive and he pointed to certain statutes into which there should be inquiry. We think, your Honor, if history condemns those actions by King Charles, which led to the creation of legislative privilege, then it is unquestionable that the government could be permitted to turn its back on our constitutional heritage in this case.

Your Honor, I know I have taken quite a bit of time. If your Honor permits, I would like to comment very briefly on a couple of arguments the government makes, because I think this they have really turned upside down, and they have not addressed themselves to the terms of the speech and debate clause or to its historical origins or to policies underlying it. I say this because the government has cited cases and made the argument that the speech and debate clause was intended only to protect congressmen from civil arrest. It has talked about a completely separate cause, which is the privilege of congressmen to be free from civil arrest while they attend sessions of [27] the House. It is the clause preceding the speech and debate clause.

It has no conceivable relevancy, a congressman saying, "I cannot be prosecuted, because what the government intends to inquire into is the legitimacy of my official conduct." This is revealed by Williamson versus United States, which the government places strong reliance on. In the first page of the opinion one Williamson was prosecuted for subornation of perjury in court in a large-scale land swindle. When the court was about to pronounce sentence he argued against the court passing sentence upon him, and especially to any sentence of imprisonment, on the grounds that thereby he would be deprived of his constitutional right to attend at and return from an ensuing session of Congress. They did not mention the speech and debate clause. The court said the question presented—this is at page 433—as to the scope and meaning of that article and section of the constitution relating to the privilege of immunity from arrest during their attendance on the session of the respective house, then going to and returning from the same."

With all due respect I think the government's argument would be analogous to arguing the history of the First Amendment by talking about the history of the Fifth Amendment. It just has no relationship.

It is true that that clause of the Constitution was [28] intended to bar private arrests, and it is also clear that the other clause, the speech and debate clause, was intended to bar criminal prosecutions of the official activities of members of congress.

The COURT. Let me ask this please: if there is any place in which you draw the line between situations which would be covered by the privilege and those which would not. Take, for example a member of the senator's personal staff who had no discretion in matters but was just doing ministerial types of things, such as perhaps, well, a messenger or a driver perhaps, someone like that. Would you consider that this same privilege would apply to such employees?

Mr. REINSTEIN. I think the question would have to be asked whether there is a confidential relationship between them if I may use an analogy.

The COURT. That is what I am endeavoring to see, whether the Court in this type of matter considers types of things done by Dr. Rodberg as a member of the senator's staff or if you consider a finding that he is a member of his staff automatically forestalls further inquiry.

Mr. REINSTEIN. Your Honor, the question is, a finding, as I understand it, has been made that he is a personal staff assistant of Senator Gravel. The question is whether the grand jury will be inquiring into the official acts of Senator Gravel or of the acts of Dr. Rodberg in assistance to Senator Gravel. [29] In other words, whether the grand jury is attempting to pierce the confidential relationship between the two and, so to speak, go after Senator Gravel in much the same way it would call a wife to testify in an investigation into the legitimacy of her husband's actions, or an attorney to investigate the legitimacy of his client's actions.

The question would have to be asked whether or not the government is seeking to inquire into these official activities through this confidential relationship. It seems to us that Dr. Rodberg's affidavit and Senator Gravel's, in which allegations—in which they speak of Dr. Rodberg as being a personal member of the staff and acting under his direction and control, of necessity leads to the proposition that Dr. Rodberg is in much the same way, if I may suggest, as your Honor's law clerk is to you. Certainly an independent agent of Congress, such as the Sergeant at Arms, who acts like a policeman or a messenger boy who is not employed by the senator at all but is employed for one reason, and that is to deliver things, certainly would be another difference, like United States Marshals in this court.

That is why, your Honor, I think in order to give full protection to the congressional privilege, on the undisputed facts of this case the subpoena must be quashed. If the government intends to retreat from the position it has taken so far, I think, your Honor it must give a specification of the [30] precise questions to be asked of Dr. Rodberg so that Senator Gravel's constitutional rights will be adequately protected, and also so this Court does not give authority to unconstitutional violation. Since the Executive has come to court for this Court's assistance, it is the obligation of Judiciary, under Marbury versus Madison, to make its own evaluation of the constitutionality.

If there are no further questions—

The COURT. All right. Thank you. I will hear Mr. Reif.

Mr. REIF. May it please the Court. I would like at the outset to define as narrowly as possible what we conceive to be the issue in this rather extraordinary, impressive case.

I would suggest at the outset that it is not, as the government has addressed itself, the question of whether or not Senator Gravel or a personal staff member of Senator Gravel, or anyone else, for that matter can be prosecuted in connection with any activities conducted by or on behalf of Senator Gravel. The issue is more narrow than that. It is whether in fact a member of the personal staff of a senator of the United States may be compelled to appear in a secret proceeding to be questioned by the Executive Branch as to the conduct of that senator in the performance of his constitutional duties.

Your Honor has raised the question of whether publication of papers by the senator to his constituents can be considered within the scope of the speech and debate clause. I would [31] suggest that it is very much within the scope of the speech and debate clause, and I would refer your Honor's attention to the decision of the District Court of Columbia in Hentoff versus Ichord, which case indeed the government cites.

In that case, Judge Gesell says quite specifically the republication of the committee report is within the scope of legitimate legislative activity and is protected by the speech and debate clause. He rejects the arguments made by the plaintiffs in the case that it is somehow without the scope of the clause.

I would also call your Honor's attention to the fact that in his statement on June 29th, Senator Gravel made quite clear in this statement in the Record that everything he was doing in connection with the Pentagon papers he was doing as a senator

in furtherance of his constitutional responsibilities as a senator.

I tried to define the issue as I have at the outset because I do not believe the Government has addressed itself to that question. Rather, they have addressed themselves to the question of prosecution, and there is considerable discussion about the question of civil arrest, which refers entirely to a separate clause in the Constitution.

As Mr. Reinstein has indicated, it is undisputed that Dr. Rodberg is a member of the personal staff of Senator Gravel, and that the grand jury is inquiring into the activities of Senator [32] Gravel in connection with the Pentagon papers.

The Pentagon papers are not just ordinary documents or run-of-the-mill documents. They are documents which are highly critical of the Executive Branch. As has been discussed in newspapers and other written materials, they disclose a rather large degree of deception by the Executive Branch for several years and its revelations with respect to the war in Vietnam. For Senator Gravel to take the position that it is his constitutional duty to expose deception we submit is fundamentally the purpose of the speech and debate clause. As the Supreme Court made clear in United States versus Johnson, the purpose of the clause is not so much to protect against civil action by an individual, but rather to protect the Congress against hostile and retaliatory conduct on behalf of the Executive, and it is precisely that factual context which is before the Court.

We believe that analysis of two established privileges is helpful in resolving the issue here, and compels quashing of the subpoena. The privileges to which I refer are the attorney-client privilege and the husband-wife privilege, which have been established for many years within the law. These privileges were derived from the importance of maintaining the relationship between the two individuals involved in those cases. If one could be forced to testify against the other, it would result in destruction of the relationship, a relationship which is deemed by society to be desirable, and consequently a common [33] law privilege arose which provides immunity from testifying, as by wife against husband and, conversely, in the same situation as attorney-client.

The COURT. Well, excuse me, but I would rather talk about this particular case, because I don't think we have to go into the attorney-client and husband-wife privileges and so forth, although those are helpful analogies that have been mentioned, I would rather like to tell you something that bothers me a little bit about the situation, something I might well have asked before and didn't think to, but in rebuttal, counsel for the senator could speak about this if they wish.

Here is the New York Times case, and the New York Times case I think makes quite clear that there can be criminal prosecutions for the unauthorized possession of secret documents. There is surely nothing in the New York Times opinion that would make it seem legal to have done whatever was done by whoever possessed the Pentagon papers without authority. That is my starting point.

Now, here we have a situation where the Pentagon papers, comprising forty-six or forty-seven volumes, or however many they comprise, were not offered by the senator. He had nothing to do with their preparation originally, but only with their disclosure or only with their publication. I don't mean by the word publication just the printing, but I mean the quoting from them, publication in the broadest sense of the word.

[34] So assume, just for the sake of the point—because this is going to be litigated out in California—assume that there is a valid crime that can be committed with respect to publication of the Pentagon papers. I don't suppose that publications through a congressman, let's say, as a conduit would serve as a defense automatically. I don't say that is what was done in this case. I am speaking hypothetically.

Let's assume hypothetically that Prof. or Dr. Ellsberg obtained the Pentagon papers through the office of a congressman, though that is not what happened here. I don't suppose that obtaining secret papers through a congressman's office would confer immunity on the person who obtained them thereby, and I don't expect you would disagree with the proposition. I am wondering where the distinctions are here. I am trying to see what was done here.

Go back to my hypothetical. Suppose Dr. Ellsberg, rather than a publishing house, had in the first instance obtained the Pentagon papers through the office of any congressman. What would your view in that hypothetical situation be? Would you consider that this passing on would be a protected publication?

Mr. REIF. I think it would very much depend upon circumstances surrounding how in fact the documents were transferred. If they were taken without the senator's or congressman's authorization, then I would take it there is no protection.

The COURT. Well, I would assume that this was a congressman [35] who felt it was in the national interest to have the Pentagon papers widely read and studied, and who, out of a sense of duty and public interest, was the conduit for the distribution of the papers to a scholar such as Dr. Ellsberg what would your—

In other words, what I am trying to get at is whether transmission of previously created material, that is, the papers created by the authors thereof, is to be distinguished for some purpose from what a senator might himself create and author personally.

Mr. REIF. I don't think there is any distinction there. I think the distinction between the hypothetical situation and the present case is that in that case, the transfer to a third or fourth person, however, is not a person who is in any way an aide of the senator nor acting in furtherance of the senator's express wishes.

I take it, for example, that at least in theory, anyone who now comes into possession of the Pentagon papers through its distribution by whoever could conceivably be subject to prosecution under 793(e), I assume that to be the case, but these people and the person in the hypothetical are not personal staff aides of the senator, and I do not think really that we even have to get to the question of whether or not anyone can be prosecuted. The question is: How does the government go about getting the information for the prosecution? That is why I was interested before in the husband-wife privilege, because [36] I thought it was a direct analogy there.

If, for example, a husband commits a crime, he can be prosecuted for that crime but it does not follow that his wife can be compelled to testify about that in the grand jury. That is the point I am trying to make here.

We think that Senator Gravel and Dr. Rodberg and any other legislative aides are immune from prosecution, but we don't feel it is necessary to reach that question. All we are concerned about here is whether or not Dr. Rodberg, a personal staff member of Senator Gravel, can be forced to testify about that relationship. That is the only point that we have here.

The reason we feel that the relationship is so important between Senator Gravel and Dr. Rodberg—and, for that matter, between any senator and any personal staff member—is because—the Court will take judicial notice of the fact that senators and congressmen, and indeed any government official in high position relies heavily on the work of his personal staff to fulfill his own constitutional duties and obligations. Indeed, in the Barr versus Matteo case, the Supreme Court said specifically the magnitude of government activity has become so great that there must of necessity be delegation and redelegation of authority as to main functions. We think that is true as to obviously any government official particularly a United States Senator.

We feel, in light of the importance of maintaining that [37] working relationship between a senator and a close personal staff aide, the aide cannot be compelled to testify about the nature of that relationship. It is for that reason we believe Dr. Rodberg is privileged not to appear and testify to that.

Finally, on this particular point, I am somewhat surprised at the position the government has taken in their brief. The brief on behalf of the senator has mentioned there are several instances where the Executive has expressly refused to permit questioning by the Legislative Branch of an Executive official on the ground that it is somehow privileged, and in the illustration Dr. Kissinger was referred to. Furthermore, last week there was the question of the working report with respect to nuclear testing in Senator Gravel's own home state, which the Executive refused to turn over to the Legislature.

I also direct your Honor's attention to the case of United States Servicemen's fund versus Eastland, which is a case presently pending in the District Court for the District of Columbia, Civil Action 1474–70. That is a civil action brought by a private individual for the sole purpose of enjoining a subpoena issued by a legislative committee, and the defendants are Senator Eastland and Mr. Sourwine, who is the counsel to the subcommittee involved. It is not a suit for damages; it is simply a suit for injunctive relief against compliance with a subpoena and the government has opposed the taking of Mr. Sourwine's deposition.

[38] I have a brief signed by the Justice Department, in fact, by Mr. Monahan, who is head of the Internal Security Division, who takes the position in their own brief that without consent of the appropriate authorities in the Senate, Mr. Sourwine does not have to answer by means of deposition questions put to him in that lawsuit.

In this case not only has there been no authorization by Senator Gravel as to permitting Dr. Rodberg to testify; it has been quite the contrary. Senator Gravel has intervened and made quite clear his feeling that Dr. Rodberg should not be compelled to appear and testify as to the subject matter in question.

I believe in light of all we have said, in light of what Mr. Reinstein has said on the present state of the record, the subpoena must be quashed.

If your Honor has no further questions on the speech and debate clause issue I would like to proceed to the First Amendment issue.

The COURT. Well please don't say everything that Mr. Levine said before. In other words, you have been here and heard the Court's colloquy with Mr. Levine on behalf of Dr. Falk. But hit the highlights, please, rather than repeat what he said to the extent that the arguments are the same. To the extent that they are different of course, you will have to speak separately to them.

[39] Mr. REIF. At the outset, I would like to refer to two cases which were relied upon so heavily by the government because I think they have no bearing upon the present case. They referred to the Blair case for the proposition that the grand jury can compel all sorts of testimony from all sorts of people who have no right to decline on any grounds to furnish that evidence or those answers.

I think the Blair case does not at all stand for that proposition. It stands precisely for the proposition that a witness has no stand-

ing to question the constitutionality of a statute that is being investigated. That is the sole holding of the Blair case. Furthermore, I would like to point out that subsequent to Blair there have been numerous cases in the Supreme Court and many lower Federal Courts which have recognized numerous exceptions to that general rule about compelling a witness to testify.

It is well established, for example, that the Fifth Amendment privilege against self-incrimination is protected, protection is afforded before the grand jury. There are numerous cases to that effect. I take it is beyond question.

Furthermore, there is the Fourth Amendment, the Silverthorne case, decided one year after the Blair case, various statutory privileges with respect to electronic surveillance and with respect to Egan and Evans. Furthermore, there are privileges as to husband and wife and attorney-client, which is a common [40] law privilege. So it is not at all undisputed that a witness may not be compelled to answer questions before a grand jury. That has been well established in a variety of circumstances.

I take it on the basis of numerous cases involving legislative investigations which are cited in our brief, there is also a defense that the appearance and the questioning would violate the First Amendment. With respect to the Kinoy case, I am kind of at a loss to explain this, but Miss Peterson, Mr. Stavis, and I were counsel in that case, and the sole question before the court was the admission by The U.S. Attorney in that case that the only question they wanted to put to Mr. Kinoy was as to the whereabouts of his daughter. That was the sole, immediate question they wanted to ask Miss Canoy before the grand jury, and it was on that basis that the First Amendment claim with respect to a lawyer's First Amendment activities as a lawyer was denied, and instead, when Miss Canoy subsequently came forward, Mr. Kinoy never went before the grand jury in that case.

I think the importance of the factual situation in this case is the understanding of what a man like Dr. Rodberg does in his work as a scholar and as a consultant to various congressmen, not only as a personal staff assistant to Senator Gravel but to other congressmen, as we have set forth in the affidavit.

The COURT. Let me say, he is further away from being a newsman, is he not, than was Prof. Falk. Prof. Falk has been [41] published very, very widely in magazines, books, et cetera. I gathered from the affidavits that Dr. Rodberg is not as much of a journalist as Prof. Falk. Is that a fair reading?

Mr. REIF. It is true that Dr. Rodberg has not published as many books or articles as has Prof. Falk. However, Dr. Rodberg has in fact published numerous articles and given numerous speeches and lectures on his own, as was cited in the affidavit, by way of example, the chapter which he wrote in a book commissioned by Senator Kennedy on the ABM. Dr. Rodberg is continuing work on various publications and has written numerous publications, although not as many as Dr. Falk.

The COURT. Do you think of him as a journalist?

Mr. REIF. I think he performs multiple roles. The lines between the roles are not always clearly drawn. He obtains information which he uses, then supplies expert advise, expert testimony, expert public writings on the subject, particularly the decision-making process with respect to the war in Vietnam.

The COURT. Here is an obvious consideration here: We have all of us to be alert to the possibility of expanding this newsman's privilege to a point where it is unrecognizable and undefinable. I suggested before the writer for a weekly newspaper. Then you can go to a weekly magazine, a monthly magazine, and a quarterly magazine. Then you can go to a lecturer, a man who is on the lecture circuit and then you can expand it to a point where you cannot define it or apply it, [42] and query, whether Dr. Rodberg's activities are sufficiently close to those of a newsman to even fit under the general, broadest interpretation of a newsman's privilege to the extent that it exists.

Mr. REIF. I agree with your Honor that there ought to be a standard clearly established as to the scope of First Amendment rights with respect to a grand jury. I do feel there is a need for that. I believe Dr. Rodberg falls within the proper standard. Dr. Rodberg, it is true, does not publish as much as Dr. Falk. He does, however, continually and has for several years published and written for public dissemination much on the war in Vietnam, and I would point out specifically the type of article Dr. Rodberg is involved in writing is not a general discussion of the war in Vietnam, not general material on that subject, but for the specific purpose of converting public opinion to a particular point of view with respect to the war.

The materials Dr. Rodberg has written and continues to write are for the purpose of slanting public opinion to oppose the present policies in Vietnam, and I think Dr. Rodberg and Prof. Falk in that regard have occupied a unique role in America in the last five or six years, because, as your Honor well knows, at the outset of the war, it was universally accepted in the country that the war was acceptable. Now there is opposition to the war, and one of the major reasons for that [43] is that scholars like Dr. Rodberg have contributed much to public information with respect to what is going on in the war, information which has been otherwise kept from the public by the Executive Branch. It is for that reason we do feel that Dr. Rodberg does fall within the permissible scope and proper scope of the First Amendment privilege.

We feel that there are two relationships which are threatened here by the proposed appearance of Dr. Rodberg. There is the relationship of Dr. Rodberg and people from whom he gets confidential information which it is not illegal necessarily to obtain, and there is the relationship between Dr. Rodberg and the people to whom he disseminates that information. He disseminates it directly to the public and he disseminates it directly on occasion on a consulting basis to numerous senators and congressmen, and we feel that both those relationships are threatened if Dr. Rodberg has to testify as to his area of expertise, how he got it, and what he did with respect to his work with respect to Senator Gravel and other senators.

We feel the public's interest and right to know is an interest not only in Dr. Rodberg. His continued ability to provide expertise and advice and information to the public is seriously threatened if he has to appear in the present context of this case. We feel on that basis the government has to take the burden. We don't feel it is an absolute position.

We recognize that there are numerous exceptions to testifying [44] before a grand jury, as for example, the Fifth Amendment privilege. We are asking the government to come forward with some showing of why Dr. Rodberg should be forced to testify in the circumstances of this case. Before they do, we believe he does not have to appear.

Addressing myself to one final point on the question of appearance versus refusal to answer specific questions, I think the immunity from appearance in this case flows, one from the existence of the privilege to decline to answer questions which would abridge First Amendment rights, and the government's failure to come forward and show whether Dr. Rodberg would be questioned as to anything else.

That was precisely the situation in Caldwell. The court first established the privilege and then said since the government has failed to come forward saying he will be questioned as to anything, there is no reason why he has to appear at all. We feel that failure of the government is apparent in this case as well, failing to have satisfied that condition.

The COURT. I think we should take a forty-five minute recess. I don't want to put counsel under such pressure as to feel they have to argue without letting them have some lunch and speed it up for that reason, so we will recess until quarter before two.

[The luncheon recess was taken.]

[45] AFTERNOON SESSION

(The hearing was resumed at 1:45 o'clock p.m.)

The COURT. All right.

Mr. VINCENT. May it please the Court. The movant in this instance, your Honor, has raised two basic points. The first is that he is immune from the service of a subpoena because of his legislative privilege. The second point is under the First Amendment.

In regard to the legislative privilege, I would like to say, your Honor, that Dr. Rodberg is either immune from service, either from his own position or derivatively from the position of Senator Gravel. The main authority relied on is the speech and debate clause of Article I, Section 6 of the Constitution. That your Honor will find at Page 2 of the government's brief. I would like to point out, your Honor, that that clause in the Constitution states: "The senators and representatives shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place."

Special note I think should be made, your Honor, that that clause is limited to senators and representatives. No reference of any sort is made to either servants or employees. The authority cited by Dr. Rodberg is contained in his brief in [46] support of his motion to intervene—I'm sorry, the brief of Senator Gravel to intervene, and at Page 6 of that brief he cites from Jefferson's Manual, which is the unquestionable authority on legislative procedures, from Section 3 dealing with privilege.

Senator Gravel in his memo states that "Members of the legislature are at all times exempted from question elsewhere, for anything said in their own house; that during the time of privilege, neither a member himself, his wife, nor his servants may be arrested on mesne process, in any civil suit, nor impleaded, cited, or subpoenaed in any court." The citation is to Jefferson's Manual and Rules of the House of Representatives, and the senator's moving papers.

I have with me, your Honor, a copy of the Rules and Manual of the United States Senate, made in 1967, which also contains Jefferson's Manual in toto. In this Manual, the Section 3 on privileges appears at Page 382 and Page 383, and I have taken the liberty, your Honor, of reproducing copies of those two pages.

The COURT. All right.

[Document tendered to the Court.]

Mr. VINCENT. And I direct your Honor's attention to the second full paragraph on page 383, but before I read that, your Honor, I go back to the first sentence of Section 3 immediately preceding the portion quoted by Senator Gravel. That first [47] sentence reads: "The privileges of members of Parliament"—you will note, your Honor, in his papers Senator Gravel said members of the legislature; Thomas Jefferson is speaking of Parliament at this point—"from small and obscure beginnings have been advancing for centuries with a firm, never-yielding pace."

Now we go to the paragraph I pointed out on page 383:

"It was probably from this view of the encroaching character of privilege that the framers of our Constitution, in their care to provide that the laws shall bind equally on all, and especially those who make them shall not exempt themselves from their operation, have only privileged Senators and Representatives themselves from the single act of arrest in all cases except treason, felony, and breach of the peace, during their attendance at the session of their respective houses, and in going to and returning from the same, and from being questioned in any other place for any speech or debate in either house." Citing the Constitution, Article 1, Section 6.

In light of the complete statement of Thomas Jefferson in his Manual, the government submits, your Honor, that the reliance of Senator Gravel and Dr. Rodberg is misplaced, in relying on that as authority for including servants and employees of members of Congress.

I would like now to look at the claim of Dr. Rodberg that his immunity is that of derivation from the immunity held by the [48] Senator. I believe, your Honor, that the law is very clear that senators are not immune from criminal process. We recall from the Constitution that immunity does not apply in cases of treason, felony, and breach of the peace. However, rather than being limited to only these two categories, the Supreme Court has held that these words refer to all criminal proceedings whatsoever.

This appears in Williamson versus United States, at 207 U.S. 425, at pages 445 and 446. In that case the defendant, who was a member of the House of Representatives, had been indicted, tried, and convicted for subordination of perjury. He claimed immunity under the speech and debate clause, the same as Senator Gravel and Dr. Rodberg.

The Supreme Court in rejecting this claim cited with approval Cushing's Treatise on the Elements of Law and Practice of Legislative Assemblies in the United States, which said, and I quote from the case, at pages 445–46, "The terms treason, felony, and breach of the peace as used in our Constitution embrace all criminal cases and proceedings whatsoever."

I think that even the movants here will agree that a grand jury subpoena is in a criminal proceeding. The courts have consistently held that congressmen are subject to subpoenas issued to obtain their testimony in court proceedings. By those proceedings, I am referring to criminal proceedings. Mr. Justice Chase, as early as 1800, in the case of United States versus [49] Cooper, at 4 Dallas, held that a congressman was subject to a subpoena even if Congress was in session. This rule has been applied as recently as 1960 by Judge Weinfeld sitting in the Southern District of New York in the case of United States versus Seeger, and that is found at 180 Fed. Supp. 467. Both the Seeger case and the Cooper case are cited in the government's memorandum.

Now even assuming that immunity attaches to a senator, and I am only assuming it, it is only when he is engaged in the lawful pursuit of the duties within the scope of his legislative functions.

Now what are our facts in the instant case? A subcommittee meeting was called at midnight and certain documents, which Senator Gravel and Dr. Rodberg assume are the basis for this opinion, were read to members of the press and members of the subcommittee. I direct your Honor's attention to the extract from Public Law 601, which I have handed to the Court, which sets forth the composition of the Committee on Public Works. I have here, your Honor, a copy—I regret that I only have one; I will make it available to your Honor—a copy of the legislative calendar of the 92nd Congress dated as recently as August 16th this year. You will note that in this document, on page 3 in Subcommittee of Public Buildings and Grounds is a third, a Subcommittee of the Committee on Public Works, with Senator Mike Gravel as Chairman.

[50] I also would point out to your Honor that on page 2 of this document there is reproduced the names and the roster of the professional staff, the senior professional staff, and the clerical staff. Dr. Rodberg's name does not appear in any of the staffs of the Senate.

The COURT. Well, that is not what they say he was. They say he was a member of the Senator's personal staff, so there is no claim that he was a member of the committee staff.

Mr. VINCENT. I only point that out, your Honor, because I think I have already shown that no employee of the Senate, whether it be of an individual senator, much less an individual senator, if he is a member of the Senate staff, has no privilege; a fortiori, a member of a personal staff of a senator certainly cannot have the privilege.

The COURT. What do you make of the Johnson case?

Mr. VINCENT. Which one, sir?

The COURT. The Johnson case, involving the prosecution for the preparation of a speech that was said to be contrary to the speech and debate clause.

Mr. VINCENT. Yes, your Honor. That is the case where a member of the House was indicted on seven counts of perjury and one of conspiracy, as I recall. The House member was convicted on all eight counts. When it got to the Circuit Court of Appeals, the Court of Appeals reversed the conspiracy count, upholding the—I am sorry, they sent the perjury counts back for a new trial, [51] and they dismissed the conspiracy count because evidence had been used from a speech made on the floor of the House by the defendant, Representative Johnson.

When it got to the Supreme Court, the Supreme Court reversed the Circuit Court on the conspiracy count, reinstating the count, and sent all eight counts back for a new trial, holding that the government could not use any evidence of the speech made on the floor of the House. Now, your Honor, that certainly comes within the protection of the speech and debate clause.

The COURT. But didn't it go beyond that and say that it couldn't use, for example, evidence of agents' activities or assistants' activities in connection with preparation of a speech? even if it were not the activity of Representative Johnson himself.

Mr. VINCENT. That is correct, your Honor, in connection with a speech made on the floor of the House, which is specifically excepted from Article I, Section 6 of the Constitution.

The COURT. I do, of course, recognize the distinction, but I was wondering what you thought of that case on the proposition that the senatorial or congressional privilege is not restricted to the congressman himself but extends also, under some circumstances, to aides of the congressman.

Mr. VINCENT. I don't think the case does hold, your Honor, or stand for that principal. I don't think the issue was in [52] that case. It had to do with evidence used against the congressman himself, and I do not recall that the Supreme Court as part of its holdings and decision said that an employee of the House is immune and has the same immunity and privileges as the Representative or the Senator.

I think the case does highlight very, very clearly, your Honor, that congressmen are not immune from criminal process. This man was convicted of a criminal offense, so the immunity extended by that speech and debate clause is highly respected. It does not apply to criminal proceedings of any type.

Now if it cannot apply to criminal proceedings of a congressman, as I say, a fortiori, it cannot apply to criminal proceedings involving members of the staff.

Referring back again, your Honor, to the meeting of the subcommittee called by Senator Gravel, I notice that attached to the moving papers of Dr. Rodberg they very kindly attached a copy of an article from the Washington Post dated August 8, 1971, apparently in support of their motion, and I call your Honor's attention to the paragraph at the bottom of column two of that article, which reads, the report made by Senator Gravel at that midnight subcommittee meeting on June 29th "has not been published because Chairman Jennings Randolph reportedly was so furious with Gravel for calling the unauthorized, nongermane subcommittee meeting that he refused to authorize payment of a stenographer or a public record."

[53] In regard to the nongermaneness of the subject matter, I direct your Honor's attention to the extract from Public Law 601, which sets forth in nine categories the subject matters covered by the Public Works Committee. I won't read all of them, since your Honor has a copy, but I notice that they are all restricted to either the improvement of rivers and harbors, navigation, bridges, Customs Houses, Federal Court Houses, government buildings within the District of Columbia, Rock Creek Park, the zoo, and the construction and maintenance of roads and post roads.

The COURT. Let me just interject, please, that I am concerned here with the power and propriety of the executive and judicial branches of government in passing upon what is the proper or improper business of a particular subcommittee or committee or activity of a member of the Congress. You did cite in your brief somewhere a case, I think, to the effect that the courts may look into this matter, look into such matters, such as the authority of a congressional committee to take certain action or the authority of a member of Congress to do certain things. I haven't read the case, and I would appreciate it if you would tell me which one it is.

Mr. VINCENT. It is on page 10 of our memorandum, your Honor, and the landmark case is Marbury versus Madison. The cases have been consistent from that time on that the courts do have the right to inquire into and reject unauthorized [54] legislative activity. As I say, I don't recall those cases myself, but they are in our memorandum.

The COURT. Well, that isn't the issue here, really. The question isn't whether the meeting of the subcommittee, let's say, was authorized or the subject matter of its meeting was in line with its authority from the parent committee; it is, I expect, whether the Court can inquire into that in this proceeding and whether any order of the Court could be based on any such inquiry. I have genuine doubts as to the power of the Court to rule upon the legality or authenticity or validity of this subcommittee meeting. That, it would seem, would be the power of Congress, I should think, and the power of the parent committee.

All I am really asking is that you elaborate on what you said already. You cited Marbury versus Madison. That I have read, of course, I read that sometime ago, but what about some of these other cases? Are they anything like this? Are there cases involving grand jury investigations or anything of similar nature?

Mr. VINCENT. These are not grand jury investigation cases, as I recall, your Honor. The Watkins case, of course, is a contempt of Congress case. No, none of these, your Honor, deal with grand juries, but I have cited them for the principle that the courts have ruled under certain circumstances that congressmen have acted outside the legislative scope, and I cited it for two [55] reasons.

First let me answer your question as to the legislative purpose of the subcommittee meeting. I agree at least in part, your Honor, that the parent committee and the Senate itself, the parent body, certainly has the

right and the authority to rule on whether or not a matter handled in a subcommittee is within a legislative purpose.

Now the contempt of Congress cases I think are an excellent anomaly, that you cannot sustain a prosecution for contempt of congress unless the courts find that the committee had a legislative purpose and was acting within its scope. That is one of the basic accompaniments, contempt of Congress, under Section 192 of the United States Code. As I say, your Honor, I cannot cite you chapter and verse in these cases, but I do know the rule is that the courts, the judiciary, can rule on whether or not an act of a congressman is outside of the legislative function.

This point is more or less of an aside for these reasons: that the defense here is based on immunity, and I think we have shown your Honor that there is no immunity (a) to a congressman in a criminal proceeding, that is, to resisting a subpoena issued in a criminal proceeding, and (b) certainly not on a member of his staff or a member of his personal staff. There is absolutely no protection in the speech and debate clause under the decided cases and tradition in history, as Thomas Jefferson pointed out. The Constitution and the founders of [56] this country drafting the Constitution left it out, the portion about his family and his servants, because Parliament had been increasingly encroaching on its own power and bootstrapping itself or trying to bootstrap itself, and I think it is very important that we don't have immunity, and that is the defense of this case.

The second reason for citing the power of the judiciary to inquire into and rule is the fact that on the facts in this case, even assuming again arguendo that Senator Gravel and through him derivatively Dr. Rodberg had any immunity, the government's position is that they divested themselves of that immunity by taking the documents they refer to and which they believe and think and assume are involved in this proceeding, and had contracted for and negotiated for to be published by a private publisher, and I certainly, your Honor, think and urge that that is ultra vires, and even if they had privilege, which I certainly do not think they have under the law, that this takes them outside of even that privilege, and the Court certainly is entitled and capable of ruling on that.

The COURT. What about the analogy that counsel made to sending newsletters to constituents and making speeches at public forums on issues of national concern?

Mr. VINCENT. Well, I don't agree, your Honor, that a speech in a public forum grants immunity to a congressman. The Constitution certainly doesn't encompass that, and I don't know of any [57] immunity for a newsletter if it is privately done. If it is authorized by the parent committee and/or by the Senate and it is printed by the Government Printing Office or government funds are used, then you might have a question, provided the newsletter, as I say, has been authorized by Congress, but there again I would have to know the particular facts.

I don't think that generically anyone can claim a privilege ipso facto of sending a newsletter out. It might have absolutely nothing to do with congressional purposes whatsoever. If there is any libel matter or slander, I am not too sure but what the author could not be sued.

The COURT. With respect to the Senator's quoting from these papers at the subcommittee meeting, would you take the same position were this quoting done on the floor of the Senate itself?

Mr. VINCENT. If the Senator had quoted anything on the floor of the Senate, I would say he has immunity.

The COURT. Now suppose the reading were done at a committee meeting of the Senate, let's just say the Committee on Foreign Affairs. What would your position be in such a situation?

Mr. VINCENT. I believe there he would have immunity, your Honor.

The COURT. So that here it is critical, in your view, that this was done at a meeting of a subcommittee of the Committee on Public Works.

[58] Mr. VINCENT. That is right, your Honor. As one of the facets—

The COURT. Well, I understand that you have other. . . .

Mr. VINCENT. Yes. Right.

The COURT. And it is your view that the time and place and room in the Capitol where this was done is significant, with respect to—

Mr. VINCENT. I think it is highly significant, your Honor, yes, I do, just as I do the fact that the chairman of the full committee would not authorize payment of either a stenographer or the printing in the public record. In other words, as I read this, your Honor, the act of Senator Gravel has been eschewed and disclaimed by the chairman of the full committee.

The COURT. I never interpreted this copy of the newspaper article as being an adoption of everything that was said in it. I thought it was filed for a more limited purpose, but the Senator's counsel would doubtless comment on that aspect of it. I never understood that everything stated in these exhibits attached to the motion was submitted as proof of facts, therein stated.

Mr. VINCENT. As I say, your Honor, ordinarily I realize that a newspaper article is hearsay, but since it has been attached as an exhibit by Dr. Rodberg, I certainly think that it is only fair that I should be able to refer to the contents [59] of the article.

The COURT. Well, you certainly may.

Mr. VINCENT. I am not saying, your Honor, that I know this to be a fact, I am not saying that the newspaper article—vouching it to be the complete truth of the facts stated, but I find it highly interesting that there was no refutation in the moving papers, there was no restriction, as I recall, on the use of the article.

Of course, if this were a trial and we were entitled to have live witnesses, it would be a simple matter to request or—I am afraid to use the word—subpoena the chairman of the full committee.

The COURT. The articles were attached as exhibits to Paragraph 8 of the motion, which simply says that it is believed that the questions to be asked "will concern the allegation made in the newspaper articles attached hereto," so that—Well, that is a minor point, but I do think I should note in passing that I don't necessarily consider everything that is stated in these articles as having been factual. That isn't the purpose for which they were offered.

Mr. VINCENT. Even there, your Honor, the newspaper article is submitted specifically for the point to show that the Senator, through Dr. Rodberg, has negotiated a contract for outside publication of a document which certainly is not within the purview of the Subcommittee on buildings and grounds. The case of Long v. [60] Ansel, which is also cited in our memorandum, in 69 Fed.2d, stands for that principle, that a congressman can divest himself of any privileges he holds by acting on the outside and going outside the legislature. As I interpret it from the cases, your Honor, the speech and debate clause is restricted to congressmen and senators themselves, not their employees, not their servants, and at most, to fall within its ambit, the congressman must be acting for a legislative purpose. I think all of the cases, your Honor, only some of which are cited in our brief, which hold that congressmen are not immune from criminal prosecution, certainly uphold that principle.

Unless your Honor has anything further, that is all I have on the legislative point, your Honor, because I think we have demonstrated that there is absolutely no immunity in Dr. Rodberg.

The COURT. Well, I haven't read a number of the cases that have been mentioned. I am not going to rule on this matter this afternoon. I will be taking this under advisement. I do have a question on another aspect of this case, although I have forgotten whether Dr. Rodberg raised the electronic surveillance point.

Mr. VINCENT. You have already ruled on that, your Honor.

The COURT. I know that, but he did raise it, and what I have in mind is my having quoted or adopted Mr. Justice Douglas's language in the early cases. This is when we had the Popkin case, the MIT professor. There I am sure I was unaware that in [61] that case, there had been, at least according to Mr. Justice Douglas and the copy that I now have, a representation to the District Court that no wire taps of any kind had been used in the Russo case. Do you think that that representation was critical to Mr. Justice Douglas's decision?

Mr. VINCENT. Not as I read that, your Honor, and bearing in mind, of course, that this is purely a denial of a bail application, a denial of a stay pending appeal. There is nothing to do with the merits of the case whatsoever, and Justice Douglas, as I read the opinion, your Honor, was aware of this fact, and he then went on to say—the language I quoted previously and which I don't have in front of me, but there must be more than a mere suspicion, and I think he was giving, in my private opinion, a preview of what the law might be.

The COURT. But when you cited that case to me last month, I do believe that you made no reference to the occurrence in the District Court that I refer to; that is, the government's having represented in the District Court that there had not been wire taps of any kind.

Mr. VINCENT. You are absolutely correct, your Honor.

The COURT. I was unaware of that aspect of the case when it was called to my attention before. At least, that is my memory.

Mr. VINCENT. That is my fault, your Honor. I take the blame for it. That is my case. I was close to it, and I [62] apparently assumed that your Honor was aware of the Russo case because of the publicity it had received.

The COURT. Well, I was indeed, but I never had seen Mr. Justice Douglas's short order on the stay, which was not entered until the 16th of August of this year, and it would seem to me that the government in that case made the very representation which it has resisted making in this case, and I should think that would be a difference between the two cases.

If you were counsel for the government in the Russo case, can you tell me, please, whether this representation, to the effect that there were no wiretaps used, was made as a result of court order, or was it just a voluntary representation?

Mr. VINCENT. It certainly was not voluntary, your Honor, and it is strictly opposed to the policy and position taken by the Department of Justice. It was in effect—

The COURT. What led up to the representation then? What is the background of the representation as to no wire taps in that case?

Mr. VINCENT. Because I did not know the department policy, to be frank with you, your Honor.

The COURT. But was it made under court order or just in the course of colloquy or argument?

Mr. VINCENT. Well, it wasn't a direct order, but from the colloquy from the bench and between counsel for the witness and myself, it became very apparent that the judge might not follow [63] the law in the Ninth Circuit. The law in the Ninth Circuit is absolutely clear, and I thought the law was

certainly sufficient, but this particular judge was indicating that he might not follow it.

The COURT. Well, I was simply surprised to read in this copy that I got today for the first time that there had been a representation by the government in that case, and I am happy to learn the background.

Mr. VINCENT. I take the blame, your Honor. It certainly was not intentional.

The COURT. Well, have you something further now with respect to this matter?

Mr. VINCENT. Not on the legislative immunity. On the point of the First Amendment, your Honor, I would just like to say that I don't want to reiterate all of my arguments in the Falk matter, but I certainly would like to point out that I believe that Dr. Rodberg stands on a much less solid footing than Dr. Falk in claiming a journalistic privilege under the Caldwell case, and I have heard nothing here or read nothing in the briefs submitted which would bring him under any rule of law under the First Amendment.

That is all I have, your Honor.

The Court. All right. Now we have rebuttal on behalf of the Senator.

Mr. REID. May it please the Court.

[64] The COURT. You are Professor Reid?

Mr. REID. Yes. R-e-i-d.

I want to say by way of introduction that I don't intend to take much time. I think a great deal of his Honor's time has been taken in argument, and there is some question of whether or not it has been directed to the inquiries which are raised, so briefly I would like to try to direct my attention to some of the several questions and inquiries which you have put throughout the morning and the various responses thereto.

I think it is important at the outset that we make—not only make but keep clear throughout this discussion the distinction flowing out of the speech and debate clause between confidential communications and judicial accountability, and at times we have said we recognize that but then the discussion has been interchangeable.

In terms, sir, of judicial accountability, there is a further question, judicial accountability in terms of balancing and protecting what kind of interests. The courts have not approached judicial accountability in terms of members of the House or members of the Senate in any absolute; it has been in terms of balancing the purpose of the legislative privilege as against the interest being affected.

Quite frequently it is difficult, and in some of the cases which were raised earlier this morning, the problem the Court is fighting is, Is its historical role to protect the rights of [65] the individual and the rights of the individual against arbitrary, capricious governmental action, and therefore, a collision between that function and the judicial overseeing of congressional conduct. I think, your Honor, that in terms of this clarity, the discussion in Powell is very helpful. I might say in passing that I have had some experience with the expansion of the speech and debate clause by being on the loose end of Dombrowski and Powell in terms of the speech and debate aspect, but there the court's power is very clear in terms of the interests being balanced and the limitation.

Briefly I would like to call your Honor's attention to United States versus Johnson, some language at 185, which deals with the specific problem that you addressed to counsel this morning, then again to government counsel. Nobody contends there is any absolute war growing out of the speech and debate clause as to the Senator or anyone else for criminal conduct. What is contended is that the operation of the speech and debate clause, if there is a necessary nexus between the conduct and the legislative activity, there may then be a protection against criminal prosecution because of inability, one, to secure information, or two, to make him accountable for his conduct growing out of and a part of his legislative function, and that, of course, is what the court was talking about in Johnson. They sent it back and said he could be sent to jail under other circumstances and what have you, his account being bad.

[66] Now, your Honor, in terms of the accountability and lines that you were drawing this morning with my co-counsel in terms of the speech on the floor of the House and the Bar Association's meeting and beyond, I think that the problem is resolved by two considerations, the kind of interest which is being affected by the speech and the need for accountability, as well as its relationship to the legislative function, and obviously the legislative function is clearer where the speech is on the floor of the House; likewise when equally protected where it was in a committee hearing and committee activity and committee work.

In terms, then, I think it is material, highly material, in this situation that this activity involved occurred at a committee hearing. In terms of that aspect, your Honor, the Court is quite correct in its suggestion that it is improper and the Court is without authority to determine the propriety or impropriety, regularity or irregularity, of a subcommittee hearing.

In Powell the court goes even further. The court has in any other case no intervening into activities of the legislative branch, but even there, your Honor, there has been and continues to be a distinction between what the courts have referred to in a series of cases between internal management and external action. Of course, Marbury, that line of cases, when you got out of the legislative process, the finished product, the act that was resolved in the legislation, of course there is no [67] problem of judicial intervention and judicial review.

In terms of Powell, the exclusion from membership the court said was at the outer limits, but the court has reserved on the political question and other judicial terminology clearly a large group of activities on the part of the legislature which is beyond judicial scrutiny, regularity of votes, certification as to the voting, any number of problems.

We are not pressing that matter. Our not pressing it does not mean we concede the facts alleged by the government in terms of repudiation of Senator Gravel. We take the position, one, it is not the subject of judicial inquiry, and that is why we have not gone further into that matter. There has been no problem, there has not been any official act on the part of the Senator nor any repudiation on his part whatsoever, but I think the legal consideration here is the lack of power of the Court to inquire. That is, of course, a question of internal management, internal—

The COURT. Well, we know that the courts make inquiry as to the scope and authenticity and credentials of committees in contempt of Congress cases and some other types of cases. It can be done.

Mr. REID. But, your Honor, let's be clear, in terms of bringing into the picture the aid of the judiciary in the contempt cases, and that is where all those cases are, the question of whether or not the court would aid the legislature by [68] judicially imposed punishment as a result of contempt in the House, and at first the court would not put any limitation on congressional action that came quite late.

In order to protect the individual and balance the individual and the regularity of the legislative process, beginning, I think, with Thompson and subsequent cases, the courts for the first time imposed, as a protective shield, legislative purpose, regularity of meetings, and that kind of issue. In terms of what had been brought into question, that is the judicial question of contempt.

Now involved in that was not the activity of Congress and its prerogatives. Involved in those cases and contempt cases was whether judicial punishment ought to be imposed, and the court has refused to impose punishment without showing that it—

The COURT. Let me ask you a question on some other aspects you touched on earlier. Is it not material, in your analysis, for the Court to consider the relationship between the legislative function of the subcommittee of the Committee on Public Works and the promulgation of these papers that related to the national security? Mr. Vincent has made the point that were this something done before the Committee on Foreign Affairs, he would consider it to be covered by the speech and debate clause, but he suggests that having been done before a subcommittee whose concern was far removed from public affairs, that the clause would not apply. What is your view on that [69] point made by Mr. Vincent?

Mr. REID. Well, with a great deal of restraint, your Honor, my view is, he is in error.

The COURT. Well, I don't think that surprises me. But why?

Mr. REID. For a number of reasons, your Honor. The inquiry in the contempt cases was, of course, not the power of a particular committee to inquire, but what it had been authorized to inquire into. Even the legislative purpose there was one of authorization in order to call witnesses and testify, because you were balancing the private interest.

I think to go into the question here of the propriety or impropriety, legality or illegality, of this committee hearing in terms of appropriateness or inappropriateness, you have then sailed upon the sea of political thinking that the court warned against in Baker and Carr, and of course this has been involved ever since. The problem there would be one of germaneness.

Now, the question which the Senator raised was, of course, considered by him and others to have been highly germane to the Public Works Committee. Not only does this committee but a number of others have a great deal of activity in dealing with these particular problems, and it has, of course, the question of reordering those particular priorities. In order to do that, more and more other committees have gotten into the kind of expenditure, the kind of activity that we are engaged in, in the [70] foreign relations field and its impact on those particular programs. In fact, there have been some programs curtailed and affected.

The COURT. My question really is, Is that consideration material to decision of this motion, in your view?

Mr. REID. No, sir, and, as I say, I don't think the Court has power to inquire into it. The question is germaneness. But I want to merely point out that we are not contending that it was not germane, it was not the interest of this committee.

Your Honor, if I may say, the only reason I have gone into accountability is that I think it is important, but I don't think we ought to lose sight of actually what is involved in the posture of this case at this particular time, and that is not judicial accountability of an agent or the Senator, but confidential communication. At this particular stage, the government wants to do nothing more than to inquire from an aide and representative of the Senator, in terms of conduct and activity between the two. We say that the confidential communication growing out of inherent privilege and speech and debate, and we don't have to get into the question now of judicial accountability for the eventual act, but that this communication cannot be breached in this manner, and the posture of the government at this particular point is simply that.

The privilege of attorney and client, husband and wife, is not merely the communica-

tion aspect. It makes the agency problem [71] material. As Professor Wigmore has said in his treatise in terms of the privilege, the lawyer-client privilege, that obviously agents are included, because if you pierce the veil, at that point you have destroyed the communication. Also, your Honor, this husband and wife privilege is such communication, and may embrace and quite frequently embraces knowledge which has been obtained prior to the marriage, so it is the question of relating back in order to preserve the confidential communication.

I think also, because it gets to the response counsel made this morning to questions your Honor put in terms of the materiality of Mr. Rodberg's conduct the 29th, the day after or the day before, and of course, I think we can concede that where lack of interest in inquiry into his conduct before the 29th, as long as it is in the present posture of invading the communication, because we have no way of measuring the limitation nor the reason for employment, or what have you, you may have a different answer altogether when you get to the accountability stage, but in terms of invading the communication aspect, it is, I would think, highly relevant that the—

The COURT. Well, I don't want, as you already have suggested, to reargue the whole matter, but do I understand you take a different position than Mr. Reinstein, who argued first, that the grand jury could not properly inquire into events previous to the 29th? I thought he conceded that there could properly [72] be such an inquiry. I just want to be clear if you take a different position.

Mr. REID. I don't understand, your Honor, that I am taking a different position.

The COURT. Well, maybe not.

Mr. REID. I gather his response was in the context of accountability rather than in terms of the context of privileged communication, and I am saying because of the privileged communication that we feel its sole purpose here, and the government hasn't denied this, is to pierce the veil of communication. That is the posture, and—

The COURT. Well—

Mr. REID. Sir?

The COURT. He said, and I asked him specifically, I think, suppose questions were put only with respect to his activities previous to the 29th of June. I think he said, "Well, then, of course, we would have no objection." I think you now say that you might or that you would have objection, if I understand you correctly.

Mr. REID. Yes, your Honor.

The COURT. All right. I don't say what you must—

Mr. REID. I am not as sharp as I was. We had a lunch break in between.

The COURT. Well, maybe during lunch—at least I remember. I am happy to realize that I remember what occurred before [73] lunch.

Mr. REID. We have all been highly impressed by your Honor's memory.

In terms of the legislative function, sir, I think no hard and fast rule can be made there either in terms of the operation of the privilege. I think what we are trying to say is that what was accomplished in this case, including the three steps that you referred to this morning, offering material as the republication and discussion with publishers, I think what we are dealing with here, of course, is a committee record, committee testimony, and the promulgation of that. Of course, we don't have to go to any republication, especially those in the field of libel and slander, where the court has been inclined to limit the privilege in order to protect the individual from the injury occasioned by imposition of the privilege involved in Matteo and Bigelow and other cases, injury to a private individual because of not being able to get relief as a result of the operation of judicial privilege. Your Honor is, of course, quite familiar with the necessity of the confidential relationship and how that could be pierced by inquiry into executive and legislative privilege.

May I say, sir, to conclude, our position, of course, is that the operation of the speech and debate clause is such as to preclude the appearance of Mr. Rodberg before the grand jury, and therefore the motion to quash ought to be granted because [74] of the confidential relationship as well as the operation of the privilege.

Further, if it appears, however, that the Court feels the objection is premature, the problem, of course, in terms of whether it is timely or not, whether substantial injury occurs for which there is no further redress, the problem in this case, unlike others, in the grand jury room we would have someone purporting to assert the privilege of the Senator and to protect the Senator or not to protect him, as he felt free. The Senator, of course, would not be present, and the only way, if the Court agrees that there is this protection, that it can be guaranteed and preserved in this kind of situation is, of course, to prevent, one, the appearance altogether, and if not, certainly we ought to be in the same stage before he is ordered to appear that we are after the questions have been propounded so that the Court might direct itself not only to the area of response but the area of inquiry by the government.

I would like to say in passing, of course, I don't know the procedure in this circuit, where I am permitted to practice, but I have had some experience with the Justice Department in its expanded use of the grand jury to help it in its investigatory function, and the mere fact that the earlier communications involved in convening the special grand jury have been found, it does not follow that they are available to counsel or to the public.

[75] The convening documents and federal inquiry into the Fred Hampton death of 1969 in Chicago are to this day sealed, even the convening order, and the question that we have noticed by what is suggested in the convening papers does not follow, because usually, following the Attorney General's Manual, they are stated in such broad and general terms that you would not understand what it is about.

Thank you, your Honor.

The COURT. Yes. It is Mr. Stavis?

Mr. STAVIS. Yes, sir. If the Court please, I shall be the last to address the Court, I think. On behalf of the attorneys in this matter, I want to express our appreciation for the obvious patience and the interest the Court has had in this matter. Obviously these cases do present to the Court matters of enormous constitutional significance, and the concern of the Court is shown in dealing with and listening to the arguments, and we all appreciate it. I shall try to be very brief. I shall try not to duplicate specific points.

Directing our attention to the legislative immunity question, it is clear in the record that Dr. Rodberg's position is at the direct request of Senator Gravel. The first question which Mr. Vincent raises is whether the immunity extends to members of the staff, and I suggest that Mr. Vincent seems—I would like to call to the attention of the Court a number of items: firstly, the brief submitted by the Department of Justice itself, [76] in which, on behalf of Mr. Sourwine, who is on Senator Eastland's staff, the Department of Justice said it is clear that the information sought from the defendant has been received by him pursuant to his official duties as a staff employee of the Senate. As such, the information is within the privilege of the senate.

So the shoe is on the other foot. The Department of Justice had no difficulty in conceiving that the speech and debate clause extended as well to staff employees of senators.

The COURT. I didn't hear it quite completely. Was it staff employees of the Senator or the Senate?

Mr. STAVIS. In that case it was a staff employee of a senate committee.

The COURT. I see.

Mr. STAVIS. It is quite clear that the speech and debate clause of the Constitution extends to the senator. It doesn't extend just to the Senate. It is very clear in its terms that it applies to the senator.

Secondly, the difficulty that Mr. Vincent has in extending this speech and debate clause to employees, he overlooks the fact that the question is, what are you going to ask the employee about? Obviously if Dr. Rodberg was to be inquired into with respect to some bank robbery that he may have witnessed, obviously the speech and debate clause doesn't extend to that, because that has nothing to do with his function with the Senate. In [77] fact, I suppose the Senator himself might be the subject of a subpoena with respect to an automobile accident that he saw at the corner. But if the issue, the subject of interrogation, concerns the speech and debate of the Senator, necessarily it extends to those who work with him on that speech and debate and when you are trying to reach the speech and debate through an employee.

I suppose if tomorrow I go to my office and interview a client and then do the dutiful thing of dictating to my secretary a memorandum of our conference, I don't suppose that the lawyer-client privilege can be just disregarded by a subpoena served on my secretary in which the grand jury would say, "And what did Mr. Stavis tell you that the client told him?" and that is what this is all about, because the guts of the inquiry is the speech and debate of the Senator.

Mr. Vincent spent a great deal of time saying senators are not immune from criminal responsibility. Of course, they are not. Nobody has ever suggested that they are immune from criminal responsibility, but that doesn't happen to be what this case is about. The question is whether they are immune from being compelled to testify about a speech and debate, so any case which says that they are not immune from criminal responsibility is irrelevant.

Mr. Vincent says maybe the actions of subcommittee were beyond his power. Well, the Senate is a self-governing body. [78] It knows how to handle its own committees and subcommittees. It even has disciplinary power, and it really would be extraordinarily beyond the power of this Court, or any other court, for that matter, to step into that kind of question. I hear tell there is a good deal of contention between the Armed Service Committee and the Foreign Affairs Committee. Perish the thought that that question would be presented to this Court for adjudication to see whether or not each is staying within its bailiwick.

Mr. Vincent couldn't quite recall the case but he said there are some cases in the Supreme Court in which the Court says the Congress has to do its business pretty carefully if it expects us, the courts, to prosecute contempt of Congress. It has to delegate its power carefully. Resolutions on contempt must be careful, so on and so forth. Of course, the case is the Novak case, but the Novak case went a little further and said the only time we get concerned with how you run your business is when you come into this courtroom and ask us to prosecute somebody for something that he didn't do before a committee, but as far as you do your own business and don't come into court to ask for our help, that is your affair. The court has no business intervening in the self-governing quality of the legislature.

Here the shoe is quite on the other foot, because the executive is now trying to move in against a senator and say, and we are telling you, we are telling you, in fact, we

looked to [79] the court to make that decision for us, that he was acting outside his balliwick. It would be a gross violation of the concept of separation of powers to do that.

Then we have the question of the loss of privilege, namely, it is all right to make a speech on the floor, to make it even in a committee, but if you start publishing speeches on the floor or in the committee, then you lose the privilege. Hentoff against Ichord, 318 Fed. Supp. 1175, at 1179, is directly to the contrary. There the legislative activities are not limited to speech or debate on the floor of Congress. Information in the report involves matters that concern the public, and the court will take no action which limits the use an individual congressmen is to make of the report or its contents on the floor of the Congress.

We are not talking about fund-raising speeches by congressmen. I am talking about the publication of a document which constituted a presentation which constituted the record of this subcommittee. I understand that the publication will be exclusively the record of the subcommittee. We cannot deal with the question of loss of privilege when that is the issue.

So much, it seems to me, needs to be said on the question of privilege, congressional speeches, and the debate privilege. I should like to spend just a few moments on the electronic surveillance question.

The COURT. Well, now I am trying to think. Didn't I rule [80] on that?

Mr. STAVIS. I don't—

The COURT. Pardon?

Mr. STAVIS. The matter is in our papers.

The COURT. Oh, yes, I ruled on that at the hearing, and I cannot offhand recall whether you attended it or not, but this is on something that the—

Mr. STAVIS. May I suggest—

The COURT. What was it? Was it the first of—No, it was the 20th of August. I asked counsel for Dr. Rodberg what he had, if anything, along the lines of the matter of an affidavit or other indication that there had been any electronic surveillance—this was Mr. Reif—and he said that because he had stated in his affidavit that on information and belief, there were questions that would be based on electronic surveillance, and correct me if I am wrong, but he said he had nothing except a suspicion, and therefore I ruled on that at that time. He can correct me if I am wrong. Isn't that what happened?

Mr. STAVIS. May I respectfully address myself to your question?

The COURT. But let me ask this: Were you present?

Mr. STAVIS. I was not.

The COURT. Well, why don't we—

Mr. STAVIS. I will ask Mr. Reif to address himself to that.

[81] Mr. VINCENT. If I may answer the question, you denied the motion in regard to electronic surveillance.

The COURT. I think I did.

Mr. VINCENT. You did, your Honor. Mr. Reif will bear me out on that.

Mr. REIF. Your Honor, that is correct. You denied the stay on the question of surveillance. It is our understanding that you did so on the basis of Mr. Justice Douglas' opinion in Russo.

The COURT. Yes. I am sure I did, so I am not going to reopen that aspect of it.

Mr. STAVIS. I wouldn't want to tax the patience of the Court.

The COURT. You see, I did not do that in Professor Falk's case because his lawyer spoke about getting some affidavits and so forth. There was just a distinction in the way the cases were treated. And I have heard Mr. Homans too, originally. I have heard all that can be—I have read these cases.

Mr. STAVIS. I don't want to tax the patience of the Court. I did simply want to say that it had been our view that when you denied the motion in that respect, it was without the knowledge that your Honor acquired today, namely, the Mr. Justice Douglas' denial of the stay to Mr. Russo was based on a representation made in the District Court by the representative of the Department of Justice, who happened to be Mr. Vincent.

[82] The COURT. Well, that is right. I didn't know that at that time, but that was not really the basis. I explained my basis then, and I just used Justice Douglas' language. You might say that I agreed with Judge Gibbons in the Third Circuit if you want to find the reasons for my ruling. So that is a matter apart.

Mr. STAVIS. May I therefore proceed to the last point.

The COURT. Fine.

Mr. STAVIS. Which is the First Amendment point. Mr. Vincent dismissed it rather casually with respect to Dr. Rodberg by saying, on this journalistic privilege Mr. Rodberg's case doesn't approach that of Dr. Falk, because he hasn't published very much. It seems to me that there is a rather basic misconception, at least in Mr. Vincent's formulation, as to what the privilege is.

The question of journalistic privilege is a First Amendment privilege, and to approach this in terms of "Do you work for a daily newspaper or a weekly newspaper or a monthly newspaper? Are you a regular? Are you fulltime? Or are you whatever else it is called?" misses the whole thrust of what the Court itself recognized this morning was an emerging recognition of the singular role of the First Amendment in its relationship to some of these grand jury proceedings.

What I would like to suggest, your Honor, is that just as courts have recognized this emerging role, so must the courts recognize the emergence in recent years of what amounts to a [83] new kind of profession, which I would like to call the scholar-communicator or the journalist-communicator. It is a development, your Honor, roughly since World War II. Scholars today do not live in the ivory tower or sit in the library publishing their findings only in learned journals that are read by their colleagues and then get lost. The scholar-communicator is the scholar who communicates to the public and contributes to the education of the public, as has indeed the journalist in our society.

That communication, your Honor, has been to the public and, as clearly noted in the affidavits of Dr. Rodberg as well as Professor Falk, these are communications to the legislative body, which is, after all, the center of the development of legislative policy in this country. It is fair to say that there has emerged a new professional identity.

Interestingly, your Honor, some of the individuals who function as the scholar-communicators function as individuals, but in large measure, some of their activities have become institutionalized in institutes, so that, for example, you find Dr. Rodberg, as the affidavit shows, is engaged by the Institute for Policy Studies; Dr. Falk is engaged by the Center for International Studies.

Creation of these institutes, which, incidentally, happen to enjoy tax exemption from the United States income tax laws, is itself a recognition of the public interest, the public [84] interest in the on-going, continuing role of the kind of scholarship and communication that these people engage in.

What is the reason for the emergence? And I suggested that this emergence has occurred only since the end of World War II, the reasons for the emergence of this new kind of professional identity. Largely, I think it reflects an enormous increase in executive power, particularly employed secretly, and for that reason the unique contribution of these scholar-communicators is that they have been tearing away the veil of executive secrecy so as to inform the public and the legislators as to what is happening.

The COURT. Excuse me. Don't you think you are going a bit beyond rebuttal? I don't remember Mr. Vincent talking about this matter.

Mr. STAVIS. May I have just two more minutes, your Honor?

The COURT. All right.

Mr. STAVIS. Because I would like to relate to your Honor the role of the grand jury and the role of the grand jury proceedings against these scholar-communicators, your Honor. Who would recognize, who would recognize the supposed grand jury proceeding as constituting a shield to the public against the over zealous prosecutor? The reality of this grand jury proceeding is that it is a weapon, a weapon of a secret hearing sought to pick off, to harass, the very group of individuals who more so than any other group have contributed to the emerging [85] public understanding of the nature of the issues with respect to the Vietnam War, and the use of the secret proceeding is designed to extend the entire concept of executive secrecy in the development of policy.

The issue, therefore, comes back to the formulation which Mr. Vincent tried to employ but which I suggest misses the point. The question is not whether Dr. Falk or Dr. Rodberg is or is not a journalist, though it happens that Dr. Rodberg has listed for me a whole series of things that he has in fact published: One, two, three, four, five books, articles in Look Magazine, the Washington Post, everything.

That is not the question. The question is the characteristics of the operation of the First Amendment privilege to prevent the employment of the secret grand jury process, employment of it as a device to throttle, throttle communication to the public of matters of public interest. That is what Caldwell was about, and that is what these cases are about.

Thank you very much, your Honor.

The COURT. Well, I have indicated already that I won't be deciding these motions off the bench. I want to read some of these cases and consider some of these arguments.

Since nothing more remains to be done, I expect, we will adjourn until Monday morning at nine-thirty.

[Thereupon the hearing was concluded.]

VOLUME 3

[1] [United States District Court, District of Massachusetts, EBD 71-172-G]

United States of America vs. John Doe.

Proceedings had in the above entitled cause before the Honorable W. Arthur Garrity, Jr., Judge of said court, in Court Room No. 7, Federal Building, Boston, Massachusetts, on Tuesday, October 12, 1971.

Appearances:

Warren P. Reese, Esq.,
Chief Assistant United States Attorney,
Southern District of California,
appeared for the government.

Robert Reinstein, Esq.,
appeared for Senator Mike Gravel.

James Reif, Esq.,
appeared for Leonard Rodberg.

[2] PROCEEDINGS

The COURT. Good afternoon, gentlemen. Before resuming the patent case—please stay where you are—I hear that counsel in the Senator Gravel/Dr. Rodberg case are here, or some of them are here. Is anyone here on behalf of the government?

Mr. REESE. I am here appearing for the government, your Honor. My name is Warren Reese. I am Chief Assistant United States Attorney from the Southern District of California. I am on temporary assignment to this case.

The COURT. Well, I received the motion for reconsideration. I have read the memo but not as carefully as I expect to, nor have I had an opportunity yet to read the cases. I will not have oral argument on this motion. I will, however, withhold decision until the government has had an opportunity

to file a reply memo, if it wants that opportunity.

Mr. REESE. Thank you, your Honor.

The COURT. I would welcome a reply memo from the government. How long do you think—Have you seen the memo filed on behalf of the senator?

Mr. REESE. Yes, I have, your Honor.

The COURT. And do you expect to file a reply?

Mr. REESE. It was my intention to, yes, your Honor.

The COURT. How long do you think you would need?

[3] Mr. REESE. Well, I suspect I would need perhaps two days. I am thinking of—

The COURT. Well, we will make it Friday.

Mr. REINSTEIN. If I may, your Honor.

The COURT. Pardon?

Mr. REINSTEIN. If I may.

The COURT. Just a moment. I just want to be sure that Mr. Reese—You will have your memo in, then, by Friday.

Mr. REESE. Yes. I can do that, your Honor. Incidentally, I should advise the Court that Dr. Rodberg has been subpoenaed to testify before the grand jury on Thursday. This subpoena was issued after your Honor entered his order disposing of the motion.

The COURT. Well, can his appearance be continued until next week?

Mr. REESE. It can be continued until a subsequent time, your Honor, unless next week is a preferable time for your Honor's convenience.

The COURT. Well, what is today, Tuesday?

Mr. REESE. Yes, your Honor.

The COURT. Well, why don't you—Well, I would have to have your memo by tomorrow, late afternoon, in order to consider it. It is up to you whether to get a memo in tomorrow afternoon and permit the subpoena to stand subject to further order, or to get the reply memo in on Friday and continue Dr. [4] Rodberg's appearance.

Mr. REESE. I think the latter, your Honor, is the desirable course to take. Next week may not be an opportune time, but sometime subsequent to Thursday, and after your Honor has had an—

The COURT. All right. At least, he is excused from appearing on Thursday, and the stay entered back in September or late August—I have forgotten which—when he was first subpoenaed is now reinstated, so that he may not be called until further order of the Court. And I will look for the government's reply on Friday.

Now you had something else to say?

Mr. REINSTEIN. Well, you took care of it, your Honor.

The COURT. Yes.

Mr. REIF. Your Honor, my name is James Reif. I represent Dr. Rodberg. From the way your Honor phrased it, I wasn't sure whether your Honor had received the papers we filed this morning as well. We filed a similar motion and memo as well.

The COURT. Oh, no, I haven't. All I have here is a motion on behalf of Senator Gravel and a 29-page memo in support of the motion, but you filed similar papers?

Mr. REIF. Yes, at about 9:30, and the woman informed us that your office would receive them as soon as you came in.

The COURT. Well, I just haven't seen them as yet, but [5] if the government wishes to reply to them, the Friday date applies to the motion of Dr. Rodberg as well.

Mr. REESE. Thank you, your Honor. May I have an indication of when your Honor expects he may render a decision in this matter?

The COURT. Well, of course, three weeks ago Friday when I heard you gentlemen on the original motions to quash and specify, I felt I would be coming down with a decision the following Monday or Tuesday, and it was almost three weeks thereafter before I did, so I just cannot predict. I would not expect it would be that long, because I have read so many of the cases cited in the memo, but I want to reread some of them in the light of the arguments here presented, so I am just not going to predict, however, when I will issue a decision, but I hope—I am confident it won't be as long as three weeks, which it was the last time.

Mr. REESE. Thank you, your Honor.

The COURT. So that is the program on these motions.

Mr. REESE. Your Honor, for the edification of the Court, I should state that the government has absolutely no intention of interrogating either Senator Gravel or any other member of his staff regarding the speech he made on the 29th of June during a meeting of the subcommittee.

The COURT. Well, any thing you wish to state along those lines I do think is better stated in writing, just so there [6] will be no misunderstanding. You are going to be filing a memo, and such representation as you wish to make along those lines I think should be incorporated in the memo.

Mr. REESE. Thank you, your Honor.

Mr. REINSTEIN. Before withdrawing, may I just apologize to you for some of the typographical errors that appear in that brief. The time in which we were working was so limited that the normal proofreading—

The COURT. Well, I am not going to decide it on the basis of any typographical errors, I am sure. So that is fine, and that is the end of the proceedings in this matter, and we will resume in the patent case.

Mr. REESE. Thank you, your Honor.

Mr. REINSTEIN. Thank you, your Honor.

Mr. REIF. Thank you, Your Honor.

[Thereupon the hearing was concluded.]

VOLUME 4

[United States of America, District of Massachusetts, Nos. EBD 71–172–G, EBD 71–209–G]

United States of America v. John Doe.

Proceedings had in the above entitled cause before the Honorable W. Arthur Garrity, Jr., Judge of said court, in Court Room No. 2, Federal Building, Boston, Massachusetts, on Wednesday, October 27, 1971, and Thursday, October 28, 1971.

Appearances:

Richard E. Bachman, Esq., Assistant United States Attorney, appeared for the government.

Robert Reinstein, Esq., and Charles L. Fishman, Esq., appeared for Senator Mike Gravel.

[2] PROCEEDINGS

The COURT. Would counsel come up, please, in the emergency matter. Here is a note I have: "Witness: Webber." Mr. Bachman's problem, which is in the note he wrote to me, is that Mr. Reese is en route to Boston from San Diego. As soon as Mr. Reese arrives, the government is prepared to have a hearing, but in Mr. Reese's absence, Mr. Bachman feels he may not be sufficiently familiar with the proceeding, and there is the way the matter stands.

What I could do is hear you during an afternoon recess or sometime. Has anyone filed an appearance or filed an affidavit or anything on Mr. Webber's behalf?

Mr. REINSTEIN. No, your Honor.

Mr. FISHMAN. We understand Mr. Webber is out of the country. This is one of the reasons we only discovered Mr. Webber has been subpoenaed by the government to appear before the grand jury.

The COURT. Well, query, whether there is any matter that could be ruled on short of Mr. Webber's being served.

Mr. REINSTEIN. Your honor, Mr. Webber was served before he left the country.

The COURT. I see.

Mr. REINSTEIN. And was ordered to return tomorrow to appear.

[3] The COURT. By whom?

Mr. REINSTEIN. By the United States Attorney. I believe that subpoena was signed by Mr. Vincent, I am not sure. We have just received word very recently that he was—that this all transpired sometime ago, and that he is expected back in the country tomorrow and expected to appear before the grand jury tomorrow. We have, your Honor, no knowledge of his disposition. For all we know, your Honor, he may be prepared to appear and testify without objection on his part. However, on the part of the senator, we have objections to raise.

We also have information, as you can see in our motion for further relief, your Honor, which raises some serious questions on two scores. One is with respect to the interpretation of your Honor's order of October 4th as to what matters may be inquired into and what matters may not be inquired into before the grand jury. We have information which indicates that the government plans to call witnesses before the grand jury, both today before they cancel and tomorrow, to inquire into matters which we are firmly convinced violate your Honor's order of October 4th.

The government also indicated to us that it is calling witnesses before the grand jury, one of which is Mr. Webber, to testify with respect to matters that are presently under consideration by your Honor in a motion for rehearing. It is [4] our understanding that those matters also should not be inquired into prior to your Honor's ruling in that matter.

The COURT. Well . . .

Mr. REINSTEIN. We would be . . .

The COURT. I understand the grand jury is not sitting today, for one thing.

Mr. REINSTEIN. That is correct, your Honor. It was cancelled.

The COURT. And I have set a hearing . . . What is today, Wednesday?

Mr. FISHMAN. Wednesday, your Honor.

The COURT. . . . for Friday in the matter of one witness named Mrs. Marx, I believe. I could schedule a hearing for tomorrow morning but, as I say, I am reluctant to keep you over.

Mr. REINSTEIN. Would your Honor grant a restraining order until such time as he has heard and decided the motions so that witnesses are not before the grand jury giving the very testimony we seek to prevent while we are arguing?

The COURT. I will act in any matter only on the basis of a written motion. That is the first thing. I won't . . .

Mr. FISHMAN. We have filed a motion for a stay, your Honor.

The COURT. I have here a motion to quash or stay, a motion to intervene.

[5] Mr. REINSTEIN. Yes. And a motion for further relief, your Honor.

The COURT. Yes. I have the three motions right here. Well, all I can say is that I don't know, without having read them further and giving them further study.

Mr. FISHMAN. Your Honor, it will be acceptable for us if a hearing were set for tomorrow morning. We will be glad to stay over in Boston. It is not that inconvienent.

The COURT. Well, yes.

[The Court conferred with the clerk.]

The COURT. Here is what we will do. I have too many things scheduled between nine and ten o'clock tomorrow morning. Therefore, we will have to see whether we go forward with Mr. Bachman. All I can say is, I will look at these papers, I will look at these other matters, which I have already to some extent, of course, and I will just simply have to let you know through Mr. Moynahan. I frankly don't know what I will do at this moment, but I will think of something.

Mr. REINSTEIN. Regardless of the time or circumstances, your Honor, we would appreciate an opportunity for short oral argument before your Honor on the matter.

The COURT. Well, I will let you know as soon as I can, probably shortly after one and shortly before two, as to just what I will do in the way of scheduling a hearing, in the way of ruling on these matters, or in some

other respect. I just [6] frankly am not sure at this juncture as to just what I can do. There are other matters either in progress or assigned. Mr. Moynahan will let you know.

[Thereupon the hearing was concluded.]

[United States District Court, District of Massachusetts, Nos. EBD 71–172–G, EBD 71–209–G]

United States of America v. John Doe.

Proceedings had in the above entitled cause before the Honorable W. Arthur Garrity, Jr., Judge of said court, in Court Room No. 2, Federal Building, Boston, Massachusetts, on Thursday, October 28, 1971.

Appearances:

Warren P. Reese, Esq., Chief Assistant United States Attorney, Southern District of California, appeared for the government.

Robert Reinstein, Esq., and Charles L. Fishman, Esq., appeared for Senator Mike Gravel.

John Evans Jones, Esq., appeared for Howard Webber.

[2] PROCEEDINGS

The CLERK. Emergency Business Docket No. 71–209, United States versus John Doe.

The COURT. Good morning, gentlemen. For the record, please state your names and the clients whom you represent.

Mr. REINSTEIN. My name is Robert Reinstein. I am a member of the Maryland bar and have been previously admitted to practice in this matter. I represent Senator Mike Gravel. With me representing Senator Gravel as cocounsel is Charles Fishman, who is a member of the bar of the District of Columbia and has also been admitted to practice in this matter.

Mr. REESE. Warren Reese, appearing for the United States, your Honor.

The COURT. All right. The matter that is actually set for hearing is this motion pertaining to a subpoena presumably served on a witness, Howard Webber. However, I think that these other motions filed on behalf of Senator Gravel relating to the subpoena served on Mr. Rodberg probably should be heard today also. Have you any different view, Mr. Reese?

Mr. REESE. No, your Honor.

The COURT. All right. Well, that is that. Now let me ask that counsel address themselves first to this motion to quash or stay the subpoena on Mr. Webber. We have heard nothing from the government on this. Perhaps I should get [3] some statement as to the facts from Mr. Reese. There was something stated on counsel's understanding yesterday that Mr. Webber was coming back to this country and would be here today. Is he available, Mr. Reese?

Mr. REESE. He is, your Honor. He is in Boston.

The COURT. He is in Boston. Maybe he is here in the court room.

Mr. REESE. He is not in this court room, your Honor, but he is in Boston.

The COURT. Incidentally, in the past I have asked that any member of the grand jury not attend these hearings. Is there any grand juror here? because I would want him to leave if there were.

[No response.]

The COURT. Well, I will consider, then, these motions, perhaps first with respect to Mr. Webber, although it might be well for the Court to state that on consideration of these memoranda of law filed in the Rodberg matter, the Court plans to, although it has not actually, endorse a denial on Senator Gravel's motion for reconsideration. The Court wants to hear argument, however, on the matter of the second part of that motion, having to do with a motion to stay the order.

So now I will hear either Mr. Reinstein or Mr. Fishman.

Mr. REINSTEIN. Addressing ourselves first, your Honor, to the Webber matter, we have filed a motion to intervene with [4] respect to the subpoena at issue on Mr. Webber, and we have also filed a motion to quash or to stay the grand jury subpoena.

Our motion to intervene and the motion to quash and stay is primarily on the same basis as in the Rodberg case, and we ask for the same relief. It is our belief that Mr. Webber has been called by the government to testify before the grand jury concerning the attempts by Senator Gravel to have the record, the official record, of the Senate Subcommittee on Buildings and Grounds, which was compiled on June 29th, published and made available to the public.

Your Honor has in the record of the Rodberg case an article in the Boston After Dark, a three-page article which describes in great detail Mr. Webber's role as Director of the MIT Press and negotiations on the publication of the subcommittee record which were held between Mr. Webber and Senator Gravel and members of his staff. Your Honor has already relied on these articles in the Rodberg matter, and we would like to incorporate them herein.

The precise issue, therefore, is whether or not the grand jury may inquire into actions by a member of Congress to make available to his constituents or the public by republication an official record of a Senate subcommitee. This is, of course, a matter your Honor has under reconsideration in Dr. Rodberg's case and which your Honor has now advised us that he intends to deny.

[5] The COURT. Right.

Mr. REINSTEIN. Because of the complexity of the issues, your Honor, and the fact that at the very least, we believe some of the cases, if not all, that we have cited in our memorandum of law give support for our position, we would ask for a stay in both the Webber case and the Rodberg case pending appeal. The problem, of course, is that we have no control over the witnesses. There is no means at all for Senator Gravel to obtain appellate review on this very, very important question except by a stay being issued by your Honor or by the Court of Appeals pending an appeal.

As we pointed out, the Supreme Court held in the Perlman case that denial of a motion to quash a subpoena with respect to an intervenor, such as Senator Gravel in this case, is a final order and is appealable under 28 U.S.C., Section 1291. We are not asking, therefore, for certification; we are simply asking for a stay pending appeal.

This precise issue has never really before been presented to the Courts of Appeals or to the United States Supreme Court, and all of the cases which were cited by both ourselves and by the government relate to libel cases. A civil suit in a libel context is different, given the historical underpinnings of the speech and debate clause. Therefore, in order to present Senator Gravel's legal position to appellate courts in a manner in which it can be decided by them is not [6] mooted by these witnesses' appearing before the grand jury and deciding, as they very well may, to answer questions posed on republication, it is essential that a stay of the subpoenas be granted.

The COURT. Let me hear from Mr. Reese. I will get back to you on other points, but I would like to get, preliminarily at least, the government's view on these motions.

Mr. REESE. Well, your Honor, it appears that the motions have been stimulated or motivated by the protective order which was included in your Honor's order denying the original motion to quash, and that the senator desires to be given some sort of supervisory control, some surveillance, if you will, of the government's investigation, the grand jury's investigation, so that he can be sure that the protective order is not violated.

The COURT. Well, that is not the principal point of the senator, as I understand these motions. The principal quarrel that he has with the Court's protective order is that it does not forbid inquiry into the republication.

Mr. REESE. Yes, your Honor.

The COURT. That is not the only point on which he wishes to appeal, at least the clearest point. Now what I would like you to comment on is whether you consider that there is any method of obtaining appellate review of this Court's order other than the way suggested by Mr. Reinstein, or whether you [7] feel that the matter is so lacking in substance as not to be appealable. I don't know what your position is on this matter.

Mr. REESE. Well, our position more nearly approximates the latter proposition that your Honor just stated. We don't feel that the order is final or appealable. Neither do we feel it is worthy of certification. The senator has not yet been affected by any act of the government, and I suggest to your Honor that he would not be affected until such time as any evidence obtained through this grand jury investigation was sought to be used against him in an administrative or judicial proceeding, whether criminal or civil.

I don't mean to suggest by that statement that we entertain the use of any such evidence against him, but it seems to me that he has not been injured as a consequence of questioning which takes place before the grand jury, and consequently, your Honor's order does not at this point have such operative effect as to impose any injury or disability on him and it will not unless and until the order is disobeyed, and we certainly don't intend to disobey the order, and if evidenced is elicited, if and when it is used in such a way as to affect Senator Gravel's legal status. His status has not been affected at this point.

The COURT. I am far from clear that the speech and debate clause prohibits only use. It speaks in terms of inquiry, you see. Any inquiry is forbidden, not just any use.

[8] But let me get back to Mr. Reinstein, please, on a different aspect of this matter.

Mr. REESE. Yes, your Honor.

The COURT. Well, I would rather talk just to Mr. Reinstein, although I will hear Mr. Fishman later if you want or if you have something not covered by Mr. Reinstein.

I am not clear that the Perlman case is applicable in this circumstance, and I would like you to discuss Perlman a little bit further.

Mr. REINSTEIN. Yes, your Honor.

The COURT. Do you have an appealable order? That is one question I have. The second question I have is this: I don't think that Mr. Webber's situation is the same as Dr. Rodberg's; that is, the relationship is not the same. The reason for the Court's permitting Senator Gravel to intervene in the matter involving Dr. Rodberg was the same as the California court in Caldwell.

Caldwell was an employee of the New York Times. The New York Times was permitted to intervene. Dr. Rodberg was on the personal staff of Senator Gravel. He was not in every respect but substantially in the same position as was the New York Times in the Caldwell case. We are lacking that relationship here. Query, whether Senator Gravel has a relationship to Mr. Webber which would warrant his intervention.

So those are two questions I would like you to speak to, [9] the right to intervene, and secondly, whether you do have an appealable order, short of a court order directing Mr. Webber to testify, or some order beyond what you have stated you believe would be a sufficient basis for appeal.

Mr. REINSTEIN. Well, your Honor, first, on the intervention, our basis for moving to intervene in Dr. Rodberg's case was that Senator Gravel's legal rights were being threatened by the grand jury proceeding. It wasn't merely that Dr. Rodberg was an employee or agent of Senator Gravel, but that the grand jury inquiry was directed to Senator Gravel, and we believed that that in-

quiry was barred by the speech and debate clause.

Now, in your Honor's protective order, your Honor forbade the questioning of any witness, not just Dr. Rodberg, with respect to subject matter which your Honor held was barred from inquiry by the speech and debate clause. Therefore, it seems clear to us that Senator Gravel's rights in the Webber case stand on exactly the same footing as in Dr. Rodberg's case because our claim is essentially identical, that is, that a witness is being called before the grand jury and the government intends to ask him questions about matters which we believe they cannot do constitutionally.

We have no control over this witness. We have certainly less control over Mr. Webber than we conceivably could have over Dr. Rodberg. If Mr. Webber decides to enter the grand [10] jury room and testify about these matters—and we feel that this is a violation of the speech and debate clause—in that event the Constitution will be violated, and there is no subsequent remedy for that violation, because the constitutional violation, as Dr. Rodberg pointed out before, is the inquiry itself.

Indeed, in United States versus Johnson, when Johnson made a motion to quash the indictment because the grand jury had elicited impermissible evidence, the Court of Appeals ruled the indictment could not be quashed on that basis. So even if we accept Mr. Reese's suggestion that some rule might be fashioned, if the government decides to continue its inquiries in criminal proceedings against Senator Gravel, there in fact is not even a proper exclusionary rule, but in any event, the point of the speech and debate clause is to prevent the questioning itself, to prevent harassment, and it extends to the principle of separation of powers, which prohibits judicial inquiry into the matter under protection.

The issue in Mr. Webber's case is the same as one issue in Dr. Rodberg's case, and that is whether or not the grand jury may inquire into activities of Senator Gravel in attempting to have published the official record of a Senate subcommittee. That is certainly a very substantial question for the appellate court, and I suppose that brings me to the question of the appealability of denial of the motion to quash, and discussion [11] of the Perlman case. Actually, your Honor, the Perlman case also involved intervention, and I think it supports our motion to intervene as well.

What happened in Perlman was that Perlman was involved in a civil suit in which certain of his property was obtained by discovery and then introduced into evidence, and one of the lawyers in the case had possession of the property. The United States Government then decided to investigate Perlman for alleged violations of federal law before the grand jury, and a subpoena was issued directed to the lawyer who possessed Perlman's property. The lawyer did not dispute the subpoena. The lawyer was quite willing, as Mr. Webber may be in this case, and Dr. Rodberg, to appear before the grand jury and, in that instance, to turn over the property.

Perlman then filed a motion to intervene in the District Court—I believe it was then called Circuit Court—and Perlman moved to quash the subpoena and to obtain his property back. His arguments were two-fold on intervention. One was proprietary argument, that he had a proprietary interest in the property, but the other, which was the more fundamental argument and the only one discussed on the merits by the Supreme Court, was that the subpoena itself violated Perlman's Fourth Amendment rights, in that it amounted to an unlawful search and seizure.

The Supreme Court held, first, that on either basis, [12] Perlman had a right to intervene, and second, the Supreme Court held that the denial of the motion to quash the subpoena was a final, appealable order. The government's arguments in that case were, I think, identical to the argument set forth here by Mr. Reese, that Mr. Perlman should have waited until the proceedings were completed and the constitutional harm done and then try somehow, in some unspecified way, to get his property back and to somehow remedy what he contended was unlawful search and seizure, and the Supreme Court held unequivocally that Perlman had a right to appeal and that it was a final order and not interlocutory.

We have also called your Honor's attention in our reply brief to numerous cases in the Circuit Courts of Appeals which have established the proposition, particularly in cases like this where third parties who were intervenors are concerned, that where one of those third parties or intervenors is asserting a legal interest in either a subpoena issued by a grand jury or a subpoena in a civil case, and a motion to quash is denied, or, for that matter, granted, even though both of these actions are normally not appealable under Section 1291 as final orders, they are if that party can show that there is no alternative means of securing appellate review before the constitutional harm is consummated and there is no means of redressing them.

That is precisely the case that we have here. If the grand jury is permitted to go ahead and question Dr. Rodberg [13] and Mr. Webber about the question of republication, and they in their discretion decide they would not wish to be held in contempt of court and will therefore answer these questions, there is no way for us to file an objection, since Senator Gravel has no right, nor his representative, to be inside the grand jury room.

There is no post hoc exclusionary rule that can remedy the harm done, and if we are right that this is prohibited by the speech and debate clause, there will be a constitutional violation and it will turn into a fait accompli. As a matter of fact, it would seem to me that at that point the case would be entirely mooted and we could never take an appeal, given the United States versus Johnson, from what the grand jury did even should the government decide later on to continue its criminal proceedings against Senator Gravel.

The COURT. Now I would like to put a question, but since you have said three times that these proceedings are against Senator Gravel, I am constrained to say that I have never observed any indication in any of these papers that this proceeding is directed against Senator Gravel.

Mr. REINSTEIN. By directed against Senator Gravel I meant, your Honor . . .

The COURT. There are inquiries being made of things that he may have participated in, or perhaps not, but surely I have never seen any indication that he is a subject of any grand [14] jury investigation. I think that should be noted.

Mr. REINSTEIN. Well, your Honor . . .

The COURT. I haven't seen any such indication.

Mr. REINSTEIN. Yes. I am not suggesting, your Honor, that the government intends to indict Senator Gravel. I wasn't suggesting that. The point I was making . . .

The COURT. Well, I know what point you were making, but I think you may be overstating just a little bit the . . .

Mr. REINSTEIN. Well, the grand jury is part of the institution of criminal proceedings, your Honor.

The COURT. Well, I would not have mentioned it except that you said three times that there was a grand jury proceeding against Senator Gravel. I just don't think the evidence supports such a characterization.

Let me ask this . . . two things: I am considering granting a stay for a short period of time, such as a week or ten days, during which time an appeal might be taken and a further stay granted by the Court of Appeals. That is at least a possibility here. Do you think that there is a proper distiction drawn between Mr. Webber and Dr. Rodberg on the basis of Dr. Rodberg's having filed statements in briefs and in oral argument through counsel to the effect that he feels duty-bound to resist the grand jury subpoenas?

Here is what I have in mind: Any doubt as to the appealability of any order that I might make would be removed should [15] I order Dr. Rodberg to testify, and perhaps, should he refuse to testify, the Court would entertain, if the government wants to seek one, an order that he be held in contempt, which motion I would act on, but should I make such an order, a stay would be more likely in such a situation . . . would be likely, let me put it that way, in such a situation, and there would be no question as to the appealability of such an order.

I do feel that there may be a distinction here with regard to the senator's rights in the Rodberg matter and in the Webber matter, and I would like to hear your view of that. Hasn't Dr. Rodberg already gone on record in these proceedings to the effect that he considers, due to his being a member of the senator's personal staff, he is duty-bound to refuse to answer these questions? Why shouldn't the Court proceed on that basis?

Mr. REINSTEIN. Your Honor, I don't think Dr. Rodberg has ever represented to the Court that he will not testify before the federal grand jury. We do not, of course, represent Dr. Rodberg. Senator Gravel has no legal power over Dr. Rodberg. Given the secrecy of the grand jury proceedings, we are not even in a position to be able to find out after the fact exactly what happened in the grand jury proceedings.

Your Honor possibly may be correct. I honestly don't know. I have not discussed either Dr. Rodberg or his counsel what he intends to do should all of his motions be [16] denied and another subpoena served on him or an order served on him to appear before the grand jury. It does seem to me, however, your Honor, that it may be impermissible speculation to assume that Dr. Rodberg will not answer those questions upon the threat of a contempt citation against him.

With respect to Mr. Webber, I suppose your Honor is suggesting that the appealability in Mr. Webber's situation is probably stronger than in Dr. Rodberg's, and . . .

The COURT. No. I am suggesting only that the appealability of . . . an order directing Dr. Rodberg to testify or adjudging him in contempt for refusal to testify is clearly appealable.

Mr. REINSTEIN. Yes, your Honor.

The COURT. There you remove any doubt about the Perlman applicability. What about a stay of a short period of time, perhaps one week, subject, of course, to a further stay being granted by the Court of Appeals? How long would you need to appeal an order of this Court? You would appeal it promptly, I would assume.

Mr. REINSTEIN. Yes, your Honor. We would appeal almost immediately.

The COURT. Well, let me ask Mr. Reese some questions about this matter. One of them I neglected to ask before is whether or not Mr. Webber is represented by counsel of his own selection.

[17] Mr. REESE. Yes, he is, your Honor.

The COURT. And who is his counsel?

Mr. REESE. Mr. John Curtin, who has his office here in Boston.

The COURT. Is Mr. Curtin present in the court room?

Mr. REESE. No, he is not, your Honor.

Mr. JONES. I am associated with Mr. Curtin. I haven't had an opportunity to discuss the case at any length with Mr. Webber, since he has just returned from out of the country.

The COURT. Well, there has been no appearance filed. I just wondered if he had separate counsel, which he evidently has.

Mr. JONES. Yes, your Honor.

The COURT. Thank you. What now are your comments, Mr. Reese, on these points made by Mr. Reinstein? if any. I am not requiring that you do so. You have already stated the government's position generally, but I wondered if you had any particular points to raise in response to Mr. Reinstein.

Mr. REESE. I don't think I can offer anything new, your Honor. We feel, as I have indicated, that the speech and debate clause is concerned with a congressman being called to account for conduct, as distinguished from being protected from questioning in an interrogating setting, so to speak, but I want to confirm that the government entertains no idea of proceeding against Senator Gravel. That is simply not probable in this case at all.

As far as the witness Webber is concerned, certainly the [18] subject matter of his testimony could not logically be limited in any event to statements or conduct of a staff member of Senator Gravel regarding a mission that he might have been on as a representative of Senator Gravel for the purpose of publication of the Pentagon papers. There are other factual components which we have a legitimate interest in which might be forthcoming from the witness Webber which have absolutely nothing to do with this contact with a representative of Senator Gravel's staff.

The COURT. Well, that introduces a new element, you see. It has been assumed by the senator's counsel, and also by the Court, that your interest in Mr. Webber related to the conversations between him and Dr. Rodberg that were described in that Boston newspaper article. To the extent that your inquiries of Mr. Webber have to do with other matters than republication of the senator's incorporation of the Pentagon papers into the subcommittee file, well, then, I expect different considerations would be controlling.

Mr. REESE. Well, your Honor, I didn't want to suggest that there was an obviously separate area of inquiry. I must in fairness concede that the other areas of interest to us are ancillary, so to speak, or originated from the contact made by the senator's representative.

The COURT. Well, thank you.

Mr. REESE. So they are not that easily segregated.

[19] The COURT. I just wanted to ask, Mr. Fishman had some point. I don't want you to just repeat something Mr. Reinstein said. If you have some separate point to make, however, I will hear you, as I said I would.

Mr. FISHMAN. With respect, your Honor, to the question we are dealing with, it seems to me there are three basic points I would like to make fairly clearly. The first is that the issue before your Honor I submit does not revolve around the status of Mr. Webber or Dr. Rodberg, but revolves around the point the Court made earlier, which is whether or not under the speech and debate clause there can be an inquiry.

If that is the key, inquiry, prohibition of inquiry, it doesn't seem to matter what the relationship is between people so long as they have privileged knowledge. Dr. Rodberg does have privileged knowledge, as the Court has recognized. Mr. Webber does have privileged knowledge, as counsel for the government just stated. If in fact we are correct, the republication is protected. That is the basis upon which we seek to intervene, not the status of the parties, but the nature of the inquiry sought by the government.

The second point is on the question of appealability. In the Perlman case, the court specifically said that the only reason Perlman's appeal was allowed was the absence of any other remedy to Mr. Perlman; if he was going to raise the question at all and secure a ruling on his constitutional [20] point, the only way that could happen is if the court took the order as a final order for purposes of the federal statute.

We have precisely the same question here. It is a functional approach. If this Court should hold that the order is not appealable, then there is no other vehicle by which the senator can raise the question. There is an absence . . .

The COURT. That is a point that was pretty well discussed by Mr. Reinstein. I don't want a rehash of Mr. Reinstein's argument but whether there was something separate you had in mind.

Mr. FISHMAN. No. That is all, your Honor.

The COURT. I will take these motions . . . Well, I guess Mr. Reese has something to say. He consulted with his associate.

Mr. REESE. Without abandoning our opposition to the theory that the Court's order is appealable, I would like to point out to the Court that his investigation has been very, very seriously impeded. I don't think anybody would deny that. However, if the Court grants a stay for a short period of time for the purpose of accommodating filing of a notice of appeal, I would urgently request that that period of time be very short and that a condition of it be that the senator be ordered to file his appeal within twenty-four hours. I think that is really just a rather perfunctory form of proceeding, a piece of paper filed indicating that the movant intends to appeal [21] the decision of the Court.

The COURT. Well, I will consider the point, but actually the time limit on the stay would be gauged not simply to counsel's speed but to the availability of the Court of Appeals. Judge Aldrich in the Court of Appeals chances to be at the Judicial Conference of the United States, in Washington.

Mr. REESE. I see.

The COURT. He is not in Boston today. That is another consideration. But I had one other—Oh, this matter of impeding of the grand jury investigation. I just don't like to let these comments go without the Court's comments. I was constrained to comment when Mr. Reinstein said three times that the senator was a target of this investigation. As far as the delay of the grand jury proceedings is concerned, I think the delay has been at least partially attributable to the necessity of government counsel's being all over the country in this matter.

I am thinking, for example, of the matter set for hearing tomorrow morning. The government requested a ten-day or two-week postponement. I was prepared to hear that matter a week or more ago, and it was set down for tomorrow because the government asked that the hearing be scheduled for some time on or after the 28th of—I think it was after the 28th of October, so I don't consider that the delay here can be attributed to anybody. I think it is in the nature of the [22] situation, and I don't charge these witnesses or defense counsel or anyone, including government counsel, with the delays. These delays are just in the nature of the situation.

Mr. REESE. I understand, your Honor. I should have used the word delay. Incidentally, as to the matter that was to be heard tomorrow, I noticed for ten days out of consideration for counsel for the witness in that case. I would have been delighted to have it heard immediately. It was no convenience of mine that was a factor in that ten-day period.

The COURT. That is what I mean by the nature of the situation. These delays are sometimes required by the complexity of the problems presented.

I will take a short recess and come out and announce my ruling on this matter.

Mr. Reinstein wants to get in the last word.

Mr. REINSTEIN. Well, your Honor, we also have the question of the motion for further relief to be discussed.

The COURT. Oh, I am considering that. I have it here. I thought that your remarks had encompassed that.

Mr. REINSTEIN. No, your Honor, they did not. The motion for further relief is somewhat separable from our motion to intervene and to quash in the Webber case.

The COURT. Well, then, say what there is to this over and above what you have already said.

Mr. REINSTEIN. Yes, your Honor. Subsequent to your [23] Honor's memorandum and decision of October 4th, we obtained information which made it necessary for us to file this motion for further relief and also a motion for a stay of all grand jury subpoenas outstanding, that were issued by this particular grand jury.

The reasons for this are two-fold. First, we have learned that the United States Government has subpoenaed witnesses who possessed information on the issue of republication. I am referring not only to Mr. Webber and to Dr. Rodberg; there are other witnesses as well. We do not have, unfortunately, a list of all of the witnesses whom the grand jury has subpoenaed. We do have information, though, that from the names that we have now, a substantial number of them do possess information on the issue of republication, and in prior conversation with Mr. Reese, he was fairly forthright in admitting that the grand jury was interested in that question.

Secondly, we have also learned that the United States has subpoenaed certain other witnesses for the purpose of inquiring into matters which we believe are barred from inquiry by your Honor's protective order of October 4th. We do know that certain witnesses possess privileged information, first of all, and second of all, again, in discussions with Mr. Reese on October 12th, he did tell us that the government was interested in finding out the source of the material which Senator Gravel used to prepare for the subcommittee hearing on June [24] 29th and the material which was then inserted into the record. We believe that this and other questions of privileged information which these witnesses possess have to be determined in advance, or else there is the same threat as there is in the Rodberg and Webber case of Senator Gravel's constitutional rights being violated without any mechanism being available for us to object and for the Court to construe the meaning of its protective order of October 4th.

We therefore moved that the United States provide a listing of all the witnesses who have been subpoenaed or are scheduled to appear before the federal grand jury in order that it may be determined which of these witnesses, in addition to the ones that we know of already, possess privileged information or are in the position of Mr. Webber and Dr. Rodberg, and then we would like with respect to those witnesses a hearing to be held to determine what relief can be granted to Senator Gravel.

We propose here, as with Dr. Rodberg and Mr. Webber, that the only feasible technique is a governmental specification on the proposed scope and the questions to be asked by the grand jury, as the government did in the case of United States versus George and the Caldwell case. They did that voluntarily, and they were ordered to do that by the District Court in the Verplanck case as a prerequisite for continuing.

Those cases involved issues of much lesser constitutional [25] importance. At least, United States versus George did. The court there was concerned with a nonconstitutional privilege, the husband-wife privilege, as well as the right of a person not to be called by a grand jury on the same matter for which he has been indicted. The government there voluntarily provided a specification.

The Caldwell case involved issues of substantial constitutional importance under the First Amendment, and so did Verplanck, and the issues we are raising here are at least as important in the context of separation of powers and the free speech rights of members of Congress.

The government has never responded to our argument that a specification was necessary and that it is impossible for there to be scrupulous compliance with a protective order and judicial review of it without the court's overseeing what is happening in advance in the grand jury. This is a technique that the Supreme Court has ordered in First Amendment cases involving seizures of allegedly unprotected written material and injunctions against demonstrations.

We don't see, particularly with the fact that the government has subpoenaed Mr. Webber particularly—we might also mention Mr. Chomsky, who has information on the issue of republication, and whom we believe the government has subpoenaed for that purpose. The government has done this even though your Honor took under reconsideration at that very time our [26] motion for reconsideration on the very issue of republication, which is dispositive of the Webber case, at least, and probably the Chomsky case.

The COURT. The reason for the Court's taking it under advisement was to enable the government to reply. I didn't wish to rule on the matter without giving government counsel an opportunity to reply.

Mr. REINSTEIN. And what the government did was, thereupon . . . I am not accusing the government of bad faith; I am just trying to illustrate the difficulties we have in trying to assure Senator Gravel's rights under the protective order will in fact be sustained, because in the interim, the government subpoenaed at least two people for the purpose of inquiring into the question of republication while your Honor had the motion for reconsideration under advisement and while the stay of the subpoena to Dr. Rodberg was issued.

We also have the fact that the government has told us that they were very much interested in finding out the source of material that a United States Senator obtained and used in preparation for a speech in a subcommittee report. We think that is barred by the first provision of your Honor's protective order. We also know there is other information which proposed witnesses have which relates to the conduct of the hearing itself, the preparation for it, and conduct antecedent to it which is intimately related to the subcommittee hearing.

[27] The COURT. It is things done by the senator, not by Dr. Rodberg. It is not things done by other persons.

Mr. REINSTEIN. Yes, your Honor.

The COURT. In other words, if these papers, let's say hypothetically, passed through the hands of Mr. X and Mr. Y before they came into the senator's possession, I don't expect that any reasonable construction of the first paragraph in the protective order would bar inquiry into the actions of Messrs. X and Y.

Mr. REINSTEIN. We are not suggesting that. We are suggesting that the inquiry that the government intends is to find out how Senator Gravel himself, first of all, obtained the information, how he prepared for the hearing. The information, how he prepared for the hearing. The information which we are talking about is information which people know of. With respect to Senator Gravel himself——

The COURT. Let me ask some questions of Mr. Reese on this matter.

Mr. REINSTEIN. Yes, your Honor.

The COURT. What is your response to these points?

Mr. REESE. Well, my response, your Honor, is along the lines of the hypothetical that your Honor just presented on X and Y. I have got to deny the factual assertions made by counsel here that we are concerned with Senator Gravel's activities with regard to these papers and the preparation of his meeting and the reading into the record of the papers and [28] and so on. We are definitely interested in the source of the papers, and it seems to me I made that fairly clear in my comments to counsel on the occasion of our first meeting.

Incidentally, your Honor, I suppose I should go on to say in response to counsel's argument that we would effectively be deprived of an investigative tool which is legitimately ours, it goes without saying, if what was permitted was virtually unfettered surveillance by the senator of the scope of the investigation.

The COURT. Here is the other problem raised by Mr. Reinstein: Pending appeal, perhaps the Court should consider some sort of protective order relating to the republication insofar as the senator, either personaly or through Dr. Rodberg, took actions directed toward republication. I am aware that on the merits I felt that the government was sound in its position that republication was not embraced by the speech or debate clause. I surely, however, could not characterize as frivolous the position taken by Senator Gravel's counsel. What would the government's view be toward refraining from, pending appeal, exploration of things done by either Senator Gravel or Dr. Rodberg in connection with republication?

Mr. REESE. May I confer for just a moment?

The COURT. Yes.

[Brief pause.]

Mr. REESE. Well, Your Honor, the government's position [29] is that we should not agree to that approach because of the possibility of our conducting an investigation into the sources of publication of the Pentagon papers by other entities which could conceivably lead us to the identification of Dr. Rodberg as a source, and then we would be coming up against the problem which would be presented by this kind of a protective order.

The COURT. Well, I will take these matters under advisement for a short period of time. Do you have some final point?

Mr. REINSTEIN. Yes, I do, your Honor. I would just like to make the point that the discussions that have gone on now about the two questions of the propriety of proposed questions before the grand jury, we just meant those to illustrate the problems that we have of enforcing and that the Court has in judicial review of enforcing the protective order. We now have debates upon the legality of two proposed questions. We cannot anticipate all of the proposed questions.

I don't think we can ask to post a sentry outside of the grand jury room door to see who is being called and whether he knows anything about Senator Gravel. That is why, your Honor, in the motion for further relief we have asked for a listing of the names of these people and a determination of which ones have privileged information, so that some sort of specification procedure or another procedure of that sort can be used [30] to insure judicial review of these questions. The same thing is going to happen in the grand jury room, with one difference, and that is, the witness will be in no position to determine whether or not the government is violating, albeit unintentionally—we don't accuse them of bad faith—but in any case, the witnesses cannot determine your Honor's protective order and whether or not questions posed to him are barred by the protective order or whether there is a substantial question as to whether or not they are. That is why we are asking for a specification that the government has characterized as our position of surveilling the grand jury, which I think is incorrect, your Honor, given the fact that the government has voluntarily used this exact procedure before in cases of lesser constitutional magnitude.

The COURT. You have said that before. We will not take a recess.

[A recess was taken.]

AFTER RECESS

The COURT. Here are my rulings on these matters. First, in the Webber matter, the motion to intervene is allowed. With respect to the motion to quash or stay the grand jury subpoena, the motion to quash is denied but the motion to stay is allowed to the extent that enforcement of the subpoena on [31] Howard Webber is stayed for ten days. I haven't written out in the margin the purpose, which I think is obvious. It is contemplated that counsel for Senator Gravel as intervenor will appeal promptly, and the stay for ten days is allowed rather than three or five or seven because whether the stay should be extended is the sort of question that has to be given some consideration by the Appellate Court.

Those, incidentally, are in EBD 71–209. The Clerk's Office opened up a separate case with respect to Mr. Webber.

Now with regard to 71–172, which has to do with Dr. Rodberg, there are similar orders entered. On the motion of the senator for reconsideration and stay pending reconsideration or appeal, the motion for reconsideration is denied, but the motion to stay is allowed to the extent that enforcement of the subpoena on Leonard Rodberg is stayed for ten days, and the other orders in that case are parallel.

The government filed a motion for an order commanding Leonard Rodberg to appear before the grand jury today. That motion is denied without prejudice to renewal upon expiration of stay or stays, as the case may be, of enforcement of the subpoena on Leonard Rodberg granted on the motion of the intervenor, Senator Gravel.

Now we have here a motion by Dr. Rodberg for rehearing or certification, and for stay. The motions for rehearing or certification are denied. The motion for stay is mooted by [32] the stay of ten days granted on the motion of Senator Gravel. In other words, the party here who has standing to appeal and whose interests are at stake is the intervenor, Senator Gravel, and is not Dr. Rodberg. It is on the senator's motion, not on Dr. Rodberg's, that the stay is granted, but the effect is the same. Dr. Rodberg may not be questioned by the grand jury for a period of ten days. Whether that period is longer than ten days will be something that will be decided by the Appellate Court.

Now, on the motion for further relief, I have not written the order as I have in the other motions because there is not room in the margin to write what I will write when I get downstairs this noontime, or after the noon recess. With respect to this motion for further relief, I don't know whether it should be said it would be denied in part and allowed in part, but this is what I will be writing. It is denied to the extent that it requires the government to list witnesses and to file lists of questions that are going to be asked of witnesses and in other respect to sort of preview the grand jury's interrogation to be sure that the senator's rights are not violated. It will, however, be allowed to this extent: that the Court will fashion a supplemental protective order of the same duration as the stay barring inquiry into acts done either by Senator Gravel, or by Dr. Rodberg as his agent, arranging for the republication of the Pentagon papers.

[33] I will say by way of explanation, I am not granting the relief in the form of lists of witnesses and questions and that sort of thing, because the Court relies, and feels it has good reason to rely, on the intelligence and good faith of government counsel in abiding by the Court's protective orders. I don't need to be at government counsel's elbow to be sure that unambiguous orders are obeyed. That is the reason I want to write this rather than just state it orally. I want

to be certain that the supplemental protective order contemplated is in writing such that it can be a clear guide to governmental counsel.

The purpose of it is, I trust, obvious, and that is that until the Court of Appeals has had a look at this case and these motions, the substantial point which Senator Gravel seeks to preserve must be protected, and absent the supplemental order that I have outlined, the point could be mooted by questions which would be answered by grand jury witnesses, without any means of protecting and preserving his point.

I hope to file this order in writing this afternoon, but in the interim I would specifically direct government counsel to abide by what I have said at this time.

I think that disposes of the motions that are pending to be heard this morning. I don't think it disposes of them to everyone's satisfaction necessarily, but is there anything that is pending that has not been ruled on?

[34] Mr. FISHMAN. Well, just one minor item we would point out, your Honor, which is, on the motion for further relief we also specifically addressed ourselves to the question of how Senator Gravel received the papers. One allegation—

The COURT. Yes, but I consider that the order already entered covers that.

Mr. FISHMAN. In the sense—I want to make it for the record, your Honor—in the sense that your Honor's order prohibits the government from questioning any witness now or possibly in the future who are to be brought before the grand jury with respect to how Senator Gravel got those papers. Is that correct, your Honor?

The COURT. It bars inquiry into what he did or what Dr. Rodberg did after Dr. Rodberg was hired as the Senator's assistant. It does not bar inquiry into what Dr. Rodberg did previous to his becoming an assistant.

Mr. FISHMAN. That is correct, your Honor. That is correct.

The COURT. Or members of the Senator's personal staff. All I can do is repeat the X and Y example. Whatever he did is privileged and may not be inquired into, but let's—Well, really, all I have to say is, read the Johnson case again. That is all I can recommend. I am not going to enlarge upon the memorandum I wrote. I endeavored to spell it out in the protection order already entered, and I think I did, so [35] I am not going to enlarge upon that further at this time.

Mr. FISHMAN. That is satisfactory.

The COURT. And I don't know who is going to be here tomorrow. What is on for tomorrow?

Mr. REESE. Mrs. Marx, your Honor.

The COURT. Mrs. Marx.

Mr. REESE. And Mr. Chomsky.

The COURT. And Prof. Chomsky.

Mr. REESE. Yes, your Honor.

The COURT. All right. Well, that concludes this matter. And we will get the jury in the land damage case.

Mr. REINSTEIN. Thank you, your Honor.

Mr. FISHMAN. Thank you, your Honor.

[Thereupon the hearing was concluded.]

VOLUME 5

[Caption Omitted in Printing]

Donald M. Woodring, sworn Direct Examination by Mr. Reece.

[54] Q. Would you give the Court your name and address and current employment? A. Donald M. Woodring. I am assigned to the Boston Division, Federal Bureau of Investigation,

Q. Pursuant to that employment, Mr. Woodring, when did you first call on the New England Merchants Bank? A. I believe it was last Wednesday.

Q. Last Wednesday.

The COURT. A little louder please. I am the gentleman who is supposed to be hearing this.

The WITNESS. Excuse me. It was Wednesday.

Q. Was that before the subpoena was served or after? A. To my knowledge it was after the subpoena was served.

Q. Did you call upon the bank before the subpoena was served? A. No, sir.

Q. To your knowledge did anyone else from your agency call upon the bank? A. I have no idea.

Q. Who did you have conversation with on Wednesday when you first called on the offices of the bank? A. W. Clifford Gittins. He is Assistant Vice President.

[55] Did you talk with any other officers of the bank on that date? A. No, sir.

Q. When did you next visit the bank? A. I haven't been there since Wednesday.

Q. Wednesday of last week? A. Just this past Wednesday.

The COURT. We are talking about two Wednesdays then?

The WITNESS. No, sir, one day.

The COURT. I thought you said you went to see him before the subpoena was served.

The WITNESS. No, sir. I said I did not.

The COURT. I beg your pardon. If you will please keep your voice up? This is a big room.

The WITNESS. Yes, sir.

Q. So this past Wednesday was the first time you visited the bank? A. That's true.

Q. And to your knowledge it is the first time anyone from your agency had visited the bank?

Mr. BACHMAN. Well——

A. Well, someone, it is my understanding that someone was over there to serve the subpoena.

[56] Q. Is it your understanding someone was there prior to the service of the subpoena? A. No, to serve the subpoena.

Q. Is it your understanding—do you understand whether anybody was there before the service of the subpoena? A. I have no idea as to that.

Q. Who accompanied you on Wednesday, this past Wednesday, when you went over? A. This would be Special Agent Charles Hickey.

Q. Is he in the court room today? A. No, sir.

Q. Is he in this building today? A. I have no idea.

Q. Would you tell the Court what you did at the bank on this day? A. Yes. I went into Mr. Gittins' office, and he was not in the office at the time I walked in. I had called him before I went over so he was expecting me, and his secretary was present. She said, "What you want to see is here."

Q. Do you know her name? A. Mrs. Hume. I believe. She said, "The documents you're looking for are right here."

Q. I can't hear you.

[57] Mr. REECE. Your Honor, I don't hear him well either.

Q. Would you mind keeping your voice up? I can't hear you, sir. I apologize. A. I always think I'm talking too loud and end up going down. She said, "The documents that you're interested in are here on the desk. If you want to sit down, fine."

Q. So at the time you made this visit there had been collected for you some bank documents? A. That's correct.

Q. Which were turned over to you? A. That's correct.

The COURT. He didn't say they were turned over.

Q. They were given to you for your inspection? A. For examination, that's right.

Q. Who was present while you inspected these documents? A. Mrs. Hume was sitting at her desk. Special Agent Hickey was there. And after very few moments Mr. Gittins arrived.

Q. What did you do in reference to these documents? A. All I did really was to page through them, noting the description of the account, and attempted to eliminate [58] those accounts which I felt we would not be interested in.

Q. What was the criteria for determining what you would be interested in or would not be interested in? A. I felt that what we will be interested in would be a general operating account, and on that basis I could eliminate the payroll account, a building management fund, and things of that sort.

Q. What was your interest in the general operating account?

Mr. BACKMAN. I object.

The COURT. Excluded.

Q. What did Mr. Hickey do in connection with these documents? A. I don't know that he did anything except sit there with me while I looked at them.

Q. Did either of you make any copies? A. No, sir.

Q. Did either of you make any notes as a result of your examination of the documents? A. I did not.

Q. Did Mr. Hickey? A. I don't know.

Q. Weren't you both sitting together? [59] A. Yes. We did not make any notes at the time we were in the office. What he may have written up when he returned to the office I don't know. I was there, I might add, because of my familiarity with bank records in general, that is basically being an accountant.

Q. Had you been familiarized with the Court's order in respect to this subpoena? You knew the subpoena had been served? A. I knew there was a—I had been told there was a subpoena served.

Q. Had you been told that the Court had taken any further action in regard to this subpoena? A. No, not that particular subpoena.

Q. Sir? A. I was aware of no action in regard to that particular subpoena.

Q. How did it happen that you visited the bank on that day, on Wednesday, this past Wednesday? A. I was asked to do so by superiors in the office.

Q. Would you indicate to the Court what superiors ordered you to do so?

The COURT. I am losing you, Mr. Reed.

Q. Would you indicate to the Court what superiors ordered you to appear at the bank? [60] A. I'm trying to think. Actually, the instructions I got came from my own supervisor, Thomas J. Honan, and the instructions, and so forth, came from another agent, who is Robert Bowe.

The COURT. Have we got it clear what the instructions were?

Mr. REED. No, sir.

Q. What were the instructions, sir? A. I was told to discuss with the Vice President of the bank means of simplifying the request in the subpoena.

The COURT. Means of simplifying what?

The WITNESS. The request in the subpoena. In other words, it was a rather blanket subpoena, and we were trying to narrow down just where our interest might lie.

Q. What criteria was given to you for narrowing your inquiry? A. Well, that is difficult to say. We were looking for certain payments and transactions, which would not occur, say, in some of these other accounts which I eliminated.

Q. Was the criteria limited by the publication of the Pentagon Papers?

Mr. BACHMAN. I object, your Honor.

[61] The COURT. Well, that is a leading question, I suppose. Strike it out.

Q. There came a time then, I gather, that you decided you were interested in some records and not interested in other records? A. That is correct.

Q. Was the subject matter of the Grand Jury inquiry discussed with you?

Mr. BACHMAN. I object.

The COURT. He may answer.

A. Could you clarify that a little, please?

Q. You knew a Grand Jury subpoena had been served on the bank? A. Yes.

Q. Did anyone ever discuss with you the scope of the Grand Jury inquiry? A. Not really. As I say, I am not involved in the investigation or any other matters other than as a kind of accounting advisor, put it that way.

Q. You were given such information so you would know what bank records were relevant and what were not relevant, were you not?

Mr. BACHMAN. I object, your Honor.

The COURT. He may answer.

[62] The WITNESS. I may answer?

The COURT. Yes.

A. Yes, sir.

Q. How did you determine that relevancy? A. Well, I knew the things we would be interested in would be transactions in a general account, general operating account.

Q. Relating to what? A. Well, relating to certain of the transactions we might be interested in. I don't quite know how to——

The COURT. You have gone all the way around the barn without letting us know what kind of barn it was.

The WITNESS. Well, we were interested in the so-called Pentagon Papers.

Q. In the publication of the Pentagon Papers? A. Right.

Q. Were you interested in any transactions with relation to Senator Gravel?

Mr. BACHMAN. I object.

The COURT. What is your objection?

Mr. BACHMAN. I think he has already answered the question, that the Pentagon Papers was the general subject given to him, and that is all there was.

[63] The COURT. He may answer.

The WITNESS. I shall answer?

The COURT. Yes.

A. Yes, sir.

Q. What is your answer, sir? A. Yes, sir.

Q. When is your next appointment with the bank? A. I have none.

Q. When you left the bank what was your understanding as to what would be done? A. That certain of the transactions contained on the account that we had narrowed the thing down to—

Q. That you had identified? A. Yes. In other words, we ended up with two accounts that we would be interested in and some of the backup material to those accounts was going to be prepared for us.

Mr. REED. That is all, your Honor.

CROSS-EXAMINATION BY MR. BACHMAN

Q. Mr. Woodring, could you describe the type of document that you or the documents that you examined while you were over there? A. Yes.

[64] What I looked at was bank copies, in some cases photostatic copies, of normal bank statements, the kind everyone would get.

The COURT. Copies of normal bank statements?

The WITNESS. Yes, the bank statement that you would get at the end of each month.

The COURT. By "normal" do you mean typical? I don't know what "normal" means.

The WITNESS. Yes.

The COURT. I don't want to put words in your mouth. I am very curious as to the details of what you were looking at. How detailed was it? How extensive was it?

The WITNESS. This would be that bank statement that would be very similar or exactly the same really that any individual would get as a statement of his account at the end of the month.

Q. Would you describe the information that these papers or that any one of these papers contained, not specifically but the type of information? For example, did it contain the name of the account? A. Yes.

Q. The account number. A. Yes.

[65] Q. Was it a statement of the deposits that were made to that account during a given period of time? A. That is correct.

The COURT. Like the monthly foldover statement?

The WITNESS. Yes, sir.

Q. And it was a statement of the amount of the checks drawn? A. That is correct.

The COURT. Was this a monthly statement?

The WITNESS. Yes, it was.

The COURT. How many of them did you look at?

The WITNESS. I believe they covered from July through October.

The COURT. Of nine different accounts?

The WITNESS. I do not recall the exact number of accounts, but I would say somewhere between eight and ten.

The COURT. Well, if they already had the statements, what were all these items that would have to be prepared?

The WITNESS. This would be photostatic copies of the individual checks.

The COURT. So if it just said $5,280, you didn't know what that was for or who it was to?

[66] The WITNESS. That is correct, sir.

The COURT. Thank you.

Q. Did you make or did anyone in the bank make and give you any copies of these statements? A. No, sir.

Q. Did you make any notes of the items that appeared on the statements? A. No.

Q. Did you make any notes as to the various account names or numbers? A. No.

Q. Did you subsequently make any report of any of the information contained in any bank statement or any of the statements which you looked at? A. No, I did not.

Q. To your knowledge did Mr. Hickey? A. Not to my knowledge, no.

Mr. BACHMAN. May I have a moment, your Honor?

The COURT. Yes.

Q. Did you have a conversation with Mr. Gittins as to which accounts you would not be interested in? A. Yes, I did.

Q. About how many of the between eight and ten accounts did you tell him there would be no interest in? [67] A. All of them but two.

Q. Did you make any arrangements with Mr. Gittins to receive in the future any documents from him or from the bank concerning or that might have appeared on the statement or where items might have appeared on the bank statements? A. Yes.

Q. Did you understand the question? A. Maybe I didn't.

Q. Did you make any arrangements to come over and pick up any copies of any documents at a later time? A. In an indirect way, yes. He was going to copy, as I mentioned, some checks, deposit tickets, and so forth, and then notify the office, and at that time we would pick them up.

Q. Have you received any notification from him? A. No.

The COURT. This is Mr. Gittins?

The WITNESS. That is correct, sir.

Mr. BACHMAN. I have nothing further, your Honor.

Mr. REED. That is all, your Honor.

The COURT. Thank you.

Mr. REED. Thank you, Mr. Woodring.

[68] Mr. FISHMAN. I don't know what would be involved on the basis of this, your Honor.

The COURT. A little louder.

Mr. FISHMAN. I don't know what would be involved at this point, but on the basis of this testimony we think it would be important to call Special Agent Hickey in to pursue this line a little further to establish just what he did.

The COURT. Where is Mr. Hickey?

Mr. BACHMAN. I have no idea, your Honor.

The COURT. When did you last see him?

Mr. BACHMAN. I don't believe I have ever seen him.

The COURT. You, sir?

Mr. REECE. Your Honor, I talked with Special Agent Dan Glasgow, I think about 1:30 I talked to him, and I asked him the names of the agents who went to the bank, and he gave them to me, and he said that neither of them was in, that one of them was in the field, I think it was Mr. Hickey, I'm not sure, and I told him to have him call me immediately. I, of course, have not been in my office for some time, and I have had no response with the exception, of course, of Mr. Woodring.

[69] The COURT. Well, we will take a recess for you to go down and see whether Mr. Hickey is around and available.

Mr. REECE. Very well, your Honor.

(Recess.)

(Arguments of counsel.)

[Supreme Court of the United States, October Term, 1971—Nos. 71-1017, 71-1026]

CONSOLIDATED BRIEF OF SENATOR MIKE GRAVEL

Mike Gravel, UNITED STATES SENATOR, *Petitioner, v.* United States of America, *Respondent.*

United States of America, *Petitioner, v.* Mike Gravel, United States Senator, *Respondent.*

On writs of certiorari to the United States Court of Appeals for the First Circuit.

OPINION BELOW

The opinions of the United States Court of Appeals for the First Circuit and the Protective Order (as modified) are not yet reported and are reproduced in the petition for writ of certiorari filed by each party hereto. The opinion of the District Court is reported at 332 F. Supp. 930 (D.C. Mass. 1971).

JURISDICTION

The judgment of the United States Court of Appeals for the First Circuit was entered on January 7, 1972 and was amended on January 18, 1972. A timely petition for rehearing was denied on January 18, 1972, and Senator Gravel's petition for writ of certiorari was filed on February 9, 1972. The Solicitor General petitioned for writ of certiorari on February 10, 1972. Both petitions were granted on February 22, 1972. The mandate of the Court of Appeals was stayed by Mr. Justice Brennan acting as Circuit Justice on January 24, 1972, pending the filing and disposition of the petition for writ of certiorari, provided that filing of the petition occur on or before February 10, 1972. The stay was extended until disposition of the case on the merits, and an expedited schedule was ordered upon motion of the Government.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Court of Appeals rightly held that there was jurisdiction under 23 U.S.C. § 1291 because Senator Gravel had no other means of obtaining review and consequently the denial by the District Court of his motion to quash was, as to him, a final appealable order. *Perlman* v. *United States*, 247 U.S. 7 (1918). See *United States* v. *Ryan*, 402 U.S. 530, 533 (1971). The Court of Appeals' finding in this regard has not been challenged by either party hereto. Similarly, this Court has jurisdiction.

QUESTIONS PRESENTED

Questions presented by Senator Gravel:

1. Does the constitutional responsibility of a United States Senator to inform his constituents and colleagues about the workings of government require that his actions in publishing an official, public record of the subcommittee of which he is chairman, containing documentary information critical of executive conduct in foreign affairs, be accorded protection as legislative activity under the Speech or Debate Clause?

2. May a federal grand jury at the request of the executive branch inquire into and investigate the legislative activities of a senator by utilizing compulsory process to interrogate persons with whom a senator dealt and to secure documents about his planning and executing a senate subcommittee hearing and publishing the official record of that hearing?

3. May an otherwise impermissible inquiry

be allowed because the legislative activity in question was carried out in a manner deemed by a federal court to be irregular and contrary to the court's notions of germaneness and of the proper way for the Senate to internally allocate its functions?

Questions presented by the Solicitor General:

4. Whether Article I, section 6, of the Constitution providing that ". . . for any Speech or Debate in either House," "the Senators and Representatives . . . shall not be questioned in any other Place" bars a grand jury from questioning aides of members of Congress and other persons about matters that may touch on activities of a member of Congress which are protected "Speech or Debate."

5. Whether an aide of a member of Congress has a common law privilege not to testify before a grand jury concerning private republication of material which his senator-employer had introduced into the record of a Senate subcommittee.

CONSTITUTIONAL PROVISION INVOLVED

Article I, section 6, of the United States Constitution, commonly referred to as the Speech or Debate Clause, provides:

"The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; *and for any Speech or Debate in either House, they shall not be questioned in any other place.*" (Emphasis added.)

STATEMENT OF THE CASE

The facts which form the basis for all of the legal submissions in this case are undisputed and are reported in the decisions of the District Court (S.G.P. 38)[1] and Court of Appeals (P.W.C. 1a).

Senator Mike Gravel is a duly elected and certified member of the United States Senate and chairman of the Senate Subcommittee on Buildings and Grounds. On June 29, 1972, he convened a public meeting of the subcommittee with United States Congressman John Dow testifying as a witness. During the course of the meeting, Senator Gravel read and inserted into the official subcommittee record part of the material commonly referred to as the "Pentagon Papers" (P.W.C. 2a). Senator Gravel stated at the outset of the hearing that the conduct of United States foreign policy in Indochina was relevant to his subcommittee, as to practically every subcommittee in the Congress, because of its effects upon the domestic economy, and specifically, the lack of sufficient federal funds to provide for adequate public facilities (S.G.P. 46–47). In order to make the contents of the subcommittee record widely available to his colleagues and to the electorate, Senator Gravel arranged, without any personal profit to himself, for its verbatim publication[2] by Beacon Press, a nonprofit publishing division of the Unitarian Universalist Association (P.W.C. 2a). Also in July, the Department of Justice and the United States Attorney for Massachusetts requested the United States District Court for the District of Massachusetts to convene a grand jury.

On August 24, 1971, the federal grand jury sitting in Boston and investigating the release of the Pentagon Papers, subpoenaed Dr. Leonard Rodberg, an aide to Senator Gravel, and ordered him to appear and give testimony three days later before the grand jury (App. 6). Dr. Rodberg had become a member of Senator Gravel's personal legislative staff on June 29, 1971, and acted from that point on under Senator Gravel's direction and control.[3] Dr. Rodberg is still on the personal legislative staff of Senator Gravel (App. 11). On August 27, 1971, Dr. Rodberg moved to quash the subpoena in the court below (App. 5–7). On that same date Senator Gravel moved to intervene, which motion was briefed by the parties and granted by the court below on September 1, 1971 (App. 1–2).

Senator Gravel then moved to quash the grand jury subpoena or for a specification of the purpose and scope of the inquiry (App. 2–4). Senator Gravel and Dr. Rodberg both alleged that the Internal Security Division of the Justice Department intended to interrogate Dr. Rodberg before the grand jury about the actions of Senator Gravel and his aides in making available to his colleagues and the electorate the contents of the material forming the subcommittee record, which was critical of executive conduct in foreign relations (App. 4, 6). Evidence in support of this allegation was introduced, and the Internal Security Division did not deny it (App. 9 and S.G.P. 42). On the contrary, the Internal Security Division asserted that none of the actions taken by Senator Gravel, including those at the subcommittee hearing, were privileged by the Speech or Debate Clause and that the Executive could subpoena and criminally prosecute Senator Gravel himself (App. 9–10). The Internal Security Division characterized the grand jury investigation as an "executive proceeding" (App. 8); and suggested that Senator Gravel himself might be subpoenaed at which time he could invoke his Fifth Amendment privilege against self incrimination (App. 8). The Internal Security Division also contended before the District Court that Dr. Rodberg was not a staff member of Senator Gravel (App. 51) and that the federal courts are the proper place and possess the power to determine the appropriateness, relevancy and germaneness of the subcommittee meeting (App. 85). Oral argument was heard on these motions on September 10, 1971.

On October 4, 1971, the District Court issued its memorandum of decision and protective order which denied Senator Gravel's motions to quash or for specification (S.G.P. 52). The District Court held that Article 1, section 6, clause 1 of the Constitution—the Speech or Debate Clause—prohibited the grand jury from making any inquiry of any witness about Senator Gravel's "conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971 [or] about things done by the Senator in preparation for and intimately related to said meeting" (S.G.P. 52); and prohibited questioning of Dr. Rodberg "about his own actions on June 29, 1971, after having been engaged as a member of Senator Gravel's personal staff to the extent that they were taken at the Senator's direction either at a meeting of the Subcommittee on Public Buildings and Grounds or in preparation for or intimately related to said meeting." (S.G.P. 52.). The District Court "rejected the Government's argument [that the subcommittee meeting was unprivileged] . . . on the basis of the general rule restricting judicial inquiry into matters of legislative purpose and operations" (S.G.P. 47).

The District Court held, however, that Senator Gravel's actions in securing the public distribution of the official subcommittee record by its publication "stands on a different footing and, in the Court's opinion, is not embraced by the Speech or Debate Clause." (S.G.P. 48.)

The District Court made three basic findings of fact which were not appealed by the Justice Department:

(1) Dr. Rodberg is and has been since June 29, 1971, a personal staff assistant of Senator Gravel (S.G.P. 38) (App. 54).

(2) "[A]s personal assistant to [Senator Gravel], Dr. Rodberg assisted [Senator Gravel] in preparing for disclosure and subsequently disclosing to [Senator Gravel's] colleagues and constituents, at a hearing of the Senate Subcommittee on Public Buildings and Grounds, the contents of the so-called 'Pentagon Papers,' which were critical of the Executive's conduct in the field of foreign relations." (S.G.P. 39.)

(3) "Viewing together the crimes this grand jury is investigating and the chronology of acts and events leading up to Dr. Rodberg's subpoena, the Court infers that the government's interest in his testimony pertains to his acts as Senator Gravel's assistant with regard to the Pentagon Papers and that the government attorneys plan to question him about them before the grand jury." (S.G.P. 42.)

On October 12, 1971, Senator Gravel filed before the District Court a motion for reconsideration and/or stay pending appeal. The court stayed enforcement of Dr. Rodberg's subpoena pending reconsideration and asked for a brief from the Justice Department on the issues presented. While this motion was under consideration by the court, counsel for Senator Gravel discovered that the grand jury had subpoenaed and intended to question witnesses about matters the Senator believes are protected from inquiry by Article I, section 6, clause 1, and the District Court's protective order of October 4, 1971 (App. 17). Counsel also discovered that the grand jury had subpoenaed and intended to question witnesses about matters which were then under submission to the court. Among these witnesses was Howard Webber, with whom Senator Gravel had unsuccessfully negotiated for publication of the subcommittee record. Senator Gravel moved to intervene and quash the Webber subpoena, alleging that the grand jury intended to interrogate him solely about these activities (App. 17). The Justice Department did not deny any of these allegations, either in the District Court or in the Court of Appeals, and admitted in the District Court that its primary interest in Mr. Webber related to the conduct of Senator Gravel and his aides in attempting to publish the subcommittee record (App. 128). Moreover, subpoena issued on Webber was *duces tecum* and directed him to produce records and notes of conversations held on July 23 with Dr. Rodberg "concerning the Pentagon Papers."[4]

On October 27, 1971, Senator Gravel filed in the District Court a motion for further relief seeking to prevent the inquiries discussed above by providing the court and Senator Gravel with some judicial mechanism for assuring that the court's protective orders and stays were being observed and that questions regarding the applicability of the court's protective order would be properly decided (App. 12). The District Court denied Senator Gravel's motion (App. 19).

The District Court granted Senator Gravel's motion to intervene with respect to the subpoena issued on Mr. Webber. While the court denied on October 28, 1971, Senator Gravel's motion to quash Mr. Webber's subpoena, it granted the Senator a temporary stay on Webber's subpoena pending appeal to the Court of Appeals (App. 20). On the same day the District Court denied the motion for reconsideration in Dr. Rodberg's case but granted the Senator a temporary stay of Dr. Rodberg's subpoena pending appeal to the Court of Appeals (App. 21). On October 28, 1971, Senator Gravel sought by motion, but was denied, stenographic copies of the grand jury minutes (App. 19). On October 29, 1971, the District Court issued a supplemental protective order to its order of October 4, 1971 (App. 21). This supplemental protective order, issued so as to protect the Senator's position pending appeal, ordered the grand jury not to question any witness about the conduct of the Sen-

Footnotes at end of article.

ator or his aides in arranging for the publication of the subcommittee record.

On October 28, 1971, Senator Gravel filed his notice of appeal in both cases with the clerk of the District Court and moved immediately in the Court of Appeals for a stay pending appeal. The Court of Appeals granted the stay on October 29, 1971 (App. 22–23). That same day, the United States filed a cross appeal to the Court of Appeals. Oral argument was had on an expedited schedule on November 10, 1971. Before the Court of Appeals the Internal Security Division asserted that the Speech and Debate privilege had no applicability at all to grand jury proceeding and therefore the Executive, in conjunction with the grand jury, could subpoena Senator Gravel and anyone who assisted him in the performance of his duties and interrogate them about all the Senator's activities (P.W.C. 5a).

The Court of Appeals' opinion of January 7, 1972, noted that "important questions as to the extent of the legislative privilege" were raised by the appeals (P.W.C. 2a). The Court of Appeals concluded that Senator Gravel "has essentially lost his appeal," and affirmed the judgment of the District Court and entered a modified protective order (P.W.C. 13a).

The Court of Appeals rendered its decision in three parts dealing with Senator Gravel and two parts dealing with those who assisted Senator Gravel in performing his legislative activities. With respect to Senator Gravel the court below held that "for what he says or does on the floor of the Senate or before the subcommittee [Senator Gravel] is concededly protected by the absolute privilege from all criminal and civil liability" (P.W.C. 5a) and that "this protection extends to any written reports of the committee proceedings . . . including material unspoken at the hearing but inserted directly into the record." (P.W.C. 5a.) The Court of Appeals also held that the Speech or Debate Clause prohibited "inquiries [of the Senator] which would restrict acquisition of information" since any other holding would "chill both the vigor with which legislators seek facts, and the willingness of potential sources to supply them." (P.W.C. 7a.) While holding that some forms of published congressional speeches or reports are "necessarily protected" (*i.e.*, news media or the Congressional Record), nevertheless the court held that the constitutional privilege of the Speech or Debate Clause did not encompass Senator Gravel's exercise of the informing function in publishing the subcommittee record and therefore did not bar grand jury investigation into this conduct (P.W.C. 9a).[5]

Turning its attention to legislative aides the court below held that the requirement "for a legislator to have personal aides in whom he reposes total confidence" was so strong that "the aide and the legislator [must be] treated as one" (P.W.C. 11a). Thus, the court held that in order to protect Senator Gravel's rights, the grand jury could not question his aide, Dr. Rodberg, with respect to any matter about which it could not question the Senator. Last, the Court of Appeals held with respect to those who assisted him in publishing the subcommittee record that so long as no effort is made to attack a legislator's motives "we can see no reason for them to be free of inquiry as to their own conduct regarding the Pentagon Papers including their dealing with intervenor [Senator Gravel] or his aides." (P.W.C. 12a.) Thus the opinion of the court below permits grand jury questions of Howard Webber, director of the Massachusetts Institute of Technology Press, and officials of the Beacon Press about how Senator Gravel prepared for the subcommittee hearings and his activities, and those of his aides, in publishing the official record of the hearings.

Footnotes at end of article.

The Court of Appeals issued a subsequent opinion denying a motion for reconsideration in which it suggested that ordinary publication of a subcommittee record might enjoy constitutional immunity but that the publication in question did not because it done "privately" and because the subcommittee had "no conceivable concern" with the documents entered into the record (P.W.C. 2c).

During the pendency of proceedings in the Court of Appeals, two subpoenas were served upon officials of Beacon Press but were revoked due to the stay in effect (App. 24, 141–149).

SUMMARY OF ARGUMENT

I.

The speech and debate privilege has consistently been construed broadly by this Court to encompass actions of congressmen which are customarily done in relation to the business before the legislature and which fulfill important goals of representative democracy. The scope of the privilege has never been fixed, either in this country or in England, to outmoded usages and needs of the legislature, but has instead always corresponded to its actual workings. Such a construction of the privilege is necessitated by its history and by the major purpose for its inclusion in our Constitution, which was to preserve the rights of the people in representative government by reinforcing separation of powers and giving practical security to congressmen against potential harassment and intimidation by the Executive.

The publication of committee records critical of executive conduct in foreign relations is a classic example of the informing function of Congress. In our system of representative government, congressmen have the obligation to enlighten the electorate about matters of public concern and in particular about the administration of government by the executive branch. This function has been assiduously performed by congressmen throughout our history and is pivotal to our democratic values. Moreover, under basic principles of separation of powers, congressmen must be able to exercise their own judgment, independently of restraints by the executive and judiciary, of what information of public importance should be disclosed to or withheld from the people. Courts and prosecutors are not referees over what a congressman may say to the electorate or how he may say it. There is no assertion here that the privilege is being used to violate an individual's constitutional rights; this is a classic separation of powers case.

The framers of the Constitution intended that the publication of congressional proceedings should be entitled to absolute privilege from inquiry under the Speech or Debate Clause. And in 1797, when a federal grand jury investigated the actions of a congressman who sent out newsletters critical of the administration's foreign policy (and said to contain military secrets), Jefferson and Madison wrote a comprehensive and eloquent protest. They stated that the Speech or Debate Clause was designed to guarantee to congressmen an absolute privilege, from the cognizance or coercion of the coordinate branches, to communicate with the electorate; and they condemned the grand jury investigation as a blatant violation of the Speech or Debate Clause.

The free speech guarantee of the English Bill of Rights of 1689, from which the Speech or Debate Clause derives, resulted from a prosecution of the Speaker of the House of Commons for publishing a committee report critical of the Crown. The English Bill of Rights was written specifically to insure that such publications would be guaranteed by the legislative privilege. In England, it is now settled by judicial decisions as well that the publication of legislative proceedings for the information of the electorate is immune from judicial inquiry. There is no reason why the privilege should be construed more narrowly in the United States.

Finally, it is well settled that the privilege is not divested by concepts such as "irregularity" and "nongermaneness." The Privilege would be of little value if it turned, *ad hoc*, on such amorphous considerations. And Congress has exclusive power under the Constitution to prescribe rules for its governance and to discipline wayward members; no supervisory power is vested in the courts.

II.

The Justice Department now concedes that Senator Gravel cannot personally be questioned before the grand jury about his legislative acts, but the Justice Department claims the right to conduct an intensive investigation into the Senator's legislative acts by asserting that everyone who assisted the Seantor in discharging his duties may be subject to unrestrained interrogation. Such an investigation would yield precisely the same information about privileged conduct and would accomplish indirectly what is conceded to be prohibited by more direct intrusions—the intensive breach of the sanctity of the legislative process. For the grand jury to investigate, by direction or indirection, how and why a senator prepared and held a committee hearing and published the official record for dissemination to the electorate is a clear violation of Separation of Powers. And such an investigation implicates the same potential for the intimidation, harassment and distraction of a congressman as if he himself were questioned personally.

The same constitutional evil would result from the very substantial inquiry into privileged conduct permitted under the decision of the Court of Appeals, which allowed the compulsory interrogation of everyone with whom a congressman dealt except his personal aides, so long as the interrogators deny any intention to attack his motives. Given the realities of the modern-day legislative process, congressmen must seek the advice and assistance of persons outside their immediate staff in deciding, for example, whether to speak out and how to vote on controversial issues. The interrogation of these persons before the grand jury about privileged legislative activity violates the doctrine of separation of powers and would substantially inhibit a congressman in the performance of his constitutional obligation. The unconstitutionality of such interrogation in no wise depends upon the motives of the interrogators.

The proposed inquiry by the executive branch in this case is particularly unseemly inasmuch as it has long and successfully championed a testimonial privilege for executive aides which it now seeks to deny to congressmen, even though the source of the latter's privilege is the Constitution itself. The reason for the application of the privilege against the questioning of aides is identical in both situations—the preservation of confidentiality in the decision-making process. This reason applies as well to printers who assist congressmen in performing the informing function; for without such assistance a congressman could not effectively communicate with the electorate. After much litigation in England, the British courts have held such printers immune from both questioning and accountability in order to effectuate the legislators' privilege.

Aside from the broadest of generalities, the Executive has offered no reason, even though it had ample opportunity to do so in the lower courts, why the breach of the privilege in this case would be helpful, let alone necessary, to it in the enforcement of the criminal laws. Nor would recognition of the privilege intolerably hamper law enforcement in the future. The Executive and grand jury possess ample means to ferret out crime without intruding into the legislative process. And those extremely rare cases where investigations would be hindered are more

than outweighed by the preservation, intact, of our system of separation of powers.

ARGUMENT

Introduction

This case presents this Court with a classic separation of powers problem. The Executive, by seeking to invoke the aid of a judicial body, that is the grand jury, with its broad subpoena and contempt powers, is trying to conduct an investigation into various aspects of a meeting of the Senate Subcommittee on Buildings and Grounds conducted by Subcommittee Chairman Senator Mike Gravel. While the Justice Department has refused to specify the questions which it seeks to put to witnesses concerning the subcommittee meeting and the preparations for it, as well as the subsequent preparation and publication of the record of that meeting, the Justice Department has from the start of these proceedings refused to deny that these subjects are precisely the objects of its inquiry.[6] The only conclusion which is possible on the basis of this record is that drawn by the District Court—that the Executive wishes to conduct an intensive investigation of Senator Gravel's preparation for the Senate subcommittee meeting and the subsequent publication of the record. The Senator, in all of the proceedings below, and in this Court, has sought and seeks an order sufficiently broad and workable to insure that his interests as a legislator, and those of his colleagues and constituents, are protected from unwarranted, unseemly and unconstitutional intrusion and inquiry by co-ordinate branches of government.

a. *The Scope of the Privileged Publication and the Informing Function.*

The Court of Appeals held that the privilege of the Speech or Debate Clause encompassed Senator Gravel's activities in preparing for and holding the subcommittee hearing, and the Government has not appealed this holding. However the Court of Appeals believed that the protection of the Clause does not go beyond the four walls of the Capitol and, specifically, does not protect the actions of a member of Congress in informing his colleagues and the electorate about executive conduct in foreign affairs through the publication of the subcommittee record. The court thus permitted the grand jury to investigate the Senator's actions in arranging for the record's publication through the compulsory interrogation of individuals whose assistance was indispensable in performing his constitutional function to inform his colleagues and the public.

The court's holding that the Senator's conduct in publishing this subcommittee record is subject to judicial inquiry is inconsistent with the history and purposes of the Speech or Debate Clause, the thrust of past decisions of this Court, and fundamental principles of separation of powers. We discuss this issue in Part I of this brief. We there show that the Clause has always been, and must be, construed liberally to insulate from judicial inquiry all of the customary and necessary functions of Congress, and that the publication of subcommittee reports reflecting on executive administration is a classic example of the well-recognized informing function and plays an important role in representative government. We also show that the framers of the Constitution specifically intended to prohibit grand jury investigations of congressmen who, in newsletters or otherwise, were critical of the executive stewardship of foreign relations. Finally, we show that the immediate purpose of the free speech privilege of the English Bill of Rights was to guarantee that publication of parliamentary proceedings be within the ambit of the privilege; and Parliament by statute and the English courts by judicial decisions have forbade inquiries of members and printers who assisted them in publishing such proceedings. There is simply no support in history or policy for the contrary conclusion of the Court of Appeals.

b. *Executive and Judicial Inquiries into Privileged Legislative Activities.*

The Court of Appeals, by its opinion, would allow a very substantial inquiry by the executive and judicial branches into privileged legislative conduct, and this should not be allowed to stand. Yet the Justice Department seeks in this Court to intrude even further into the actions of a coordinate branch, and to subpoena a Senator's aides and those who assisted him in meeting his constitutional obligations and to interrogate them with respect to what even the Justice Department now concedes to be protected legislative conduct, such as the holding of a hearing.

At the early stages of these proceedings, the Justice Department adopted the stance that it could, if it wished, subpoena Senator Gravel, and, for that matter, other members of the Senate, in order to inquire about the holding of the subcommittee meeting and the preparation and publication of the record of the meeting.[7] The Justice Department also maintained in the District Court that no privilege existed and that it could indict and prosecute Senator Gravel himself for both holding the subcommittee hearing and publishing the record,[8] and in the Court of Appeals that the Senator could be interrogated and indicted but not prosecuted for the subcommittee hearing and interrogated, indicted and prosecuted for the publication of the record.[9] As the case moved through the courts, the Justice Department, in evident response to the lower courts' obvious distaste for such a claim of power, retrenched to the position that it seeks only to subpoena the Senator's aides and other parties who worked with the Senator in preparing for the meeting and for the publication of the record. The Justice Department, then, appears content with the knowledge that it might accomplish, through the interrogation of the Senator's aides and assistants, what it was prohibited by both courts below from accomplishing by direct interrogation of the Senator—to conduct an intensive investigation of a Senator's legislative activities, to pierce the confidential relationship between the Senator and those who assisted him in the performance of his constitutional obligations, to learn every detail concerning the meeting and the publication.

The Justice Department has thus seen what appears to it to be a back door into the Senate committee rooms, but as we shall show in Part II, this back door is likewise blocked by the stone wall of the Speech or Debate Clause. The Clause must be interpreted and enforced in light of the requirements of the legislative branch and in light of the purposes of the Clause. We shall show that to allow the Justice Department to breach the separation of powers wall by pursuing a Senator's activities through questioning of his trusted aides and those whom he requires in order to perform his constitutional functions would be to accomplish precisely the same constitutional evil as if the Senator himself were interrogated directly. It would permit unrestrained intrusions by the executive and judicial branches into the Capitol. This would not only render illusory the protection secured to Senator Gravel from the constitutional guarantee but would threaten the very independence and integrity of the legislative branch.

PART I

The Publication by a Senator of an Official, Public Record of a Subcommittee, of which he is Chairman, critical of Executive Conduct in Foreign Relations is Privileged from Judicial Inquiry by the Speech or Debate Clause.

A. The privilege must be read broadly to protect those actions of Congressmen which foster the goals of representative government.

The Court of Appeals' holding that the publication of committee records containing information of overwhelming public concern was not within the purview of the Speech or Debate Clause was bottomed upon a narrow, almost literal reading of the Clause which limited its applicability to the four walls of Congress. This approach is basically inconsistent with prior opinions of this Court, which have held that the Clause embraces all actions of members of Congress which are necessary to effectuate the functions of Congress and to protect and foster the goals of representative government. It is also inconsistent with the historical application of the privilege in England and with the intentions of the framers.

1. Prior Decisions of this Court.

In the very first interpretation of the Speech or Debate Clause, this Court held that the history and policies underlying the Clause demanded that it be given a liberal construction to immunize from judicial inquiry not only speeches and debates on the floor but also committee reports, resolutions and votes and all things "generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn* v. *Thompson,* 103 U.S. 168, 204 (1880). Subsequent decisions have consistently reaffirmed this standard and have applied the guarantee of the Clause to all activity of a congressman "in the sphere of legitimate legislative activity," *Tenney* v. *Brandhove,* 341 U.S. 367, 376 (1951); and this Court has admonished that "the privilege should be read broadly" to include all conduct "related to the due functioning of the legislative process." *United States* v. *Johnson,* 383 U.S. 169, 172, 179 (1966).

By thus adopting a functional approach to the Clause and insulting the "legislative acts of . . . [a] member of Congress [and] his motives for performing them," *id.,* at 185, this Court was hardly indulging in "catch phrases."[10] On the contrary, this approach has derived from the basic purpose of the Clause, which is to immunize actions taken by a member of Congress in the discharge of his obligations as a representative of the electorate and thereby prevent intimidation and harassment by a possibly hostile executive and judiciary. This was nowhere better stated than by Chief Justice Parsons in the seminal decision of *Coffin* v. *Coffin,* 4 Mass. 1, 27 (1808)[11]:

"These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution, of the office; and I would define the article as securing to every member exemption from prosecution, *for every thing said or done by him, as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules. I do not confine the member to his place in the house; and I am satisfied that there are cases in which he is entitled to this privilege, when not within the walls of the representatives' chamber.*" (Emphasis added.)

The applicability of the Clause, therefore, does not turn on mere geographical considerations involving the fortuitous location of a congressman's activities but on the "exercise of the functions of [his] office." *Ibid.* It is for

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this reason that the Clause protects a legislator's conduct at committee hearings, for "[i]nvestigations, whether by standing or special committees, are an established part of representative government." *Tenney* v. *Brandhove, supra,* at 377. Likewise, a variety of other functions resulting from the nature of a congressman's office, such as voting and committee resolutions, *Powell* v. *McCormack,* 395 U.S. 486, 502–503 (1969), *Kilbourn* v. *Thompson, supra;* and obtaining material for committee hearings, *Dombrowski* v. *Eastland,* 387 U.S. 82 (1967), have been held within the privilege. In none of these cases was there involved speech or debate in the narrow, literalistic sense; yet, as the Court said in *Kilbourn, supra,* at 203, if the ordinary and necessary functions of Congress are not privileged, of what value is the Clause? A literalistic construction of the Clause in this case would overrule almost one hundred years of decisions.

The Court of Appeals did not deny that the recognized duties of congressmen include informing the electorate about the workings of government.[12] Indeed, that fact is a presupposition of our system of representative government, where "[l]egislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them," *Bond* v. *Floyd,* 385 U.S. 116, 136 (1966). See generally *section* I.B., infra. Nevertheless, the Court of Appeals simply held the informing function to be outside the protection of the Speech or Debate Clause by asserting that the Clause encompasses only *one* function "generally done" in Congress—the narrow category of congressional deliberations.[13] This limited veiw of the Clause cannot be reconciled with the reasoning in prior decisions of this Court, which stressed the legislative process *as a whole.* It is also inconsistent with the historical antecedents of the privilege in England and with the purposes for its inclusion in our Constitution.

2. *Historical Application of the Privilege in England.*

A review of the origins and development of the free speech privilege in England demonstrates clearly that its scope has always been determined by the actual functions of the legislature at any given moment in history and has never been frozen to past usages; in this manner, it has evolved as a *practical* instrument of security for legislators. Each of Parliament's privileges originated, in fact, in the fourteenth and fifteenth centuries out of a *judicial* conception of the House of Lords, the highest court of the land.[14] The acquisition of similar privileges by the House of Commons was based on its function of acting on private petitions and was first limited to that narrow activity.[15] As the powers of the council decayed in the late fifteenth and early sixteenth centuries, the House of Commons asserted growing authority over bills submitted by the Crown, and a practical security against the King's oft-expressed displeasure became a felt necessity. It was "out of this need for unrestrained criticism of government measures" that the free speech privilege was formalized into the Speaker's petition in 1541.[16] Yet even then the privilege went only as far as the jurisdiction of the House and through the reigns of Henry VIII and Elizabeth I afforded no protection for "licentious" discussion into matters involving the prerogatives of the Crown.[17]

The ever-increasing independence and legislative authority of the House of Commons was, however, an irreversible process, and cognizance was taken of matters heretofore reserved to the Crown's domain, such as the succession and the conduct of foreign wars. The House began to conceive of itself as the Grand Inquest of the Nation, demanding "a voice in the general policy of the country, and [the right] to criticize the action of the executive in modern fashion." [18] The consequent intrusion into the Crown's prerogative led to a century-long battle over freedom of speech, with the Tudor and Stuart monarchs claiming the right to interfere in Commons' debates and punish members for "seditious" and "licentious" speech. If the privilege were to be maintained as an instrument of security for Parliament, a broader, absolute definition of the privilege, which would preserve the House's expanded jurisdiction, was essential.[19] This dispute over the scope of the privilege witnessed systematic harassment of members who dared criticize the Crown, with the King claiming that the privilege ended where his prerogatives began; and the House declaring that the privilege was absolute for any matter touching Parliamentary business.[20] The battle culminated when Sir John Eliot and other members who opposed funding a needless and bloody war overseas were prosecuted in 1629 for making "seditious" speeches in the House.[21] The judges of the King's Bench rejected the plea of privilege by reverting to its earlier and limited applications as excluding "seditious" speeches.[22] The imprisonment of Eliot and others crystallized opposition to the despotic rule of Charles I and was a significant factor leading to the Civil War and the execution of the King.[23] In 1641, the House of Commons declared the trial to be a breach of the speech and debate privilege,[24] and there followed a series of resolutions and acts by both Houses, before and following the Restoration, guaranteeing the privilege in the broadest terms.[25]

During this entire period of constitutional development, Parliament never defined the outer limits of its privileges with particularity. The free speech privilege was not a static concept or an end in itself, but an essential mechanism for the protection of this legislature's changing functions. Even prosecutions such as Eliot's would not have been condemned a century earlier; it was only when Commons seriously asserted its right as the Grand Inquest that "restrictions hardly noticed before were bitterly resented; and the illusion of freedom gradually vanished from men's minds." [26] As the circumstances and need for the privilege were fluid, so, too, was the privilege itself; and, as Blackstone has observed, transient definitions would have been counter-productive: [27]

"Privilege of parliament was principally established, in order to protect its members not only from being molested by their fellow-subjects, but also more especially from being oppressed by the power of the crown. If, therefore, all the privileges of parliament were once set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member, and violate the freedom of parliament. The dignity and independence of the two houses are therefore, in great measure preserved by keeping their privileges indefinite."

The functional approach to the privilege did not end with the Restoration, and there followed events of particular relevance to this case. By the time of James II's accession in 1686, the House of Commons asserted the right to publish its proceedings to the country at large as a corollary of its power to investigate misbehavior by the Executive. The King reacted bitterly and ordered the prosecution of Sir William Williams, Speaker of the House, who, with permission of the House, had published and circulated a committee report, written outside of Parliament but introduced into the parliamentary records and then redistributed by Williams, which accused the King and his relatives and closest advisors of a plot, jeopardizing the religious freedom of the country. The reaction to this prosecution in Parliament and the country at large was intense, and, as we shall discuss in detail, *infra,* 67–75, was the primary cause of the exile of James II and the passage of the Bill of Rights, which stated, in the broadest language:

"That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess., 2, c. 2.

Finally, as the fear of executive intrusion gradually lessened and the representative character of Parliament was enhanced by the democratic reforms of the late eighteenth century, the House removed its veil of secrecy [28] and recognized its obligation to inform the public fully of the workings of government. This in turn led necessarily, albeit after some dispute with the courts, to the extension of the free speech privilege to individual members who, with or without the permission of the House, circulated to the public reports of their speeches and other proceedings.[29] In this process, too, the privilege followed and then embraced the changing realities of the legislative function, at first to preserve the secrecy of legislative debates and later to insure the free flow of information from Parliament to the people.

3. *The Intent of the Framers.*

The framers of our Constitution were well aware of this history and of the necessity for a functional approach to the privileges of Congress. They consciously excluded certain privileges and limited others, which had derived historically from the judicial character of Parliament and had, or should have, fallen into desuetude.[30] The speech and debate privilege, however, was viewed as essential to republican government, as "an important protection of the independence and integrity of the legislature." *United States* v. *Johnson, supra,* at 178. Madison's motion in the Convention to delineate specifically this privilege was defeated,[31] and the language of the Constitution, therefore, was "framed in the broadest terms." *Id.,* at 182–193.[32]

A functional interpretation of the privilege is also necessitated by a unique purpose for it which was not present in England. "In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders." *United States* v. *Johnson, supra,* at 178. This purpose would be vitiated, and the "practical security" which the Clause is designed to afford, *id.,* at 179, would be rendered a rhetorical abstraction, if the courts construe the Clause in its narrowest historical setting. This conclusion follows inescapably from this basic purpose of the Clause in our scheme of government, as stated early in our history by James Wilson:

"In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offense." I Works of James Wilson 421 (McCloskey et. 1967).[33]

And this Court has made it perfectly clear that the "powerful" of whom Wilson spoke refers primarily to the executive branch. *United States* v. *Johnson, supra,* at 181–182.

The content of the Clause cannot, therefore, be frozen to the burgesses of five hundred years ago, or to the events leading to the execution of Charles I, or even to conditions prevalent in 1787. As an effective instrument of separation of powers, the Clause must be shaped, as it always has been,[34] by the present-day functions of Congress in our system of representative government, and must protect against intrusions by the executive and judiciary which "threaten those *consequences* which the Framers deeply feared." Cf. *School District of Abington Township, Penn.* v. *Schempp,* 374 U.S. 203, 236 (1963) (Brennan, J., concurring) (em-

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phasis added). In this regard, we cannot improve on Cella's cogent analysis:

"If the doctrine of legislative privilege is to perform its traditional function in our system of separation of powers of permitting legislators to carry out their increasingly onerous responsibilities without fear of prosecution or harassment from the executive and judicial branches, then it must be applied broadly and liberally to effectuate its intended purpose. In its application, it must be geared to the realities of the manner in which a modern legislative system operates. It cannot afford to be permanently attached to the ways in which legislatures discharged their responsibilities when the Republic was founded or, for that matter, even fifty years ago.

"Modern legislatures have had to adopt their techniques of operation to the increasingly complex society within which they must function. New techniques and new methods of procedure have gradually evolved. The doctrine of legislative privilege cannot remain static if it is to remain meaningful." *Cella, supra,* at 34.

In sum, there is no warrant in English history, or the prior decisions of this Court, or in the historical application of the Clause, or in the purposes for its inclusion in the Constitution, to warrant the narrow approach taken by the Court of Appeals.[35] The very opposite is true: the free speech privilege evolved in a functional manner to give practical security to legislators who criticize the administration of domestic and foreign policy by the Executive. The facts giving rise to this case fall within the mainstream of the historical purposes for the privilege.

In the section which follows, we shall show that the publication of committee reports is commonly done in Congress and performs an important function in representative government. And when, as here, the report involved is critical of executive conduct, its publication and distribution to the people is a classic example of the well-recognized "informing function" of Congress. This, combined with fundamental principles of separation of powers, requires that such publication be privileged legislative activity.

A considerable amount of illumination is also provided by examining the intent of the framers, for there is substantial evidence that they intended to immunize from executive and judicial inquiry—and specifically from inquiry by the grand jury—all forms of communication between a congressman and the public in the exercise of the informing function. This material is set out in section I.C. In section I.D. following that, we trace the precise historical development in England on this issue, showing that the immediate purpose of the inclusion of the privilege in the English bill of rights was to reverse a judicial decision holding publication of committee reports to be outside the privilege. We also examine in that section subsequent English judicial decisions establishing that the publication of speeches and reports by members of Parliament is privileged from judicial inquiry.

B. The publication of committee records is generally done by Congressmen and is essential to the proper functioning of representative government.

In considering whether any given practice falls within the functional standards established in previous cases, it is of course obvious that the privilege against inquiry does not extend to all of a congressman's actions simply because of his status. Clearly, for example, crimes such as assault and battery, armed robbery and bribery are beyond the scope of the privilege, even if fortuitously committed within the walls of the Capitol. See *United States* v. *Johnson, supra.*[36] Two benchmarks are implicit in past decisions. First, the court should ask whether the practice in question is necessary to fulfill any of the goals of representative government as established by the Constitution. Second, guidance is available in the actual workings of Congress to determine whether a practice is widely utilized by members of Congress in the performance of their duties; in other words, whether it is "generally done . . . by . . . its members in relation to the business before it."

1. *The Informing Function.*

It is clear that the publication of speeches and committee records about the workings of government and their dissemination to the electorate meets each of these criteria. The scheme of representative government envisaged by the Constitution presupposes an obligation on the part of a legislator to inform his constituents and colleagues about vital matters concerning the administration of government. This Court recognized the central importance of this informing function in contrasting it with exposure for exposure's sake:

"We are not [here] concerned with the power of Congress *to inquire into and publicize corruption,* maladministration or inefficiency in agencies of the Government. That was the only kind of activity described by Woodrow Wilson in *Congressional Government* when he wrote: 'The informing function of Congress should be preferred even to its legislative function.' *Id.,* at 303. *From the earliest times in its history, the Congress has assiduously performed an 'informing function' of this nature.* See Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 153, 168–194." *Watkins* v. *United States,* 354 U.S. 178, 200, fn. 33 (1957). (Emphasis added.)

The informing function plays a key role in our system of separation of powers, for it insures that the administration of public policy by the innumerable non-elected officials of the executive department is fully understood by the legislature and the people. As Woodrow Wilson wrote in his classic study of Congress:

"It is the proper duty of a representative body to look diligently into every affair of government *and to talk much about what it sees.* It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; *and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct.*" (Emphasis added.) W. Wilson, Congressional Government, 303 (1885).

In contemporary times, as much as when the Constitution was written, the informing function acts to preserve the basic character of our constitutional government. Departing drastically from the theories of government in Europe, the framers believed that ultimate power must always rest in the people. As Madison, who is appropriately called the Father of the Constitution, said: "The people, not the government, possess the absolute sovereignty." [37] For this system to be viable, the people must be informed fully of the workings of government so that they may be able meaningfully to exercise their constitutional rights to vote intelligently and to the "free public discussion of the stewardship of public officials." [38] This necessarily imposes a *duty* on congressmen to inform the electorate for, to borrow again from the language of Woodrow Wilson:

"The argument is not only that discussed and interrogated administration is the only pure and efficient administration, but, more than that, the only really self-governing people is that people which discusses and interrogates its administration . . .

"Quite as important as legislation is vigilant oversight of administration; and even more important than legislation is the instruction and guidance in political affairs which the people might receive from a body (Congress) which kept all national concerns suffused in a broad daylight of discussion." Wilson, *supra,* at 303, 297.

The centrality of the informing function to democratic institutions has been emphasized even by those political theorists who, while doubting the capacity of legislative bodies to legislate, nonetheless believe that by overseeing the administration they would make an essential contribution to the protection of liberty:

"The proper office of a representative assembly is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censor them if found condemnable . . . . This is surely ample power, and security enough for the liberty of the nation." J. S. Mill, On Represenative Government 42 (London: Longmans, Green, Reader and Dyer 1878).

It has been fortunate for the country that, as this Court noted in *Watkins, supra,* congressmen have always "assiduously performed" this kind of informing function. In the article there cited by the Court, Dean Landis reviewed Congress' historic exercise of this obligation in investigating and exposing bad judgment and corruption in the executive branch.[39] Perhaps more than any example of investigation and publicity discussed by Dean Landis, a member of Congress who informs the electorate and the rest of Congress about the process by which the Executive took the nation into a controversial war is engaging in legislative activity in the most classic sense of the terms.[40]

On a broader plane, the publication of congressional committee proceedings and their dissemination to the electorate play other important roles in representative government. The heart of representative democracy is the communicative process between the people and their agents in government. By making widely available accurate reports of these proceedings, congressmen enlighten the electorate and at the same time insure that the people will inform them and their colleagues of their well-considered views on pending or potential legislation. Practically every careful student of Congress has observed this process and has noted as well that committee hearings and the publication and distribution of speeches and committee reports form the principal avenue for achieving it.[41] They thus agree with Harold Laski that:

"A legislature can criticize, it can ventilate grievances; its power to investigate through committees is invaluable; and, not least, as it fulfills these tasks it provides a process of public education which is pivotal to democratic government." The American Presidency, quoted in R. Bolling, House Out of Order 29 (New York, E. P. Dutton Co. 1965).

Also, in examining what is "generally done" in Congress, it is pertinent to note that congressmen understand both the utility and necessity of holding committee hearings and publishing their proceedings in order both to enlighten the electorate and affect future legislation.[42] Congress has, accordingly, provided a variety of financial and other support for communications between a legislator and the public.[43] One study revealed that a majority of congressmen send newsletters to the public on a periodic basis,[44] and it has also been found that congressmen spend a substantial portion of their time in informing the electorate.[45]

The informing function is a fact of life in the modern Congress, and it surely can-

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not be dismissed cynically as a mere device for congressmen to woo votes. Many congressional hearings have been held and massively publicized in order to enlighten the electorate about activities which were inimical to the general welfare and resulted in public pressure for the consequent passage of important legislation. A small sample might include the famous inquiries conducted by the Kefauver committees on organized crime and on dangerous drug practices, by the O'Mahoney committee on the concentration of economic power, by the Senate rackets subcommittee on the regulation of internal operations of labor unions, by the LaFollette civil liberties committee, by the 1966 Senate committee hearings on automobile safety, and by the Fulbright committee on the Reconstruction Finance Corporation.[46] With respect to investigations of executive conduct, one might add the Wheeler-Walsh exposure of scandal in the Harding administration,[47] the Truman-Mead hearings on national defense and, of course, many more recent hearings on the origins and conduct of the Vietnam War.[48] The value of congressional investigations and the publicity they generate was stated in powerful terms by Senator (later Mr. Justice) Hugo Black, who was catapulted into national prominence by his exposures of corruption in the utilities lobby and maladministration of the merchant marine.[49]

"They have formed the basis of our most important legislation . . .

"But most valuable of all, this power of the probe is one of the most powerful weapons in the hands of the people to restrain the activities of powerful groups who can defy every other power.

"Public investigating committees, formed by the people themselves or from their public representatives, exist always in countries where the people rule . . . that is because special privilege thrives in secrecy and darkness and is destroyed by the rays of pitiless publicity." Black, Inside a Senate Investigation, 172 Harper's Monthly 275, 285–286 (Feb. 1936).

An examination of the operations of Congress, therefore, settles beyond doubt that the informing function, effectuated in large part by the publication of speeches and committee records, is activity which is "generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn, supra,* at 204, and is clearly "related to the due functioning of the legislative process," *United States* v. *Johnson, supra,* at 182.[50] And it thus falls within the protection of the Speech or Debate Clause.[51]

A similar functional analysis led this Court to hold in *Barr* v. *Matteo,* 360 U.S. 564 (1959) and *Howard* v. *Lyons,* 360 U.S. 593 (1959), that the judicially-created doctrine of executive privilege protects the issuance and widespread circulation of news releases by the thousands of subordinate officials of the executive department. The Court there held, applying a functional approach, that while such activity was not statutorily mandated it was nonetheless customarily done and related to the duties of the office:

"It would be an unduly restrictive view of the scope of the duties of a policy-making executive official to hold that a public statement of agency policy in respect to matters of wide public interest and concern is not action in the line of duty. That petitioner was not *required* by law or by direction of his superiors to speak out cannot be controlling in the case of an official of policy-making rank . . . where the concept of duty encompasses the sound exercise of discretion." 360 U.S. at 575. (Emphasis in original.)

And Mr. Justice Black concurred on the ground that the public had a right to be informed about the operation of agencies:

"The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of the government service rendered by all elective or appointed public officials or employees. Such an informed understanding depends, of course, on the freedom people have to applaud or to criticize the way public employees do their jobs, from the least to the most important." *Id.,* at 577. This reasoning, of both the majority[52] and concurring opinions, applies with even greater force to the privileges of elected members of Congress, which derive from the Constitution itself. And congressmen *are required,* in the constitutional sense, to speak out and enlighten the electorate.

2. The separation of powers context of this case

The issue of the degree to which the informing function of Congress is encompassed within the scope of the Speech or Debate Clause is presented herein with striking clarity. What is now before this Court is a classic separation of powers case. There is no claim here, in contrast to some civil cases, that a member of Congress used the authority of his office to violate willfully an individual's constitutional rights. That kind of situation draws into play the obligation of the courts to protect individual rights, and there may very well be circumstances where no other means is available to safeguard the preferred constitutional rights of the individual, and where the judiciary will therefore be compelled to draw the balance on the side of the individual. Cf. *Hentoff* v. *Ichord,* 318 F. Supp. 1175 (D. D.C. 1970); *Doe* v. *McMillan,* —— F. 2d —— (D.C. Cir. 1972) (dissenting opinion).

In this case, on the other hand, the judiciary is not being asked to balance the rights of individuals, including preferred constitutional rights, against the privileges of members of Congress; to the contrary, the executive branch of government has come to the courts, seeking the aid of the courts' compulsory process and resulting contempt power, and claimed that it may determine what a member of Congress may tell his constituents about matters of overwhelming public concern. It is no exaggeration to say that this claim of the executive branch challenges the fundamental character of our tripartite system of government.

The constitutional evil which would result from denying the privilege's applicability to the informing function of Congress is magnified when this is done at the behest of the Executive and with respect to material which is critical of executive behavior. As this Court has emphasized, the central purpose of the Speech or Debate Clause is "to prevent intimidation by the executive and accountability before a possibly hostile judiciary." *United States* v. *Johnson, supra,* at 181. If the executive branch may, at will, institute grand jury proceedings and interrogate witnesses about Senators' publications of their speeches and committee reports which they send to the electorate, it will possess the power to isolate effectively all but the most courageous legislators from their constituents. If such a rule applies, congressmen will have to watch what they say to the people—in press releases, newsletters and anything spoken outside of the four walls of the Capitol—and they will inescapably be inhibited out of fear of harassment, grand jury inquisitions and even prosecutions. Yet if the Speech or Debate Clause means anything, it is that courts and prosecutors are not referees over what congressmen may say to the people or how they may say it.

The Court of Appeals believed that the "consequences" of acknowledging the right of congressmen to inform the electorate would be "staggering" and in support of this proposition, hypothesized a series of strained examples of possible abuse. (P.W.C. 10a.) It is clear that the hypothetical possibility of abuse of congressional power "affords no ground for denying the power." *McGrain* v. *Daugherty,* 273 U.S. 135, 175 (1927).

The cogent answer to this sort of "parade of horribles" argument[53] was given by Mr. Justice Harlan in *Barr* v. *Matteo, supra,* at 576:

"We are told that we should forbear from sanctioning any such rule of absolute privilege lest it open the door to wholesale oppression and abuses on the part of unscrupulous government officials. It is perhaps enough to say that fears of this sort have not been realized within the wide area of government where a judicially formulated absolute privilege of broad scope has long existed. It seems to us wholly chimerical to suggest that what hangs in the balance here is the maintenance of high standards of conduct among those in the public service. To be sure, as with any rule of law which attempts to reconcile fundamentally antagonistic social policies, there may be occasional instances of actual injustice which will go unredressed, but we think that price a necessary one to pay for the greater good. . . . We think that we should not be deterred from establishing the rule which we announce today by any such remote forebodings."

This reasoning supported the extension of the executive privilege to all forms of utterances, including publication and distribution of news releases, even through thousands of diverse, subordinate and non-elected officials were covered. It would seem, *a fortiori,* to govern the scope of the constitutional privilege of elected members of Congress. It is appropriate, in this regard, to recall Mr. Justice Holmes' famous statement in *Missouri, Kentucky—Texas Ry. Co.* v. *May,* 194 U.S. 267, 270 (1904):

"[I]t must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

Moreover, the Court of Appeals' hypothetical approach may be compared with *Hearst* v. *Black,* 87 F. 2d 68 (D.C. Cir. 1936), where the plaintiff filed a complaint alleging that personal telegrams had been seized illegally and were to be exposed to the general public by a Senate committee. The Court dismissed the complaint on the principles of separation of powers. It is noteworthy that the defendant in that case was Senator (later Mr. Justice) Hugo Black, who was seeking to expose corruption in the utility lobbies and their bribery of newspapers, including the plaintiff Hearst Publishing Co., for which acquisition and publicity of these telegrams were essential. Yet if the Court of Appeals' theory in this case were correct, Hearst could have successfully harassed Senator Black in a court proceeding by merely alleging illegal acquisition and thereby hindered the investigations. Thus, in considering the parade of horribles, it is appropriate to quote the wise statement of Judge Learned Hand in *Gregoire* v. *Biddle,* 177 F. 2d 579, 581 (2d Cir. 1949):

"[I]f it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties."

This certainly applies with equal force to the constitutional privilege of congressmen, who are "to be protected from the resentment of everyone, however powerful," I Works of James Wilson, *supra,* at 421, particularly the executive branch, *United States* v. *Johnson, supra,* at 181. Finally, in the unlikely event that a member of Congress does

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engage in such reprehensible conduct as hypothesized by the Court of Appeals, he *will* be held accountable—by the House and by the people at the polls. What Mr. Justice Frankfurter said in *Tenney* v. *Brandhove, supra,* at 378, is directly on point to this case:

"In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses."

C. The Framers intended that the clause would operate as a bar against executive and judicial inquiry into a Congressman's communications to the electorate.

1. *The Cabell Grand Jury Investigation and Jefferson's Protest.*

There is substantial evidence that the privilege of the Speech or Debate Clause was intended by the framers to protect from inquiry by the executive and judicial branches, including the grand jury, *all* communications from a congressman to his constituents. This was certainly the view expressed unambiguously by Thomas Jefferson and James Madison, two of the architects of our Constitution, with respect to an event which is practically indistinguishable from the case at bar. In 1797, a federal grand jury in Virginia investigated the conduct of several members of Congress, including Congressman Cabell of Virginia, in sending newsletters to their constituents critical of the administration's policy in the war with France. The administration believed the newsletters to be "seditious," to contain information valuable to the enemy, and to threaten the security of the Nation.

The grand jury reported: [54]

"We, of the grand jury of the United States, for the district of Virginia, present as a real evil, the circular letters of several members of the late Congress, and particularly letters with the signature of *Samuel J. Cabell,* endeavoring, at a time of real public danger, to disseminate unfounded calumnies against the happy government of the United States, and thereby to separate the people therefrom; and to increase or produce a foreign influence, ruinous to the peace, happiness, and independence of these United States."

Thomas Jefferson, who was the Vice-President of the United States and the leading contemporary expert on congressional privilege,[55] immediately drafted a long essay, in the form of a protest to the Virginia House of Delegates signed by himself and other leading citizens of the district represented by Cabell, condemning the grand jury's investigation as a blatant violation of the congressional privilege and of the doctrine of separation of powers. The draft was forwarded to Madison who joined in it and suggested certain minor changes.[56] These changes were then adopted by Jefferson and the protest was sent to the House of Delegates. This eloquent protest bears so directly on the present case that we believe it merits quotation at unusual length. Its significance goes beyond even the stature of its authors and the factual identity with the case at bar; this protest, line by line, is the most cogent analysis in existence of the purposes and scope of the Speech or Debate Clause, as well as the limitations the Clause places on grand jury investigations. The protest is as follows: [57]

". . . that in order to give to the will of the people the influence it ought to have, *and the information which may enable them to exercise it usefully,* it was a part of the common law, adopted as the law of this land, *that their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive;* and *that their communications with their constituents should of right, as of duty also, be free, full, and unawed by any*: that so necessary has this intercourse been deemed in the country from which they derive principally their descent and laws, that the correspondence between the representative and constitutent is privileged there to pass free of expense through the channel of the public post, and that the proceedings of the legislature have been known to be arrested and suspended at times until the Representatives could go home to their several counties and confer with their constituents.

"That when circumstances required that the ancient confederation of this with the sister States, for the government of their common concerns, should be improved into a more regular and effective form of general government, the same representative principle was preserved in the new legislature . . . and the laws and principles remained unaltered which privileged the representative functions, whether to be exercised in the State or General Government, against the cognizance and notice of the co-ordinate branches, Executive and Judiciary.

". . . that the said Samuel Jordan Cabell accepted the office, repaired at the due periods to the legislature of the General Government, exercised his functions there as became a worthy member, and as a good and dutiful representative was in the habit of corresponding with many of his constituents, and communicating to us, by way of letter, information of the public proceedings, of asking and receiving our opinions and advice, and of contributing, as far as might be with right, to preserve the transactions of the general government in unison with the principles and sentiments of his constituents: that while the said Samuel J. Cabell was in the exercise of his functions as a representative from this district, and was in the course of that correspondence which his duty and the will of his constituents imposed on him, the right of thus communicating with them, deemed sacred under all the forms in which our governed has hitherto existed, never questioned or infringed even by Royal judges or governors, was openly and directly violated at a Circuit court of the General Government, held at the city of Richmond, for the district of Virginia, in the month of May of this present year, 1797 . . . .

* * * * *

"That the grand jury is a part of the Judiciary, not permanent indeed, but in office, *pro hac vice* and responsible as other judges are for their actings and doings while in office: *that for the Judiciary to interpose in the legislative department between the constituent and his representative, to control them in the exercise of their functions or duties towards each other, to overawe the free correspondence which exists and ought to exist between them, to dictate what communications may pass between them, and to punish all others, to put the representative into jeopardy of criminal prosecution, of vexation, expense, and punishment before the Judiciary, if his communications, public or private, do not exactly square with their ideas of fact or right, or with their designs of wrong, is to put the legislative department under the feet of the Judiciary, is to leave us, indeed, the shadow, but to take away the substance of representation* . . . is to do away the influence of the people over the proceedings of their representatives by excluding from their knowledge, by the terror of punishment, all but such information or misinformation as may suit their own views; *and is the more vitally dangerous when it is considered that grand jurors are selected by officers nominated and holding their places at the will of the Executive:*

". . . and finally, is to give to the Judiciary, and through them to the Executive, a complete preponderance over the legislature rendering ineffectual that wise and cautious distribution of powers made by the constitution between the three branches, and subordinating to the other two that branch which most immediately depends on the people themselves, and is responsible to them at short period." (Emphasis added.)

Jefferson's protest ended with a petition that the House of Delegates order the arrest and imprisonment of the grand jurors for this "great crime, wicked in its purpose, and mortal in its consequences," which not only jeopardized Cabell personally, but infringed the rights of the public.[58] In adding his complete agreement, Madison stated: [59]

"It is certainly of great importance to set the public opinion right with regard to the functions of grand juries, and the dangerous abuses of them in the federal Courts; nor could a better occasion occur."

2. *The View of Other Framers.*

The object of their petition was to mobilize public opinion; the more drastic action urged in the petition became unnecessary since the grand jury withdrew the presentment.[60]

Other founders shared Jefferson's view that the free speech privilege prohibited intrusions by the executive and judicial branches into communications by a congressman to the electorate about matters of public concern. James Wilson, "an influential member of the committee on detail," [61] stated the reason for the speech or debate privilege as enabling a representative of the public "to discharge his public trust" and to "be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offense." I Works of James Wilson, 421 (McCloskey ed. 1967), quoted in full, *supra,* p. 33.

Wilson believed firmly that part of the "discharge of his public trust" was the right of a legislator to communicate with the people. In the Essays on the Constitution, Wilson said:

"Representation is the chain of communication between the people and those to whom they have committed the exercise of the powers of government. The chain may consist of one or more links, but in all cases it should be sufficiently strong and discernible." II. Eliot's Debates, 424 (1788).

And, to Wilson, this placed an obligation on congressmen to inform the people fully about proceedings in the Congress:

"That the conduct and proceedings of representatives should be as open as possible to the inspection of those whom they represent, seems to be, in republican government, a maxim, of whose truth or importance the smallest doubt cannot be entertained. That, by a necessary consequence, every measure, which will facilitate or secure this open communication of the exercise of delegated power, should be adopted and patronised by the constitution and laws of every free state, seems to be another maxim, which is the unavoidable result of the former." I Works of James Wilson, 422 (McCloskey ed. 1967).

Wilson's statements are characteristic of a consistent theme of the framers that our system is one of self-government and can operate effectively only when the people are given full information about what their agents in government are doing; a necessary corollary of which is that congressmen must "look diligently into every affair of government and talk much about what [they] see." [62] Madison thus believed: [63]

"Knowledge will forever govern ignorance. And people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both."

And also, that ". . . the right of freely examining public characters and measures, and

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of free communication thereon, is the only effective guardian of every other right." 6 Writings of James Madison, 398 (Hunt ed. 1906).

The framers were writing against the background of the experience of the English people, who for the last two centuries had been battling for increased control over their government and had finally, shortly before the Declaration of Independence, won the right to have the debates in Parliament published.[64]

In addition, the framers were appreciative of the effects on public opinion and on government caused by the publicizing of debates in the colonial assemblies. Following the practice of the House of Commons, the colonial assemblies had early enjoined their members from reporting their proceedings so as to preserve secrecy of operation from the Crown, or, in their situation, the Crown-appointed governors. See *Clarke, supra*, at 227–234. However, beginning around 1760, several of the assemblies repealed their secrecy rules and opened their proceedings to the public. The immediate effects in one important state, Massachusetts, have been described as follows:

"By exposing its debates to the public, the assembly offered itself to the people as an agent of public opinion far more direct and immediate than could have normally been the case before. But its action also proceeded in the reverse direction—towards the public. The publicity of debates excited interest and accentuated the sense of crisis. The members, while framing their bold policies of resistance, challenged the people to support them. The immediate public was that of Boston: and this was of no small significance, since it was the Boston mob which executed the most provocative acts of violence and resistance, which could terrorize reluctant representatives from country towns, and whose hearts and minds could so effectively be stirred to mutiny and rage." J. R. Pole, Political Representation in England and the Origins of the American Republic, 70–71 (London: MacMillan, St. Martin's Press, 1966).

3. *The Publication Requirement of Article I, Section 5.*

A confluence of these factors—rooted both in history and political theory—convinced the framers that the obligation of Congress to inform the public should be declared in the Constitution. In order to prevent Congress from ever imitating the ancient practices of the House of Commons and enacting a standing rule against publication, the Constitution requires, in Article I, section 5, that:

"Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the **Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal."**

Clearly, the reason for this publication requirement was, not so much for the benefit of the members themselves, but to insure that congressmen fulfill their obligation to inform the public. As this Court has stated, the purpose of section 5 is "to insure publicity to the proceedings of the legislature, and a correspondent responsibility of the members to their respective constituents." *Field* v. *Clark*, 143 U.S. 649, 670 (1892). This echoes James Wilson's reasoning during the Convention's debate on this section:

"The people have a right to know what their agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings." J. Madison, Notes on debates in the Federal Convention of 1787, at 434 (Ohio Univ. Press, 1966).

In gauging the tenor of the times, it is signficant that this section generated heated battles in the ratification debates, and not because it stood for the principle of Congress' obligation to inform the public. Anti-federalists argued vehemently that the provision did not go far enough, inasmuch as it allowed the people's representatives to conduct secret proceedings "in their judgment." [65] They were assuaged only after Madison and other influential members of the Convention assured them that the secrecy provision would be invoked only on extremely rare occasions and that the people's representatives could be trusted to exercise considerable restraint in withholding any proceedings from the electorate.[66]

Given their recognition of the obligation of congressmen to inform and enlighten the electorate; their conviction that communication between a representative and his constituents was the heart of a representative's functions; their knowledge of abuses by the Crown in stifling dissent in the legislature under the guise of punishing "sedition" and "treason"; their decision to require the publication of congressional proceedings; and their fundamental belief in separation of powers, it is manifest that the framers intended the publication of committee hearings by a congressman to be privileged. It is simply inconceivable that they could have intended to allow intrusions by the executive or judiciary for any reason into the free communication of information about matters of public importance by a representative to the people. Jefferson's protest against such intrusions is the only position which is consistent with the basic theories of sovereignty, government and representation enunciated in the Constitution: For the Executive and grand jury "to interpose in the legislative department between the constituent and his representatives . . . to put the representative into jeopardy of criminal prosecution, of vexation, expense and punishment . . . if his communications, public or private, do not exactly square with their ideas of fact or right, or their designs of wrong, is to . . . leave us, indeed, the shadow, but to take away the substance of representation . . . rendering ineffectual that wise cautious distribution of powers made by the constitution between the three branches. . . ." [67] They thus understood that restraints on the exercise of the informing function through the publication of committee reports must come from the House itself, which is given ample power in Article I, section 5 to discipline its members.

4. *The Matthew Lyon Case.*

Finally, this view of the framers of our Constitution with respect to the informing function aspect of the privilege was shared by those who counted the most—the people. The privilege of a Congressman to inform his constituents was so well recognized as an essential part of our policy that during the entire disgraceful period of enforcement of the Alien and Sedition Acts, when the Executive equated criticism of its foreign policy with giving aid and comfort to the enemies of the United States, only one prosecution of a congressman for publishing "seditious libels" occurred. This was the trial of Congressman Matthew Lyon of Vermont in 1798. This trial, its effect on representative government, the intense public reaction to it, and Lyon's ultimate vindication bear witness to the disastrous consequences to separation of powers which result when the executive and judicial branches take action against a legislator who speaks out, in any form, against policies thought by the Executive, but not by the people's representatives in Congress, to be essential to the national security.

Lyon was tried under the Sedition Act for publishing two letters: the first accusing the President of an "unbounded thirst" for power, adulation and ridiculous pomp; and the second reprinting a communication from a French diplomat containing a charge of "stupidity" in our policy towards that country.[68]

Lyon was then "an active opposition member of the House of Representatives, where the vote was so equally balanced as to make his withdrawal of national political consequence; and he was then a candidate for re-election." [69] Lyon offered no real defense, both he and the reporter attributing this to his ignorance of the law (his counsel, the Chief Justice of Vermont, had withdrawn because the Court refused to allow adequate time for preparation).[70] He was found guilty by a jury and sentenced by two federalist judges to four months imprisonment and a fine of $1000. The Administration's careful planning was upset, however, when Lyon's constituents, enraged at the imprisonment of their representative for criticizing Adams, formed a mob and threatened to free him forcibly from jail. Lyon apparently perceived the political leverage he now possessed and quieted the mob. His continued imprisonment was so embarrassing "[t]hat the cabinet panted for an excuse to liberate him." [71] he was offered a pardon for an apology (the President said that "repentance must precede mercy") and, apparently, a money bribe, but Lyon held fast. He was re-elected while in jail by an overwhelming majority, returned to his seat, and continued his attacks on the Administration.[72] A move by Admintration forces in the House to expel him failed to get the necessary two-thirds. Lyon served another ten years in the House, and final vindication came in 1840 when an Act of Congress was passed by both Houses and signed by the President declaring his conviction void.[73]

In repudiating the harrassment and persecution of Congressman Lyon, Congress believed that it laid to rest forever the premises under the Sedition Act. In *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 274–276 (1964), this Court agreed, holding that these premises were inconsistent with the form of government established by the Constitution and "the attack upon [the Act's] validity has carried the day in the court of history." Just as the controversy over the Act "crystallized a national awareness of the central meaning of the First Amendment," *id.*, at 273, the *Cabell* and *Lyon* cases established the centrality of the informing function of Congress and the principles of separation of powers to the free speech privilege of the people's representatives. This broad consensus of opinion, articulated by Jefferson, Madison and Wilson and by the people themselves ought now to be recognized as the proper meaning of the Speech or Debate Clause, so that Sedition Act's "last vestige [is] effaced, and its doctrines finally disowned." [74]

D. English history and decisions sustain that publication of legislative proceedings is guaranteed by the privilege.

1. *The Purpose of the English Bill of Rights—the Case of Rex v. Williams.*

The Speech or Debate Clause is the product of a lineage of legislative free speech guarantees from the English Bill of Rights of 1689 to the first state constitutions and the Articles of Confederation. *See generally Tenney* v. *Brandhove, supra*, at 372–375. Historians are unanimous in concluding that the *legislative free speech guarantee in the English Bill of Rights resulted from a prosecution of a member of the House for causing to be published and disseminating to the people a committee report and was specifically designed to protect such conduct in the future.*[75] This case, the presecution of Sir William Williams, Speaker of the House is of overriding importance since it was "one of the immediate causes of the Revolution . . . (and) the occasion of one of the most important clauses in the Bill of Rights, and probably therefore of the like provision in the Constitution of the United States." *McIlwain, supra*, at 242.

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The grievance which gave rise to the legislative free speech provision is set forth clearly in the preamble to the Bill of Rights:

"Whereas the late King James the Second, by the assistance of diverse evill councillors, judges and ministers, imployed by him did endeavor to subvert and exterpate the Protestant religion, and the lawes and liberties of this Kingdome . . . by prosecutions in the Court of King's Bench for matters and causes cagnizable onely in Parlyment . . . The said lords spiritually and temporall and commons . . . for the vindicating and asserting their anntient rights and liberties, declare . . .;"

Corresponding to this article of grievance was the declaration:

"That the Freedom of Speech, and Debates or Proceedings in Parlyment, ought not to be impeached or questioned in any Court or Place out of Parlyment." 1 W. & M., Sess. 2, c. 2

This provision was not by its terms confined to spoken words and could not have been so intended. The last prosecution of members for words spoken in Parliament had occurred in Eliot's case in 1629 during the reign of Charles I, and that conviction was reversed on writ of error by the House of Lords in 1668.[76] The *only* prosecution of a member by King James II was that of Sir William Williams in 1686–1688 for having ordered the publication of a House committee report which alleged misconduct by the king, his family and advisors.[77]

The great case of Sir William Williams began during the reign of Charles II, where the House of Commons, of which Williams was Speaker, received a number of narrative reports about an alleged popish plot between the king, his relatives and advisors and the King of France to restore Catholicism as the established religion and to violate the free exercise of religion by Protestants.[78] The most famous of these narratives was Dangerfield's Narrative, which contained allegations of this sort in lurid detail against some of the most prominent members of the court. A committee of the House received this narrative, their report containing it was entered on the Commons Journal, and the House then gave permission to several of its members and outside printers to publish the narrative and other papers relating to the popish plot.[79] Williams, the Speaker, requested and received permission to publish Dangerfield's Narrative.[80] Sir William Courtney, among others, went on record for the reason for the printing: [81]

"Let men know what they please, the weight of England is the people; and the more they know, the heavier will it be; and I could wish some would be so wise as to consider, that this weight hath sunk ill ministers of state, almost in all ages; and I do not in the least doubt but it will do so to those who are the enemies of our religion and liberties."

A number of seditions libel prosecutions were instituted by Charles II against the authors of virulently anti-Catholic narratives.[82] All were found guilty by the handpicked judges of the King's Bench.[83] Yet even Charles II dared not attack members of Parliament. This rash action was undertaken in 1686, the year James II succeeded to a turbulent throne, with the filing of an information in the King's Bench against Sir William Williams for the publication of Dangerfield's Narrative.[84]

Williams was represented by Sir Robert Atkyns, a former Chancellor of the Exchequer, who came out of retirement to argue on behalf of the free speech privilege of the House.[85] Atkyn's argument contained a remarkable exposition of the origin, development and purposes of the privilege. He traced the history of the privilege from its early judicial antecedents, which he claimed settled the principle that anything said or done in Parliament could not be questioned in any inferior court.[86] He then argued, on functional terms and with an amazingly modern ring, that the privilege encompassed actions of members in effectuating the powers of Parliament. He saw those powers as three-fold: a legislative power, in the enactment of statutes; a judicial power, when acting as the High Court; and a counselling, or enquiring, power.[87] As evidence of the latter he cited the obligation of the House to investigate matters of state, expose corruption and maladministration, punish offending ministers and offer guidance to the king.[88]

Atkyns tied Williams' printing of the report to the enquiring function. He asserted, in fact, that this function was necessary for the accomplishment of all of the House's powers: [89]

". . . [T]he enquiry is the most proper business of the House of commons. For this reason they are commonly styled The Grand Inquest of the nation . . ."

"This enquiry of theirs is necessary in a subserviency of all the several high powers of that high court. Namely, in order to their legislature, or to the exercise of their power of judicature . . .

"Or it may be in order to their counselling power, for removal of great officers or favorites . . .

"But still they must first make enquirys . . . [and] the most effectual enquiry is most probably from without doors; and without such enquiry, thing of great importance may lie concealed."

Atkyns then responded to the Attorney General's contention that the act of publication divested Williams of the privilege. As a matter of common sense, he said, this was absured. The narrative had already been made public when read before the bars of both Houses and entered in their Journals; the publishing in print changed nothing.[90] Finally, Atkins asked rhetorically, "but what need was there of printing it?" and responded that the House "out of a sense of duty" might decide that it was necessary to inform and alert the public of Dangerfield's charges against high ministers. An enlightened public might then offer more information, "a fuller proof," that could lead to the prosecution, removal, or clearing of the ministers.[91] Publication of the report was a good way of conducting this further enquiry; "of late years enquiry by printing has been a most frequent practice, and we meet with it every week, and it is become the most ordinary way of making enquiries, which run into all parts of the nation." [92]

Atkyns' argument was thus a forerunner of the standard applied two hundred years later by this Court—that the privilege protects things "generally done" by members "in relation to the business" before the legislature.[93] In ordinary times, this argument would have been successful; but James II dismissed the honest judges of the King's Bench and caused Williams to be tried by a court headed by the notorious Jeffries.[94] The plea of privilege was rejected out of hand and Williams was fined ten thousand pounds.[95]

James II was sent into exile shortly after Williams' conviction, and a committee was appointed by the House of Commons "to bring in general Heads of such things as are absolutely necessary to be considered for the better securing our Religion, Laws, and Liberties." The committee was chaired by Sir George Treby and contained Sir William Williams.[96] The committee reported back, and Treby said of the free speech guarantee: [97]

"This article was put in for the sake of one, once in your place (i.e., the Speaker), Sir William Williams, who was punished out of Parliament for what he had done in Parliament."

A delegation was then sent to the House of Lords, with Williams at its head, and in February of 1689 the two Houses agreed upon the broad language of the Bill of Rights.[98] In July, the House of Commons passed a specific resolution that the judgment of the King's Bench against Williams "is an illegal Judgment, and against the Freedoms of Parliament." [99]

This history should lay to rest any contention that the publication and dissemination of legislative proceedings is not protected legislative activity. On the contrary, it is fair to conclude that the free speech guarantees beginning with the English Bill of Rights were designed to protect just such activity.

2. *Subsequent Decisions Holding the Privilege Applicable to Members who Publish Without Permission of the House.*

The English Bill of Rights of 1689 overruled the King's Bench decision in the *Williams* case and established that publication of proceedings was encompassed within the free speech privilege. Williams had, however, obtained an order from the House to publish Dangerfield's Narrative. It would seem to be a short step from that to the protection of publication by a member on his own.[100] Yet that step was taken only after a prolonged conflict with the courts between 1795 and 1868. Care must be taken in analogizing the English cases—all decided after the Constitution was written—to the scope of the privilege in America because of the existence of certain historic factors in England which were there relevant in molding the privilege in this area but which have never existed in our country. The major factor is the standing rule of the House of Commons, dating back to the early 1600's, which prohibited the publication of its proceedings, either by members or by the press, except by specific leave of the House.[101] This rule was justified first to insure secrecy against Stuart and Tudor monarchs who systematically threatened retaliation against members who were discovered to have intruded into their prerogatives in parliamentary debates, but the rule was later invoked out of fear of misrepresentation in the press and a general intolerance to public opinion.[102] When individual members and the House printers then claimed the right to publish the proceedings, their arguments about the necessity to enlighten the public were greeted quite unsympathetically by courts which had observed the imprisonment of newspapermen by the House for the violation of the standing rule.[103] These circumstances, of course, did not exist in America, where Congress was *required* by the Constitution to publish its proceedings and where Congress from its earliest days recognized its obligation to make its proceedings widely available to the public and encouraged individual members to do so.[104]

An examination of these post-Constitution English cases is nevertheless instructive because the privilege was ultimately extended to publication of legislative proceedings due to the recognition of the informing function of Parliament. In England, members of Parliament are now privileged in publishing speeches and reports for the information of their constituents, and this privilege applies derivatively to publishers and to the press. The first cases which held to the contrary, and which were relied upon by the Court of Appeals,[105] were never firmly settled and have not survived. The evolution of English decisions is a follows:

(a) In *Rex* v. *Lord Abington*, 1 Esp. 226, 170 Eng. Rep. 337 (1795), a member of the House of Lords accused his attorney of unprofessional conduct, in a speech on the floor. Abington later arranged for the speech to be published, and the attorney instituted a libel action. Although Abington pled the privilege as a bar to the action, he did not argue that the privilege was applicable due to his obligation to inform his constituents; nor could he have so argued since he was a member of the House of Lords, and thus not elected to Parliament. Lord Kenyon sitting

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nisi prius, rejected the plea. His opinion is quite clear in upholding the right to publish speeches made in Parliament, but he excluded from that right libels against *private individuals:*

"A Member of Parliament has certainly the right to publish his speech, but that speech should not be made a vehicle of slander against any *individual;* if it was, it was a libel." *Id.*, 170 Eng. Rep. at 340. (Emphasis added.)

(b) Four years later in *Rex* v. *Wright*, 8 T.R. 293, 101 Eng. Rep. 1396 (1799), the King's Bench held a bookseller absolutely immune for printing and circulating an allegedly libellous House report. The Crown relied principally upon the trial of Sir William Williams as *authority* for this prosecution; but Lord Kenyon, now Chief Justice, dismissed the argument with the comment that that case "happened in the worst of times." Justice Grose, more forthrightly, said of the *Williams* case, "it must be remembered that that was declared by a great authority to be a disgrace to the country." And Lord Kenyon stated the broad principle:

"[T]he report in question, being adopted by the House at large, is a proceeding of those who, by the constitution, are the guardians of the liberties of the subject; and we cannot say that any part of that proceeding is a libe." *Id.*, 101 Eng. Rep. at 1398.

The third member of the Court, Justice Lawrence, concurred on the basis of the public's right to be informed fully about proceedings in Parliament:

"It is of advantage to the public, and even to legislative bodies, that true accounts of their proceedings should be generally circulated; and they would be deprived of that advantage if no person could publish their proceedings without being punished as a libeller." *Id.*, 101 Eng. Rep. at 1399.

(c) Obviously, there was a basic inconsistency in the approach taken by the court, including Lord Kenyon, in *Wright* as contrasted to *Abington*. Unfortunately, by the time that *Rex* v. *Creevey*, 1 M. & S. 272, 105 Eng. Rep. 102 (1813), a libel action for publication against a member of the House, was decided, Lord Kenyon had died and his successors had to reconcile the precedents. Instead, they held that the privilege did not extend at all to a publication of a speech—a position hardly supported even by the narrow holding of *Abington*—the theory being that since the House has a standing order against publication of its proceedings, any member who does so is acting *ultra vires*. See *Wason* v. *Walter*, discussed in (e), *infra*.

(d) In *Davison* v. *Duncan*, 7 E. & B. 229, 233, 119 Eng. Rep. 1233, 1234 (1857), all of the justices agreed in dictum, that despite *Creevey* a member of Parliament was privileged in republishing a speech in order to disseminate it to his constituents.

(e) In *Wason* v. *Walter*, L.R. 4 Q.B. 73 (1868), the Court held, in a libel action against a bookseller for publication of a speech in Parliament that the privilege protected a member, if published "for the information of his constituents," *id.*, at 95, and afforded derivative protection to a publisher.

The governing principle was that the informing function of Parliament was essential to representative government:

"How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is passing in either house? Can any man bring himself to doubt that the publicity given in modern times to what passes in parliament is essential to the maintenance of the relations subsisting between the government, the legislative, and the country at large? . . . It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the houses of parliament shall be communicated to the public, who have the deepest interest in knowing what passes within their walls, seeing that on what is there said and done, the welfare of the community depends." *Id.*, at 89.

The court then severely criticized the reasoning of earlier cases, including *Stockdale* v. *Hansard*, 9 A. & E. 2, 112 Eng. Rep. 1112 (1839), and *Abington* and *Creevey* were limited in the narrowest possible manner. Finally, the Court forthrightly rejected the *ultra vires* argument:

"It only remains to advert to an argument urged against the legality of the publication of parliamentary proceedings, namely, that such publication is illegal as being in contravention of the standing orders of both houses of parliament . . . [P]ractically, each house not only permits, but also sanctions and encourages, the publication of its proceedings, and actually gives every facility to those who report them. . . . Collectively, as well as individually, the members of both houses would deplore as a national misfortune the withholding their debates from the country at large . . . The standing orders which prohibit it are obviously maintained only to give to each house the control over the publication of its proceedings, and the power of perventing or correcting any abuse of the facility afforded. Independently of the orders of the houses, there is nothing unlawful in publishing reports of parliamentary proceedings. Practically, such publication is sanctioned by parliament; *it is essential to the working of our parliamentary system, and to the welfare of the nation.* Any argument founded on its alleged illegality appears to us, therefore, entirely to fail." L.R. 4 Q.B. at 95. (Emphasis added.)

(f) *Wason* v. *Walter, supra*, was the last judicial decision in England considering the privilege in the context of publishing proceedings. In 1938, however, the House of Commons appointed a select committee to consider the applicability of the Official Secrets Act to members of Parliament. The incident precipitating the appointment of the committee was the action of a military court of inquiry in subpoenaing a member of the House of Commons, Duncan Sandys, who obtained and disclosed highly sensitive military documents, containing current battle of order plans and marked "secret," allegedly in violation of the Official Secrets Act. The committee asked Sir Gilbert Campion, a noted scholar and legal advisor to the House, to prepare a memorandum on the law of privilege in England. He concluded, among other things, that a member was immune from judicial proceedings and all forms of executive and judicial harassment for receiving documents in violation of the Act and in disclosing them on the floor or in committee. Report from the Select Committee on the Official Secrets Act 23–28 (1939). He then reviewed the libel cases from *Abington* through *Wason* v. *Walter* and concluded that the privilege would include as well the publication and dissemination to the public of such a speech or hearing, at which he disclosed classified information:

"If . . . a member circulated among his constituents a speech made by him in Parliament in which he had disclosed information of the kind in question, it might be held on the analogy of the principles which have been said to apply to prosecutions for libel that he could not be proceeded against for disclosing it to his constituents, unless, of course, the speech had been made in secret session. Even if the suggested analogy is not admitted, it would be repugnant to common sense to hold that though the original disclosure in the House was protected by parliamentary privilege, the circulation of speech among the member's constituents was not." *Id.*, at 29.

In America, Congress has never had standing orders against publication; from the beginning, Congress has actually encouraged it. See, *e.g.*, 39 U.S.C. § 4163 (the franking privilege). Indeed, such a rule would appear to be specifically prohibited by Article I, section 5. And the legislative privilege for publication was recognized fully in England only after democratic reforms had emphasized the primacy of Parliament as the people's representatives, and the correlative informing duty. Again, in America, this was the revolutionary presupposition of our Constitution.

Over one hundred years ago, the British recognized that parliamentary privilege, for both members and those acting on their behalf, must extend to the publication of parliamentary papers in order to ensure the public that legislators will perform their vital informing function. There is no reason in history or policy why the rights of the people's elected representatives should be narrower in the United States. In fact, it would be anomalous in the extreme for Great Britain, a country in which separation of powers is *not* a constitutional principle of government, to have definitively established this privilege, but for the United States, where separation of powers has been a basic doctrine from the outset, to reject it.

E. The privilege is not divested because the legislative activity in question was carried out in a manner deemed by a Federal court to me irregular and contrary to the court's notion of germaneness.

Perhaps out of recognition that its holding was at odds with the thrust of prior decisions of this Court and was inconsistent as well with the history and policies underlying the Speech or Debate Clause, the Court of Appeals suggested that ordinary publication of committee reports might well be constitutionally protected but that this particular instance was not. This was implied in the initial decision [106] and stated beyond doubt in the second opinion (on rehearing), where the Court of Appeals "dr[ew] a distinction between normal and customary republication of a speech in Congress and republishing privately all or part of 47 volumes of, we must presently assume, lawfully classified documents, through the device of filing them as exhibits to the records of a subcommittee to which they have no conceivable concern." (P.W.C. 2c.)

The clarifying language in the opinion on rehearing indicates clearly that the Court of Appeals has thus taken upon itself the power of determining whether or not a procedure followed by a senator in the performance of his legislative functions is sufficiently "regular" so as not to divest his protection under the Speech or Debate Clause. In so doing the Court of Appeals has departed drastically from settled principles. Even the District Court recognized in its opinion that "[t]he courts have no right to dictate . . . the procedures for Congress to follow in performing its functions. . . ." and that "[j]udging the applicability of the legislative privilege in the exercise of the functions of a legislator's office should be done 'without inquiring whether the exercise was regular according to the rules of the House, or irregular and against their rules,'" 332 F. Supp. at 936. See also, *e.g.*, *Tenney* v. *Brandhove, supra; Coffin* v. *Coffin, supra;* and *Cochran* v. *Couzens*, 42 F. 2d 783 (D.C. Cir. 1930).

Article I, section 5 of the Constitution vests in Congress, and Congress alone, the power to make and enforce rules for its proceedings. This is a "textually demonstrable commitment" of authority to a coordinate branch of government, cf. *Baker* v. *Carr*, 369 U.S. 186 (1961), and clearly precludes superintendence by the judicial branch. How a

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House of Congress internally allocates its functions among its committees is a political question which is beyond the cognizance of the courts.[107] The judiciary has no more authority to tell a senator what is "germane" to the subcommittee which he chairs[108] than to adjudicate the current jurisdictional dispute between the Foreign Affairs and Armed Services Committees. The privilege is inapplicable to committee investigations only when it is "obvious that there was a usurpation of functions exclusively vested in the Judiciary or in the Executive." *Tenney* v. *Brandhove, supra,* at 378. As the District Court observed, a committee investigation into the causes and conduct of the war in Vietnam is hardly such a "usurpation," 332 F. Supp. at 935.[109]

It is equally clear that there is nothing in the nature of "private" publication which may defeat the privilege. Technological developments in printing have so persuaded congressmen and other public officials to utilize private facilities to disseminate reports and records in order to obtain the cheapest and most widespread distribution that it is now a dominant mode of publication. This Court may take judicial notice of the fact that, for example, every important commission report over the last decade has been printed privately.[110] Similarly, transcripts of many significant congressional committee hearings have been printed privately and published in book form. Some of the better known examples are the 1966 Senate Committee Hearings on the Vietnam War,[111] the 1954–1955 Subcommittee Hearings on Juvenile Delinquency,[112] the 1961 Subcommittee Hearings on Employment, Manpower and Poverty,[113] the Hearings on the Housing Act of 1936,[114] the 1937 Hearings on the Reorganization of the Federal Judiciary,[115] the 1902 Hearings on the Philippine Insurrection,[116] the 1867 House Hearings on the New Orleans race riots,[117] the 1866 Hearings on the Memphis riots,[118] and the 1866–1868 Report of the Joint Comimttee on Reconstruction.[119] And even before this development became so pronounced, the public printer, who is after all distinguished only by being subsidized by the taxpayer, has not had a status at all different, under either American or English Law, from private printers who publish legislative proceedings.[120]

As this Court has recognized, the privilege would be "of little value" if it turned upon such amorphous concepts as "germaneness" and "regularity," for such standards in reality reduce to the way in which a judge or jury, in its discretion, speculates about the propriety of a congressman's actions. *Tenney* v. *Brandhove, supra* at 377. The doctrine announced by the Court of Appeals, for the first time in our jurisprudence, would permit private suits against congressmen for speaking to their colleagues and to the electorate—which should be dismissed summarily—to go to the trier of fact upon a simple allegation of irrelevance or irregularity. *But see, e.g., Cochran* v. *Couzens, supra.* It would permit the institution of grand jury proceedings and criminal prosecutions against disfavored legislators upon the same naked assertion. The "absolute" protection[121] of the Speech or Debate Clause would crumble, and the "practical security" it seeks to afford rendered illusory, in the face of essentially political questions of regularity and propriety. This is precisely such a case. The executive branch believed that it would be improper to reveal to the public the contents of the Pentagon Papers; a United States senator, elected by the people, believed that it would be improper for those documents to be withheld from public scrutiny and that he had the duty to inform the people of their contents. The executive branch now asks the courts to umpire this dispute. "Courts are not the place for such controversies." *Tenney* v. *Brandhove, supra,* at 378. Neither are grand juries.

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PART II

The Speech or Debate Clause Prohibits Grand Jury Investigation into the Legislative Acts of a Senator through the Interrogation of Persons who Assisted Him in the Performance of his duties.

In the preceding part, we have shown that the historical underpinnings of the Speech or Debate Clause, the purposes for its inclusion in the Constitution, and the specific intentions of the framers, all lead to the inescapable conclusion that the publication and circulation of the subcommittee record are privileged from judicial inquiry because they fall within the category or actions necessary to foster the aims of representative government and are customarily done by congressmen in relation to the business before the legislature. The protection given to acts such as these does not derive as an emolument of office but is essential to preserve the independence, integrity and freedom of the legislative branch and, hence, the rights of the people.

The executive branch in this case claims the right to intrude deeply into the legislative process by investigating, through the compulsory process and contempt powers of the grand jury and of the courts, the privileged legislative activities of Senator Gravel. It claims the right to subpoena everyone with whom the Senator dealt in the performance of his constitutional obligations and to interrogate them about how and why the Senator prepared for and conducted the subcommittee hearing and how and why he arranged for the publication and dissemination of the record of that hearing to his colleagues and to the electorate. The executive branch thus asks this Court to hold that it may, in conjunction with the grand jury, intensively breach the sanctity of the legislative process. And, although given ample opportunity to do so in the lower courts, the Government has not even offered a reason, beyond the broadest of generalities, why this intrusion into the privileged activities of a coordinate branch would be even helpful, let alone necessary, in the enforcement of the criminal laws.

In evaluating whether this proposed investigation is barred by the protections of the Speech or Debate Clause, consideration must, of course, be given to the role which the Clause plays in our system of separation of powers and to its basic purpose of giving "practical security" to the legislature. *United State* v. *Johnson, supra.* Likewise, consideration must be given to the legitimate social interest in the enforcement of criminal and civil laws, save in those situations where constitutional mandate and overwhelming social policy dictate otherwise. *Ibid.*

A. An investigation by the executive branch, in Conjunction with the grand jury, into the legislative acts of a Senator violates the Doctrine of Separation of Powers.

As has been pointed out, *supra,* at pp. 5–10, the Justice Department in this case started out its intended investigation of the publication of the subcommittee record by focusing upon Senator Gravel personally. The lack of success of this focus in the courts below has forced the Justice Department to abandon any attempt to subpoena Senator Gravel in order to inquire into the details of his privileged conduct.[122]

However, the Justice Department persists in continuing its investigation of the Senator's conduct in holding the hearing and publishing the record by seeking to interrogate parties whose aid was a *sine qua non* to the Senator's accomplishment of his legislative task, namely the Senator's aide and those who assisted him in publishing the record.

The argument made by the Senator herein is not that the introduction of the Pentagon Papers into the subcommittee's official record "bathes" all actors in the transaction with senatorial immunity in order to protect them or anyone. Rather, the Senator argues that on the facts of this case, in order for *the Senator* to be protected against unseemly and unconstitutional executive and judicial "question[ing] in any other Place" concerning his legislative acts, he must be able to assert his privilege against having those who assisted him in the accomplishment of his legislative obligations questioned about those very subjects on which the Government has now abandoned any efforts to question the Senator personally.[123] It is the Senator's own privilege, and more importantly the rights of the sovereign people, that he seeks to vindicate, not any right or privilege that inheres independently in such aides and other parties.

It must be understood at the outset that the Senator's argument here is very limited. He does not argue that either he or his aides or other parties are bathed with any immunity from questioning where what they did, saw or heard was not a necessary and proper adjunct to a legislative act. Nor does the Senator here venture a view with respect to whether or not any party with whom he did or did not deal is bathed with any kind of immunity from prosecution or accountability.[124]

In fact, we will assume that if the Senator personally had "stolen" the Pentagon Papers, and if such an act were a crime, then he could be prosecuted for that criminal act. Certainly, then, aides and other assistants could likewise be prosecuted.

But there has been no suggestion in this case that the Senator or anyone working under his direction "stole" the Pentagon Papers. The investigation for which Dr. Rodberg, Howard Webber, and Beacon Press officials and others have been subpoenaed forcuses directly and entirely on the preparation for the subcommittee meeting and the subsequent publication of the record thereof, and the finder of fact so stated (S.G.P. 39.) To put the matter more precisely in the language of prior opinions of this Court, the Justice Department focuses its inquiry on acts "generally done" in a session of the legislature by a member in relation to the business before it.

1. *The Inquiry Proposed by the Justice Department.*

The Justice Department now acknowledges that the Speech or Debate Clause bars direct questioning of a member of Congress about his legislative acts. (S.G.P. 10.) Yet it seems evident that exactly the same constitutional evil may result from a grand jury inquiry into the congressman's legislative acts through the interrogation of everyone with whom he dealt. In the course of his legislative activities, a congressman must of necessity deal with many people, and the interrogation of them before the grand jury will accomplish by indirection precisely what the Justice Department concedes cannot be done directly—the intensive breach of the sanctity of the legislative process. The Executive, with the assistance of the grand jury, may, under the claim now advanced by the Solicitor General, investigate how a congressman wrote a speech, what materials were in his possession, what conversations he had prior to speaking out or voting on controversial issues, how he prepared for and held a hearing, how he made his speeches, reports and hearings available to the electorate, and why he engaged in any of these legislative activities. This case represents just such a situation. It is difficult to imagine a Senator adequately preparing for and holding a committee hearing without the assistance of aides, or of performing the informing function adequately without the assistance of printers. The interrogation of Dr. Rodberg before the grand jury about the hearing, and of Webber and the Beacon officials about the publication of the record, would disclose *precisely* the same amount of information about the

Senator's privileged activities as if he himself were called.

This kind of unrestrained intrusion [125] into privileged legislative activity is a clear and blatant violation of separation of powers. The Speech or Debate Clause was designed to serve the function of "reinforcing the separation of powers so deliberately established by the Founders." *United States* v. *Johnson, supra,* at 178; Federalist No. 48 (Madison). See also Works of James Wilson 299 *et seq.* (McCloskey ed. 1967). Indirect and subtle breaches of separation of powers are just as prohibited as direct and massive violations, for, as the framers well understood, "power is of an encroaching nature, and . . . it ought to be effectively restrained from passing the limits assigned to it." Federalist No. 48 (Madison).[126] Stripped of its verbiage, the issue here is a simple one: May the executive branch and the grand jury investigate the privileged legislative activities of a member of Congress? Unless the stone wall conception of the doctrine of separation of powers is reduced to a pleasant-sounding, but meaningless, metaphor, the answer must be emphatically "No."

2. *The Inquiry Permitted by the Court of Appeals.*

The same basic principle of separation of powers forecloses the very substantial inquiry permitted by the Court of Appeals, which would allow the interrogation of all those except his personal aides who assisted the Senator in the performance of his legislative activities, so long as the "object is [not] to attack the legislator's motives in speaking." (P.W.C. 12a.) In so holding, the Court of Appeals misapprehended the holding of *United States* v. *Johnson, supra,* at 173–176, where this Court barred inquiry of anyone not only into motives but also into *how* the speech was prepared and into its precise ingredients. More fundamentally, the rationale of the Court of Appeals affords little, if any, protection to a member of Congress against intrusions by the executive and grand jury into privileged activity. Given the complexities of modern-day government, Congressmen must and customarily do require the assistance, cooperation and advice of persons outside their immediate staff in fulfilling the duties of their office. This inescapable fact of modern-day legislative life renders illusory the protection against unconstitutional inquiry announced by the Court of Appeals. Any protection which the Senator has from direct inquiry may be circumvented through the investigation of his privileged activity by the interrogation of private persons with whom he dealt about how he prepared and delivered speeches, votes, committee hearings and so forth.

The Court of Appeals apparently believed that an otherwise impermissible intrusion into the legislative process was legitimate if the interrogators disclaimed any intention to attack the Senator's motives. That this limitation does not ameliorate the patent violation of separation of powers is clear, for four reasons. First, and most basically, the unconstitutionality of a breach of separation of powers does not depend on whether it was done out of good or bad intentions. Certainly no court would uphold a clear infringement of First Amendment rights because the executive branch acted in good faith; the same is true with respect to the absolute guarantee of the Speech or Debate Clause.[127] Second, if the executive branch and the grand jury may uncover every detail concerning the manner in which a senator, for example, decided to give a controversial speech, his motives for doing so are readily inferable. Third, this standard is unenforceable; the Court of Appeals rejected as "extraordinary" the Senator's motion that the Justice Department specify the purpose and nature of its proposed inquiries (P.W.C. 13a). And fourth, the reason that courts do not delve into the motives of legislators is that to do so would be "indecent, in the extreme." *Fletcher* v. *Peck,* 6 Cranch, 87, 3 L. Ed. 162, 176 (1810) (Marshall, C. J.) It is equally unseemly to pry into privileged *acts.* The District Court was therefore correct in holding that no witness before the grand jury could be questioned about Senator Gravel's privileged acts and his motives for performing them.[128]

B. The Investigation of a Senator's privileged acts through the interrogation of those who assisted him has the same potential for intimidation, harassment and distraction as if the Senator were questioned directly.

The proposed inquiry by the Executive and grand jury into the Senator's privileged legislative acts, even under the limitations placed by the Court of Appeals, is directly violative of separation of powers; and the Executive has asked the assistance of the federal courts, by way of their compulsory process, in a manner which would indeed make the courts a party to an unconstitutional end. This provides ample reason for this Court to hold the inquiry barred by the Speech or Debate Clause.

In addition, the Executive's proposed inquiry runs afoul of the Speech or Debate Clause in another, albeit related, way. An important purpose of the Clause is to guarantee "practical security" to congressmen and to prevent "intimidation by the executive." *United States* v. *Johnson, supra,* at 179, 181. In considering this question, then, the courts must "look particularly to the prophylactic purposes of the clause." *Id.,* at 182. The Solicitor General has now conceded (what would appear in any case to be self-evident) that direct interrogation of a congressman about his legislative activities before the grand jury carries with it an obvious potential for intimidation and harassment. (S.G.P. 9–10.)[129] Yet it is a mystery why the Solicitor General does not recognize exactly the same potential in the interrogation of persons who assisted the congressman in executing his constitutional functions.

In its petition for certiorari, the Justice Department pointed out the one and only difference between the investigation of a congressman's privileged conduct through personal questioning and the same investigation accomplished by the interrogation of those who assisted him in the performance of his duties; namely, that in the latter case his own time is not being expended in the grand jury room (S.G.P. 11). While the avoidance of this result is of course one purpose of the Clause, see *Powell* v. *McCormack, supra,* at 505, the major thrust of the privilege is to foreclose intimidation and harassment. Jefferson's and Madison's powerful protest against the intrusion and intimidation by the grand jury in *Cabell's* case was wholly independent of whether Cabell himself was interrogated personally, which apparently he was not. See pp. 53–58, *supra.* If a senator knows that the executive branch, and federal grand juries, may investigate every detail of his legislative activities as a result of his giving a controversial (or displeasing) speech or holding a committee hearing, or in casting his vote in a manner questioned by the Executive, he will certainly think twice before discharging his duties uninhibitedly. The result of permitting the interrogation of those who assisted him in his decision-making process would be to intimidate the legislator from seeking advice and assistance on controversial matters, which are those in which he needs it the most. It will also deter those who would render such assistance and then face the choice of breaching every confidence before the grand jury or going to jail for contempt. Finally, in terms of "distraction," we did not understand this Court in *Powell* to suggest that this term has only a temporal content. Manifestly, a congressman will not be oblivious to the fact that an intensive grand jury investigation into his privileged activities is occurring, with an uncertain scope and outcome, and this is bound to distract him from the maximum performance of his duties. And the fact that he had not been called may cut the other way. The congressman has on right to be in the grand jury room during the secret, inquisitional interrogation of those who assisted him, he cannot object to the most outrageous of inquiries, and he cannot even be sure of the degree to which the Executive and grand jury have intruded into his privileged conduct. It thus may be even more intimidating of a congressman for the Executive to intrude into his legislative activities in circumstances where the interrogation is in a secretive chamber and is of those over whom he has no certain control.[130]

C. Prior American and English cases have prohibited the testimony of nonmembers about the legislative acts of members.

On several prior occasions, courts in both the United States and Great Britain have held that a legislator may invoke the privilege to bar the interrogation of persons who assisted him in the discharge of his duties. While these cases are, in varying degrees, distinguishable from the present situation, each deals with the intercession of the speech and debate privilege to prevent the questioning of nonmembers with respect to the legislative acts of members.

In perhaps the situation closest to the instant case to have reached this Court held that it was error for the judiciary to allow *any* persons, including aides and complete outsiders, to be questioned with respect to a member's legislative acts. In *United States* v. *Johnson, supra,* four defendants were convicted under an indictment charging conspiracy to defraud and substantive acts under a conflicts of interest statute. The conspiracy counts alleged, essentially, that the defendants had conspired to defraud the United States of its right to have the official business of the Department of Justice conducted honestly and free of undue pressure and influence. As this Court described the "broad outline" of the conspiracy, two congressmen (including Johnson) agreed with two officers of a Maryland savings and loan institution, that the congressmen would exert influence on the Justice Department to obtain dismissal of a pending indictment against a loan company and its officers. As part of the conspiracy, Congressman Johnson was to give and did in fact give a speech on the floor of the House favorable to independent savings and loan associations. The two congressmen approached officials of the Justice Department and tried to influence them to drop the indictment. Congressman Johnson received fees allegedly disguised as "campaign contributions" for these services.

This Court did not discuss the case in terms of in what respects the Speech or Debate Clause protected Johnson in accepting a bribe [131] or in applying unlawful pressure on the Justice Department. On the contrary, this Court specifically noted that:

"No argument is made, nor do we think that it could be successfully contended, that the Speech or Debate Clause reaches conduct, such as was involved in the attempt to influence, the Department of Justice, that is in no wise related to the due functioning of the legislative process." *Id.,* at 172.

In other words, this Court considered the Speech or Debate Clause applicable only to legislative activities; and "influence peddling," particularly where it involved an intrusion by the legislator into prosecutorial activities specifically delegated by the Consitution to the executive and judicial branches, could not be considered within the sphere of legislative duty.[132]

But other of Johnson's activities, illegal and badly motivated though they may have been, were ruled by this Court to be within

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the clear ambit of and related to "the due functioning of the legislative process," namely, "the manner of preparation and the precise ingredients of the speech [and] the motives for giving it." *Id.*, at 175–176. In order to protect the Congressman's privilege under the Speech or Debate Clause, this Court held that it was error for the trial court to allow questioning of the Congressman, *his administrative assistant, and outsiders* representing the loan company, with respect to their knowledge of or participation in the preparation of the speech and its delivery. *Id.*, at 173–176. Thus, while the Court did not have to reach the question whether such aides and outside assistants and parties could be prosecuted and held criminally accountable for their participation in the Congressman's perhaps unlawful but nevertheless privileged acts involving the speech,[133] it prohibited any questioning of anyone where that questioning involved protected legislative activities. Since the attempts to pressure and influence the Department of Justice were found to be outside the scope of legislative activities, the Government was not prohibited from questioning either the Congressman or his aides or other parties about that conduct.

It should be noted that this Court in *Johnson* was dealing with the trial of a criminal indictment. Yet the Court did not analyze the applicability of the Clause primarily in terms of any immunity from criminal prosecution afforded to either the member or his nonmember associates.[134] Instead, this Court chose to isolate the legislative acts from the nonlegislative acts and prohibit *questioning* of *anyone* regarding legislative acts.[135]

English law is in accord. In *Ex parte Wason*, L.R. 4 Q.B. 573 (1868), a complainant charged that a nonmember conspired with two members of the House of Lords to deceive the House by making speeches in the House which they knew to be false and libellous of the complainant.[136] Although this conspiracy was a crime under English law, *id.*, at 574–575, the Court held unanimously that no information could issue against *any* of the defendants. The gravamen of the charge was that the members improperly prepared and delivered speeches, which is privileged conduct. This conduct was immune from the cognizance of the courts for, as Mr. Justice Lush said:

". . . [W]e ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House." *Id.*, at 579.

And Chief Justice Cockburn said:

"It is clear that statements made by members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third person. And a conspiracy to make such statements would not make the persons guilty of it amenable to the criminal law." *Id.*, at 576.

The court thus did not allow the case to proceed against the members or outsider, for *either* charge would have required the introduction of testimony concerning the legislative acts of the members themselves.

This doctrine was also followed in *Rex* v. *Rule*, 2 K.B. 372 (1937), in which a legislator's constituent was convicted for publishing defamatory libels. He had written to his member of Parliament indicating that he had documents proving that a detective and a justice of the peace were guilty of criminal conduct. The member wrote the constituent, requesting that the constituent mail to him the documents. "These can be forwarded to me with utmost confidence. . . ." *Id.*, at 377. The court attached particular significance to the fact that the member requested the information of his constituent in confidential fashion. *Id.*, at 376. Thereafter, the constituent sent the materials to the member, for which the former was prosecuted. Lord Hewart, C.J., writing for the court said:

"It is sufficient for the purpose of this case to say that in our judgment a Member of Parliament to whom a written communication is addressed by one of his constituents asking for his assistance in bringing to the notice of the appropriate Minister a complaint of improper conduct on the part of some public official acting in that constituency in relation to his office, has sufficient interest in the subject-matter of the complaint to render the occasion of such publication a privileged occasion. When once it is seen that a decision favourable to the appellant requires no more than this limited assertion of the interest of a Member of Parliament in the welfare of his constituents, it appears to us impossible to resist the conclusion that the conviction cannot be supported." *Id.*, at 380.

The court thus recognized that the imperative of free communication between a legislator and his constituents necessarily implies that the legislator can invoke his privilege to bar questioning of the constituent with respect to the privileged relationship.

It is essential to bear in mind in any analysis involving the testimonial privilege of the Speech or Debate Clause that the prohibition against inquiry extends *only* as of an organization's documents and records far as is required in order to protect the congressman's legislative activities from being "questioned in any other place." Congressmen themselves are not immune from questioning, nor from prosecution for that matter, with respect to non-legislative activities. Certainly, aides and others who assisted a congressman in *nonlegislative* acts could also be questioned and held accountable. And this Court has made clear that at least in one situation the privilege is not coterminous between a congressman and a party who assist him; when that party enforces an unconstitutional order, he may be subject to restraints by the courts, which have the obligation to protect individual rights. *Powell v. McCormack, supra, Kilbourn* v. *Thompson, supra*.

In keeping with this rather simple set of standards, this Court has dealt with several situations arising under the Clause after the *Johnson* case. In *Dombrowski* v. *Eastland*, 387 U.S. 82 (1967), the Court was faced with a civil action arising out of the subpoenaing in the name of a Senate subcommittee. The petitioners charged the respondents with an unconstitutional conspiracy with state officials. The chairman and legal counsel of the Internal Security Subcommittee of the Senate Judiciary Committee raised the Speech or Debate Clause in defense.

This Court upheld the dismissal of the action as against the Senator. There was no evidence that the Senator himself was a party to the conspiracy. With respect to the subpoena, the Court pointed out that the Senator was engaged "in the sphere of legitimate legislative activity" and he should neither be held liable nor even be made to spend time and energy defending the action. *Dombrowski* v. *Eastland, supra*, at 84–85. The Court noted that the Senator's immunity from liability for legislative acts was absolute. *Ibid.*

With respect to respondent Sourwine, the subcommittee's counsel, the Court stated that the immunity is *"less absolute, although applicable,* when applied to officers or employees of a legislative body, rather than to legislators themselves." *Id.*, at 85 (Emphasis added.) However, there was some question as to whether or not Sourwine conspired with Louisiana authorities to violate the plaintiffs' constitutional rights—a nonlegislative act. The Court was obviously satisfied that if indeed Sourwine committed any nonlegislative and illegal acts, he was *not* doing it in conjunction with the Senator or under his direction. This Court specifically ruled that "[t]he record does not contain evidence of [Senator Eastland's] involvement in any activity that could result in liability," and it further found that the Senator was engaged "in the sphere of legitimate legislative activity." *Id.*, at 84–85. If indeed Sourwine committed the acts complained of, this Court must have been convinced that he was on a frolic of his own, in concert with illegally-acting state authorities. It was on this basis that the Court reversed a summary judgment granted to Sourwine below, and sent the case back for a hearing on his liability and, if necessary, damages. The rationale for this decision is quite simply that it was not necessary to hold Sourwine immune from either questioning or liability in order to protect the sanctity of the Senator's legislative activities.

That this is the extent of the Clause's "less than absolute" applicability to nonmembers of the legislative branch is confirmed by *Powell* v. *McCormack, supra*. Although the action was dismissed against the named congressmen defendants, this Court held that it had jurisdiction over the ministerial employees, such as the sergeant-at-arms, who had enforced an unconstitutional resolution. In so doing, they were acting as any law enforcement official who carries out an unconstitutional act and infringes an individual's secured rights; and this Court had not only the power, but indeed the duty, under the doctrine of *Marbury* v. *Madison*, 1 Cranch, 137, 2 L. Ed. 60 (1803), to examine the legality of the congressional act and vindicate the constitutional rights of Powell and his constituents. This intervention by the Court was not a breach of separation of powers; it was a classic example of preserving that doctrine. At issue only was the Court's duty to set aside an unconstitutional act; *the Court certainly did not suggest that the sergeant-at-arms or others could be questioned about how and why the congressmen decided to speak and vote the way they did.*

The result in *Powell* was dictated by the earlier decision of *Kilbourn* v. *Thompson*, supra, where the plaintiff challenged the constitutionality of a House resolution ordering his arrest and imprisonment for having refused to respond to a subpoena issued by a House investigating committee. The Court held the members completely immune from judicial inquiry, but upheld jurisdiction over Thompson, the sergeant-at-arms of the House, for false imprisonment, since the House had no power to punish for contempt in the circumstances, and the resolution leading to the arrest was constitutionally void. This Court in *Powell* summed up in one sentence the essential doctrine set forth consistently in all of the Speech or Debate cases until that time involving nonmembers:

"The Court first articulated in *Kilbourn* and followed in *Dombrowski* v. *Eastland* the doctrine that, although an action against a Congressman may be barred by the Speech or Debate Clause, legislative employes who participated in the *unconstitutional* activity are responsible for their acts." 395 U.S. at 504. (Emphasis added, footnote omitted.)

The cases thus uniformly make clear the proposition that unless the nonmember acts unconstitutionally, he cannot be "questioned in any other Place" while he is engaged in the member's legislative activities. And when unconstitutional infringement of another's protected rights forces the court to act under the *Marbury* doctrine, the courts will act as gingerly as possible, dealing with the ministerial employees and not delving into the member's legislative activities or into any

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confidential relationships between member and nonmember.

D. The inhibiting effects of a grand jury investigation into legislative activity are heightened when persons are interrogated who rendered necessary assistance to the Senator in meeting his obligations.

We have shown in the preceding pages that both policy and the case law establish that any inquiry by the Executive, with the assistance of the grand jury, into the privileged activities of a congressman is barred by the Speech or Debate Clause because, first, it would amount to a clear violation of separation of powers, and second, because it carries such a high potential for intimidation, harassment and distraction of the congressman as to bring into play the prophylactic purposes of the Clause.

These principles are not dependent upon the identity or status of the person from whom privileged information is compelled, for essential constitutional evil is the breach of the sanctity of the legislative process. In this case, however, an additional and significant element is added by the fact that the Executive seeks to accomplish its investigation of Senator Gravel's privileged conduct by interrogating his personal aide and printers whose assistance was indispensable in the execution of his legislative obligations.

There is now, and has been throughout Anglo-American legal history, good reason why courts have held that the legislative privilege may not be defeated by questioning or intimidating those who work closely with legislators, and particularly those who stand in a confidential relationship to the legislator. Some of these reasons are evident from the history; others are evident from the nature of legislative work, particularly in our modern, complex society and government.

1. *Aides.*

It is particularly unseemly in this case to have the executive branch seeking to thwart a legislator's privilege by questioning personal aides and assistants, since the Executive has long and consistently championed a testimonial privilege for executive aides—even though the Executive's privilege is not explicit in Article II. See *Barr* v. *Matteo*, 360 U.S. 564 (1959). The President has time and again refused to allow his personal aides to testify before Congress on matters concerning foreign policy. Very recently the President has invoked "executive privilege" in refusing to provide the House Government Information Subcommittee with documents and information relating to United States aid programs in Cambodia.[137] And numerous administrations, since the trial of Aaron Burr, have invoked this privilege against judicial inquiry in both criminal and civil proceedings.[138] On other occasions as well, the Executive has stressed the need for a confidential relationship between principals and aides, and in at least two recent cases has argued that the principal and the aide should be treated as one, the aide being the "alter ego" of the principal.[139] The reasons given by the Executive for asserting that his privilege precludes questioning of his aides are equally applicable to the congressional privilege. As was stated by then-Assistant Attorney General (now Mr. Justice) Rehnquist in his written statement on executive privilege before the Foreign Operations and Government Information Subcommittee of the Government Operations Committee of the House: "It includes the confidentiality of conversations with the President, of the process of decision making at a high governmental level and the necessity of safeguarding frank internal advice within executive branch.[140] According to this official statement by the office of legal counsel of the Justice Department, the President not only can refuse to provide Congress with specific information and documents, but he can also refuse to allow "intimate advisors to appear as witnesses before Committees of Congress." [141] In a spirit of evenhandedness that it appears to have forsaken in the instant case, the Department of Justice went on to add "that the integrity of the decision-making process which is protected by executive privilege in the Executive Branch is apparently of equal importance to the Legislative and Judicial Branches of the government." [142] And one former member of the executive branch, the late Dean Acheson, emphasized the importance of protection of aides from testimonial subpoenas by analogizing them to law clerks of judges.[143]

Similar arguments advanced consistently by the Justice Department prior to this have been accepted by this Court. In *Barr* v. *Matteo, supra*, a subordinate official in the executive department was sued for libel after maliciously issuing a press release which challenged the integrity of two critics and referred their names to Senator Joseph McCarthy. Barr's only defense was that this communication fell within the executive privilege.[144] This Court agreed. After noting that the Court had created rules of absolute privilege to immunize judges and their staffs and executive officers of cabinet rank, in a manner paralleling the constitutional privilege of members of Congress, *id.* 569–570, and observing that the reason for each privilege was that adverse court action would otherwise "inhibit the fearless, vigorous, and effective administration of policies of government" and "dampen the ardor of all but the most resolute, or the most irresponsible in the unflinching discharge of their duties," *id.*, at 571, this Court held that these considerations dictate its application to subordinate officials.

Reiterating the functional approach to privileges which we have endeavored to outline earlier in this brief, the Court stated:

"The privilege is not a badge or emolument of exalted office, but an expression of a policy designed to aid in the effective functioning of government. The complexities and magnitude of governmental activity have become so great that there must of necessity be a delegation and redelegation of authority as to many functions, and we cannot say that these functions become less important simply because they are exercised by officers of lower rank in the executive hierarchy." *Id.*, 572–573. (Footnote omitted.)

Even closer to the factual setting of the instant case is the companion case to *Barr, Howard* v. *Lyons*, 360 U.S. 593 (1959). That case was a libel suit against a captain in the navy for preparing a memorandum to his immediate superior and publishing that memorandum by sending copies to members of Congress, concerning conditions in the Boston Naval Shipyard. Following the principles enunciated in *Barr*, this Court held Captain Howard to be immune from suit.

The *Barr* and *Howard* decisions therefore lend additional support to the thesis that official privilege, to be viable, cannot be constricted in an arbitrary manner which fails to take account of the realities of governmental life and the purposes of the privilege. It thus cannot exclude staff and other necessary confidential assistants. It seems indisputable that were Dr. Rodberg a member of the staff of a judge or executive official, or were Beacon Press officials aiding the President in editing and preparing for publication a sensitive document of importance, they would be immune from questioning about official duties. Since the source of the prvilege herein asserted is a provision of the Constitution which "itself gives an absolute privilege herein asserted is a provision of the gress in respect to any speech, debate, vote, report, or action done in session," *Barr* v. *Matteo, supra*, at 569, the scope of the congressional privilege surely must be given at least as much respect.[145]

2. *Printers.* The Court of Appeals, for unexplained reasons, drew an unbridgeable distinction between "aides" and "third parties" and proceeded to lump printers of legislative proceedings in the latter category. Yet such printers are hardly akin to persons who merely come into casual contact with a legislator. Unlike other private parties, printers play a unique and historic role in enabling a congressman to perform adequately an important duty of his office—informing his colleagues and the electorate. And as we have shown before, the framers believed that the Speech or Debate Clause would provide the people's representatives with enough of a fence around their activities so that they could freely contribute to enlightening the electorate. In discharging this obligation, it should go without saying that a congressman cannot be confined to the use of his xerox machine.

The issue of the degree to which the legislative privilege guards against the interrogation and intimidation of printers who assist legislators in executing the informing function is hardly a novel one. Historically, much litigation in England arose out of efforts to restrain printers from publishing Parliamentary proceedings. The outcome of this litigation has been the extension of the privilege to printers. The English courts have held that printers are immune not only from questioning, but even from accountability.

As has been pointed out, *supra*, for many years the Crown was brazen enough to wage virtual war with Parliamentarians who displeased the sovereign by aiming criticism at the royal house or its pet projects and prerequisites. But the Crown did not always choose to attack the member directly, particularly in later years when the powers of the monarch began to wane and those of the Parliament were on the rise. Furthermore, when a party other than the Crown chose to attack Parliament or a member thereof, that party often could not atack directly.

One of the more common avenues of attacking Parliament's privilege indirectly was to focus on those who published and disseminated the words spoken in the House and reports delivered in or to the House. The English courts at first held that the privilege had no application in these circumstances, but these decisions were subsequently overruled by statute and by judicial decision.

In the case of *Stockdale* v. *Hansard*, 9 Ad. & E. 2, 112 Eng. Rep. 1112 (1839), the English courts refused to extend the Parliamentary privilege to a printer who published material at the specific direction of the House. Interestingly, the Court of Appeals in the instant case placed some reliance on this decision (P.W.C. 8a). The *Stockdale* case, however, while it might have found favor with the Court of Appeals, found no favor with the English Parliament which, in a monumental debate, excoriated the *Stockdale* court, and pronounced the opinion to be an aberration which would never occur again.

The debates precipitated by this decision took place almost immediately following it. The House of Commons was in a virtual frenzy because Stockdale had been able to recover damages against Hansard, who, upon the request and instruction of the Speaker of the House, had published and disseminated a report, presented by a prison inspector to a House committee, which was highly critical of the management of the prison at Newgate. The report mentioned Stockdale in an unfavorable light, and he sued Hansard and recovered on several occasions. The House grew frustrated at the multiple suits, and finally ordered Stockdale imprisoned while it debated how to deal with the situation.

Lord John Russell, a noted member of the House of Commons, presented the dilemma squarely at the outset and posed the alternatives. The House, he said, could retreat and "might have abandoned their resolution [to print the report]," or

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"they might have determined to vindicate their powers upon the consideration that all necessary functions for legislation must be allowed to the House of Commons; and, conceiving the publication of its reports to be one of its necessary functions, they might have proceeded to vindicate their privileges." 52 Parliamentary Debates (Hansard) at 253 (1840).

While no member was being attacked *directly* by Stockdale or by the King's Bench, nevertheless, said Russell:

"what [the Members of the House] had to consider was, in what manner their privileges were to be maintained; what they had to consider was, whether by any possibility they could allow the goods of a *servant of their House* to be seized because he had acted in execution of their order, and had printed their report, which was essential for their legislation; whether they could permit these goods to be *taken from themselves through their servant* and be handed over to the plaintiff. . . ." (Emphasis supplied.) *Id.*, at 255–256.

It was pointed out that this was a deviation from the prior law:

"When the House considered, however, that for many years the question had not been raised, when it had been thought, from the uninterrupted practice of Parliament ever since the Revolution, and from the recorded judgment of Lord Kenyon [in the case of *Rex* v. *Wright*, discussed *supra*, pp. 77–78], that there was little doubt upon the subject, and when they now found that judgment of a court of law impeaching that practice, they could but admit, that the sheriffs had an embarrassing duty to perform." *Id.*, at 256.

Lord Russell pointed out that in the *Wright* case, "another printer, and not . . . the printer of the House," had printed "voluntarily . . . the proceedings of a secret committee of the House," and Lord Kenyon ruled that the printer could not be charged in a criminal information for libel since "[t]his report was first made by a committee of the House of Commons." *Id.*, at 258. Russell observed that until *Stockdale*, there was "no reason to doubt that such was the declared law. . . ." *Ibid.*

House Member Fitz Kelly, in proposing a weakening amendment to Russell's proposed legislation to remedy the erroneous *Stockdale* decision, protested that only members should be able to claim the privilege for themselves, and that the privilege of free speech should not be extended so that "any man, with the Speaker's authority, might commit any crime, from the consequences of which he should be relieved when challenged in a court of law." [146] *Id.*, at 268. Some House members were in favor of the House indemnifying Hansard for the judgments against him, rather than asserting the privilege to encompass the printer.[147] One member felt that the printer should have stated the faults found in the prison, without mentioning Stockdale's name.[148]

The Attorney General rose to expound on the prior law, pointing out that "[t]his was a privilege that had existed for upwards of two centuries," and that while printing was not known in the early days of the privilege, the privilege obviously had to extend to printers since "if they were any new mode by which information could be conveyed to the people, it might be adopted by the House of Commons from time to time." *Id.*, at 280. He pointed out that if the *Stockdale* case were allowed to stand, it would interfere with the House's functioning, since "there had been many persons like Mr. Stockdale, who, if they had thought that an action could be maintained, would have been anxious to place themselves in a similar situation." *Id.*, at 280. In modern tones echoing the functional approach to the privilege and the requirement that it protect legislative activities, not nonlegislative activities which happened to be committed by a Parliamentarian or his aide or printer, the Attorney General denied that under his interpretation of the privilege the courts could not interfere in a case, for example:

"where a House of Parliament clearly travelling beyond its jurisdiction should make an order so monstrous, illegal, and preposterous, that no attention ought to be paid it. For instance, if the House of Commons were to order a man to be put to death for some supposed offence. Would any one deny that to make an order as to the publication of papers essential to its proceedings was within the jurisdiction of Parliament?" *Id.*, at 282.[149]

One of the most eloquent and influential speakers in these debates was the great Parliamentarian, Sir Robert Peel. He noted that those papers which it is "most necessary and the most important to publish, were necessarily and unavoidably of a character to afford ground for legal proceedings, if not protected by privilege of Parliament." *Id.*, at 305. He urged the House to bear in mind at all times the *purpose* and *object* of the privilege, and to consider the accomplishment of such purpose more important than the harm or embarrassment which might be caused to persons objecting to the privileged act. *Id.*, at 305–306. He read off a long list of grave abuses, from slavery to official corruption, which were remedied because members of Parliament were free to print and publishers were free to circulate "information directly bearing on the character of individuals, frequently containing matter of which there might be great reason to complain," but if restraint were imposed upon the publication of such matter, "it was impossible that a representative constitution could work to advantage." *Id.*, at 307. He continued:

"[T]here would have been great reason to complain if, instead of defending themselves from these charges, the parties concerned in the administration of the law had stifled the accusation by proceeding, as in the case of Hansard, against someone, for the publication of the charges." *Id.*, at 307. Peel went on to excoriate that part of the *Stockdale* v. *Hansard* judgment which held that when publishers distribute House proceedings to the outside world, they are "individuals acting on their own responsibility":

"What a mockery was this! The Speaker, in the exercise of an admitted privilege, ordered Mr. Hansard to do a certain act, *which could only be done out of the walls of Parliament*, and the moment that Mr. Hansard set to work to execute that order, the privilege of the House was lost, and its agent liable to be punished by a court of law." *Id.*, at 335. (Emphasis supplied.)

He stressed, thus, that members were helpless to disseminate to their constituents important information without the aid of printers who necessarily had to work "out of the walls of Parliament," and that the free speech privilege, without such a logical extension, was a mockery.

The position advocated by Lord John Russell and Sir Robert Peel, and by the weight of prior precedent, won the day, and in the year after the *Stockdale* v. *Hansard* decision, Parliament enacted the Parliamentary Papers Act, 3 & 4 Vict., c. 9 (1840), which provided that criminal or civil proceedings against any persons for publication of papers printed by order of either House were to be stayed. The Act was prefaced by the claim that "it is essential to the due and effective . . . [functioning] of Parliament . . . that no Obstructions or impediments should exist to the Publication of . . . Reports, Papers, Votes, or Proceedings" and that there were of late too many vexatious lawsuits against printers which threatened to hinder such publication. The Parliament did not purport in this act to reverse the decision in *Stockdale* v. *Hansard*, so much as it proclaimed that the privilege set forth in the statute was long part of the common law and merely required a convenient procedural device for a defendant printer to assert in order immediately to stay the effect of any subpoena and ultimately to defeat any proceeding against him.

The persuasiveness of *Stockade* v. *Hansard* as precedent for the Court of Appeals' or the Solicitor General's position, is further vitiated by the fact that it was, at least *sub silento*, overruled in the later case of *Wason* v. *Walter*, L.R. 4 Q.B. 73 (1868).[151] in this case, the defendant printer published in a newspaper a report of a parliamentary debate in which a member disparaged the character of the plaintiff. The court went into an explanation of the informing function, *id.*, at 89, and concluded that in deciding the case the court had to take into consideration "the difficulty in which parties publishing parliamentary reports would be placed" if their publishing activities in this sphere went unprivileged and unprotected. *Id.*, at 90. Thus did the court recognize that to allow a printer to be harassed was the functional equivalent of allowing members of Parliament to be harassed: "[T]he difficulty in which parties publishing parliamentary reports would be placed" would be also the difficulty in which members would be placed in their efforts to perform their informing and other legislative duties. The court concluded with the observation that in the event that any publisher ever ran afoul of Parliament's desires with respect to publication of a specific item, Parliament could deal with the matter without judicial interference:

"Should either house of parliament ever be so ill-advised as to prevent its proceedings from being made known to the country—which certainly never will be the case—any publication of its debates made in contravention of its orders would be a matter between the house and the publisher." *Id.*, at 95.[152]

The English courts have thus recognized that a legislator cannot accomplish the informing function alone. While he does not need the army of subordinates which the President needs to accomplish his work, nevertheless he must have at least adequate assistance. The precedents for a senator's using private printers to accomplish this task are numerous in our history,[153] and while there are precedents for attacks on such publishers for aiding legislators, such attacks have been rebuffed in circumstances akin to those in the instant case. This is not to say that any person (or even any congressman or his aide) is free to break the law and steal documents merely because he subsequently "cleanses" his deeds by turning them over for introduction into the legislative process.[154] All aspects of the original acquisition may be investigated, except, of course, by inquiries into the legislative process itself. The privilege goes no further than the legislative process.

The fact that legislators and those who assist them in performing their constitutional duties become immune from injury into those aspects of their work involving the legislative process does not mean that they are entirely immune from questioning, much less from punishment for abuses and for illegal conduct. Quite the contrary is true. English and American legislatures have broad powers to discipline and punish not only their own members, but aides and "outsiders" who, while engaged in legislative work, run afoul of some standard of law or of decency. From the earliest days of our jurisprudence our legislatures have claimed, and our courts have upheld their claims to, such powers.

In the landmark case of *Anderson* v. *Dunn*, 6 Wheat. 204 (1821), this Court upheld the power of the Congress to punish contempts committed by members and nonmembers

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alike, including the power to imprison.[155] While such drastic powers in the hands of legislatures have been to some extent curtailed (see, for example, *Kilbourn* v. *Thompson, supra*), and while the requirements of due process of law have been read into such powers (see *Groppie* v. *Leslie,* U.S.), nevertheless such powers still undoubtedly exist. See *Groppie* v. *Leslie, supra.*[156]

The Congress has, in addition to its powers to punish, other methods for controlling abuses of privileges. These were summed up by the select committee of the House of Commons which was assigned to study the problems engendered by claims by the Crown that Parliamentarians were bound by the provisions of the Official Secrets Act which allowed interrogation by the Attorney General of persons suspected of knowing of security leaks. Said the committee in its final report:

"The House of Commons has disciplinary powers over its members, and a member who abuses his privilege of speech may be punished, not merely by suspension from the service of the House, but by imprisonment or expulsion from the House, or both. Expulsion at least cannot be considered a light penalty. It is not so much on penal sanctions, however, that Your Committee would desire to rely for the prevention of abuses of parliamentary privilege prejudicial to the safety of the realm, as on the good sense of members themselves, who are as much concerned as ministers to prevent such abuses. Their inquiry has . . . brought home to members the need for discretion on their part in framing questions or seeking information regarding matters which affect the safety of the realm, and has impressed upon ministers of the Crown that the powers comferred upon the executive by the Official Secrets Act must not be used in such a way as to impede members in discharging their parliamentary duties." Report from the Select Committee on the Official Secrets Acts, *supra,* at xv.

As Clement Attlee said in a House of Commons debate concerning effort by the Crown Attorney General to question a member of Parliament concerning the source of his acquisition of classified defense secrets:

"Unless Members of Parliament can have reasonable access to knowledge they cannot criticize ministers effectively. It is our duty to criticize Ministers who are in charge of the administration.

* * * * *

"In practice Members of Parliament do not abuse their privileges; we are not a House of spies and traitors, and the House has its own method of dealing with Hon. Members and of keeping them within bound. I think it is essential for the life of this House that this House itself should make itself responsible for Hon. Members. There is a danger in any suggestion that there should be some outside court or sanction brought in." Debate in Sandys' case, Commons Journal, June 30, 1938, at 2167.

E. A balancing of competing social interest dictates the recognition of the privilege in this case

The Court's vindication of the privilege in the case at bar would not, contrary to the Solicitor General's asserted fears, open up a pandora's box for law enforcement and the administration of the criminal laws. First of all, as the paucity of reported American cases on the subject shows, it is rare indeed that a legislator by himself, or in concert with nonmembers, acts with the legislative sphere in such a way as to run afoul of the civil or criminal law. In some cases, where the victims of civil abuses have sought redress, the courts have found the authority to grant relief in order to protect constitutional rights. *Powell* v. *McCormack, supra; Kilbourn* v. *Thompson, supra; Dombrowski* v. *Eastland, supra; Hentoff* v. *Ichord, supra.* In other cases, legislatures have exercised their powers to discipline or punish wayward members and nonmembers alike without courting or allowing interference from other branches. *Anderson* v. *Dunn, supra; Groppie* v. *Leslie, supra.* In still other cases, where criminal infractions were involved, Congress has sought narrowly to delegate powers to the judiciary *United States* v. *Brewster, supra.*

Secondly, even in exceptional cases, an investigation can be conducted without inquiry into legislative activities. Where both legislative and nonlegislative conduct are involved, the legitimate area of inquiry can be segregated by a specification of questions that the Executive intends to ask prospective witnesses before the grand jury,[157] or some similar form of relief can be fashioned to accommodate the ends of the privilege and the demands of justice.

This Court has not hesitated to impose serious limitations upon law enforcement investigations which intruded into constitutionally protected conduct. When inquiries of other investigative bodies of stature at least equal to the grand jury were perceived to have an inhibiting effect on the exercise of First Amendment rights, those investigations were not allowed to proceed unchecked and the Government was required to *at least* make a showing of a specific and compelling reason, factually supported, for the inquiry. See, *e.g., DeGregory* v. *Attorney General of New Hampshire,* 383 U.S. 825 (1966), and cases cited therein. Even judged under these standards, which were imposed in areas where there were no separation of powers considerations, the present inquiry would not be permitted. The Justice Department has offered no reason at all—let alone a specific and compelling one—for its investigation into Senator Gravel's legislative activities, although it was given ample opportunity to do so in the lower courts. It takes more than unspecified and purely hypothetical claims of impeding law enforcement to counterbalance a constitutional right of this magnitude; otherwise, there is nothing to prevent virtual fishing expeditions into the Capitol. And surely there is no reason why the grand jury, which is subject to the supervisory powers of the federal courts, should be allowed to conduct an inquiry which would be prohibited of other investigative bodies under conditions involving constitutional rights which, unlike the Speech or Debate Clause, are not absolute.

Finally, it must frankly be admitted and accepted that in a very few hpyothetical cases, it is possible that wrongdoing will go unquestioned, uninvestigated, or unpunished because the courts will be found to be without jurisdiction over the offense and the legislature will look aside, perhaps for political reasons or out of solicitude for a member or employee of the legislature. Yet this is an inevitable consequence of our constitutional system. Such results are frequently seen where, for instance, confessions are rendered inadmissible due to the circumstances of their procurement, and where indictments are defeated because of technical considerations involving territorial jurisdiction or statutes of limitations. It can safely be predicted that far fewer cases of culprits evading justice will result from centuries of vigorous enforcement of the Speech or Debate Clause than result every year from enforcement of portions of the Constitution found in the various amendments. And as Pitt stated in his famous protest against Parliament's notorious action in stripping Wilkes of his privileges upon the claim of the Crown that law enforcement was being paralyzed:

"Let the objection, nevertheless, be allowed in its utmost extent, and then compare the inexpediency of not immediately prosecuting on one side, with the inexpediency of stripping the Parliament of all protection from privilege on the other. Unhappy as the option is, the public would rather wish to see the prosecution for crimes suspended, than the Parliament totally unprivileged, although notwithstanding this pretended inconvenience is so warmly magnified on the present occasion, we are not apprised that any such inconvenience has been felt, though the privilege has been enjoyed time immemorial." 342 Protests, 68, 73–74 (1763).

It is not terribly probable that a parade of horribles is any more likely to follow this Court's vindication of the privilege in the case at bar than has been true in hundreds of years of English and American history. The occasional instances in which law enforcement is hindered are more than counterbalanced by the preservation, intact, or our system of separation of powers.

"The doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident to the distribution of governmental powers among three departments, to save the people from autocracy." *Myers* v. *United States,* 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting).

In addition, the privilege remains the member's and the right to assert it is his alone. See *Rex* v. *Rule,* 2 K.B. 372 (1937). He can at any time refuse to assert the privilige with respect to the questioning of a wayward aide or associate who foolishly relied on anticipated legislative privilege in violating a law in the course of his legislative work for the senator. A senator should not be presumed to be lightly willing to raise his privilege to prevent questioning of an aide or associate who has, in the senator's judgment, placed the interests of the Nation upon too low a plane. To cite again the assertion of Mr. Attlee during the British Official Secrets debate, *supra*: "[W]e are not a House of spies and traitors. . . ."

Courts should not see such privileges as being at all novel or startling. Privileges of lesser magnitude than the constitutional Speech or Debate privilege are vindicated daily in our courts. The attorney-client privilege is absolute unless waived by the client. The same applies to the priest-penitent privilege, the husband-wife privilege, and, in some jurisdictions, to the doctor-patient privilege. In cases involving such privileges, it matters not who is questioned or accused—the privilege stands with respect to the protected relationships or situations or endeavors. To deny protection to legislative relationships, situations and endeavors in the face of such clear mandate in the Constitution. Anglo-American history, and public policy would be one of the most serious breaches of separation of powers imaginable. This is a narrow case, and a hard-core case. It is not, as the Solicitor General suggests, on or near the frontiers of the privilege. The simple question, stripped of verbiage and adornment, is whether the executive branch and the grand jury can breach the separation of powers, in the face of specific constitutional prohibition, by conducting an intensive investigation of the activities of the legislative branch. Whether such an investigation is conducted with or without direct questioning of a member is entirely irrelevant in both law and common sense.

CONCLUSION

The framers of our Constitution believed that representative democracy could best be served if members of Congress were given unlimited freedom in actions within the scope of their legislative activity. They know that the privilege might be occasionally abused, but they also wisely understood that the risks to democracy in anything less than an absolute privilege, broadly construed and interpreted, was much greater. This perception is as true today as when the Constitution was written. "In the final analysis, no task is likely to be more important to the preservation and ultimate vitality of our

Footnotes at end of article.

governmental system of separation of powers than the widespread popular acceptance of the doctrine of legislative privilege in its most unwavering, pristine and absolute terms." *Cella, supra,* at 43. That is the theory of our Republic.

Senator Gravel respectfully submits that this Court should hold that: (a) the publication by the Senator of the official record of a Senate Subcommittee is encompassed by the protections of the Speech or Debate Clause, and (b) no witness may be questioned before the grand jury about the Senator's privileged activities.

In No. 71–1026, the judgment should be affirmed.

In No. 71–1017, the judgment should be reversed.

Respectfully submitted,

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FOOTNOTES

[1] All reference to the appendices to Senator Gravel's petition for a writ of certiorari are referred to as "P.W.C." since under the Rules of this Court the material contained in the appendices to the petition for a writ of certiorari need not be reprinted in the joint appendix. All references to the appendices to the Solicitor General's petition for a writ of certiorari are referred to as "S.G.P."

[2] The publication of the subcommittee record by Beacon Press has been variously referred to in the briefs and opinions of the Court below as "publication" and "republication." We use the term "publication" throughout this brief.

[3] Proof of Dr. Rodberg's status as a personal aide to Senator Gravel was established by affidavits of Dr. Rodberg (App. 6), Senator Gravel (App. 11) and the Sergeant-at-Arms of the Senate (App. 11).

[4] At the oral hearing on Senator Gravel's motion, counsel for the Internal Security Division stated *for the first time* that they did not intend to seek an indictment against Senator Gravel. However, even this belated disclaimer was not unqualified; counsel for the Internal Security Division stating, "this is not probable." (App. 127–128.)

[5] The Court of Appeals, admitting that "the court is not in total agreement" on this point, nevertheless "presently" held that the Senator and his aides could not personally be questioned as to "republication," . . . "without binding ourselves for future purposes." (P.W.C. 11a.) More exactly, the Court of Appeals found that the Speech or Debate Clause privilege did not extend at all to the "republication," but that the Senator and his aides may be protected from direct interrogation by a common law privilege (P.W.C. 10a–11a).

[6] See S.G.P. 41 n. 3; App. 9, 42, 82.

[7] See App. 89–90.

[8] See App. 81–83, 84–85, 86–87, 90.

[9] See generally brief of Justice Department in the Court of Appeals.

[10] P.W.C. 8a.

[11] Quoted with approval in *Kilbourn, supra,* at 203–204.

[12] App. 9a–10a.

[13] App. 9a.

[14] See generally C. H. McIlwain, The High Court of Parliament and Its Supremacy, 229–246 (1910); C. F. Wittke, The History of English Parliamentary Privilege, 13–20 (1921); Neale, The Commons Privilege of Free Speech in Parliament, in 2 Historical Studies of the English Parliament 147–176 (Fryde & Miller ed. 1970); Cella, The Doctrine of Legislative Privilege of Freedom of Speech and Debate: Its Past, Present and Future as a Bar to Criminal Prosecution in the Courts, 2 Suffolk L. Rev. 1, 3–5 (1968).

Parliament of course claimed a number of privileges other than freedom of speech, and those too derived from judicial antecedents—*e.g.,* the freedom of members and their servants from arrest, and the right of each House to punish members and outsiders for contempt.

[15] Neale at 163. The judicial origin of the speech and debate privilege is well illustrated in *Strode's Case,* which this court has termed "one of the earliest and most important English cases dealing with the privilege." *United States* v. *Johnson, supra,* at 182, n. 13. In 1512, Richard Strode, a burgess of Parliament, was convicted for obstructing tin mining because he voted in favor of a bill controlling abuses against the tin miners. He was imprisoned and petitioned Parliament for a remedy, and a special bill was passed setting him free. 4 Henry VIII, c. 8. As Neale points out, this case "has no concern with the relations of the crown and the commons. The act concerning him asserts the obvious principle that an inferior court cannot punish members of a superior court for their actions in that court." *Id.,* at 160, n. 45. See also McIlwain, *supra,* at 219–223. More than 150 years later, when the Commons' functions had conflicted with the Crown's prerogatives and Parliamentary supremacy was established, the act was declared to be a general act. See note 14, *infra.*

[16] Neale at 164–165. As Neale points out, when Parliament's initiative was by petition, there was no real threat to the wide powers of the Crown since the petition was only a request for a remedy and the king's response became the statute. The king could, of course, and often did, qualify the sense of the petition in his reply and thereby mold the statute. When, however, the bill procedure was introduced, the king's power of modification was eliminated and he could only assent to or veto the bill. The bill was thus the actual text of law enforceable in the courts and the veto was an unreliable weapon. Elizabeth tried, therefore, to reinstitute the old petition procedure, but did not succeed. The House, on the other hand, needed protection against more direct interference with their debates. *Id.,* at 170–172. Thus, the speech and debate petition did not arise independently of the change in Parliament's functions, but as a result of it.

[17] Neale at 164–165.

[18] 1 Anson, Law and Custom of the Constitution 34–35 (4th ed. 1909).

[19] See *id.,* at 160–161:

"The line taken by the Tudor and Stuart sovereigns on this question of freedom of speech shows that the House had to struggle not merely for latitude of discussion, but for the existence of its own initiative in legislation and in deliberation. The Crown maintained and the House denied that the Commons were summoned merely to vote such sums as were asked of them, to formulate or to approve legislation or topics of legislation submitted to them, and to give an opinion on matters of policy if, and only if, they were asked for one . . . ."

[20] The methods of intimidation employed by the Crown, and protested by Parliament as a breach of privilege, took a wide variety of forms. In addition to the institution of criminal proceedings, the Crown's arsenal also included issuing direct orders to the Speaker to cease debate on sensitive topics, bribing corruptible Members of Parliament, summarily arresting others and arraigning them before the Star Chamber or committing them directly to the Tower, and spreading rumors of Royal displeasure and threats of retaliation. See generally T. P. Taswell-Langmead, *English Constitutional History,* 318–321, 336–337, 541–579, 770–772 (4th ed. 1890).

Secret, inquisitorial bodies with contempt power—the equivalent of the modern-day investigating grand jury—also were used as instruments of harassment. For example, in 1575, Peter Wentworth was interrogated about his speeches by a special committee, composed of state ministers. When he refused to answer on the ground that he could not be questioned outside of Parliament, he was committed to the Tower for contempt. See Cella, *supra,* at 6–10; Taswell-Langmead, *supra,* at 490–494.

[21] Taswell-Langmead, *supra,* at 557–560, 578–579.

[22] *Proceedings Against Sir John Eliot, Denzil Hollis and Benjamin Valentine,* 3 How. St. Tr. 294. It is noteworthy that Eliot's counsel based his plea to the court's jurisdiction in a functional approach, arguing that the privilege applied even to speeches characterized as "seditious" because of the accusatory and inquiring functions of Parliament:

". . . The words of the speech themselves contain several accusations of great men; and the liberty of accusation has always been parliamentary. . . . So it is the duty of the commons to enquire of the Grievances of the subjects, and the causes thereof, and doing it in a lawful manner . . . [and] parliamentary accusation, which is our matter, is not forbidden by any law. . . .

"Members of the House may advise of matters out of the House: for the House itself is not so much for consultations, as for propositions of them." *Id.,* at 295, 296, 298.

He also relied on the judicial origins of the privilege:

"Words spoken in Parliament, which is a superior court, cannot be questioned in this court, which is inferior." *Id.,* at 296.

In rejecting the plea, the judges addressed themselves *only* to the latter proposition. Justice Whitlocke said:

"[W]hen a burgess of parliament becomes mutinous, he shall not have the privileges of parliament. In my opinion, the realm cannot consist without parliaments, but the behaviour of parliament-men ought to be parliamentary. No outrageous speeches were ever used against a great minister of state in parliament which have not been punished. If a judge of this court utter scandalous speeches to the state, he may be questioned for them before commissions of Oyer and Terminer, because this is no judicial act of the court." *Id.,* at 308.

And Chief Justice Hyde added:

"As to what was said, that an inferior court cannot meddle with matters in a superior court; true it is . . . but if particular members of a superior court offend, they are oft-times punishable in an inferior court. . . ." *Id.,* at 307.

[23] See Cella, *supra,* at 11–12.

"This decision was extremely unpopular throughout the country. It was one of the most significant factors in the growing opposition to King Charles I and his policies. It made a lasting impression upon the House of Commons which never forgot this unwarranted invasion of their ancient rights, privileges and liberties."

See also *Tenney* v. *Brandhove, supra,* at 372; Wittke, *supra,* at 103–106.

[24] This resolution is reprinted in 3 How. St. Tr. 310–311. The year 1641 was the first opportunity for the House to invalidate Eliot's conviction and establish the absolute scope of the privilege since Charles I governed dictatorially without Parliament from 1630 until the Civil War. Taswell-Langmead, *supra,* at 600–606.

[25] For example, in 1667, both Houses resolved that the special act in *Strode's Case* was a general law. See 3 How. St. Tr. 314 *et seq.* In 1668, the House of Lords reversed the convictions of Eliot, Hollis and Valentine. Taswell-Langmead, *supra,* at 378, n. 55.

[26] Neale, *supra,* at 175. In this regard, it is noteworthy that prior to the institution of the bill procedure and the expansion of Commons' jurisdiction, there were only three protests by the House respecting breach of the speech and debate privilege—*Haxey's*

Case in 1399, *Young's Case* in 1455 and *Strode's Case* in 1521. See Wittke, *supra*, at 23–25.

[27] 1 Blackstone's Commentaries 164.

[28] Since 1641, a standing rule of the House of Commons had forbade individual members from publishing parliamentary proceedings. See II T. E. May, Constitutional History of England 34 (10th ed. 1891).

[29] This is discussed in detail in our brief, *infra*, section I.C.

[30] See Jefferson, Manual of Parliamentary Practice, § 3. Thus, for example, the privilege of the legislature to keep its proceedings secret was barred by Article I, section 5, of the Constitution, which requires the publication of a journal. The unlimited privilege from arrest and civil process was severely curtailed in Article I, section 6. And Congress was not given a general privilege of the contempt power, for, as this court observed in *Kilbourn* v. *Thompson*, *supra*, at 183–189, this privilege obtained only in bodies of a judical character.

[31] Cella, *supra*, at 14–15.

[32] Apparently recognizing that the Convention acted properly in rejecting his proposal for a static definition of the privilege, Madison later advocated the functional approach:

"In the application of this privilege to emerging cases, difficulties and differences of opinion may arise. In deciding on these the reason and necessity of the privilege must be the guide." 4 Writings of James Madison 221 (Hunt ed., 1910).

[33] Quoted in *Tenney* v. *Brandhove*, *supra*, at 373.

[34] The evolutionary and functional nature of legislative privilege was also present in the American Colonies. See generally M. Clarke, the Parliamentary Privilege in The American Colonies (1943). For example, given the historical setting it is not surprising that the Speakers Petition in all of the colonies claimed the right of access to the colonial governor at all times and demanded that he should not take cognizance of their proceedings except as was revealed in formal reports; and other privileges developed according to local needs. See *id.*, at 70–82, 227–234.

[35] The arbitrary line drawn by the Court of Appeals at the deliberative process of Congress, does have the apparent virtue of being applied easily to any state of facts. We submit that the price for this line—jeopardizing the independence and integrity of Congress—is far too high. Moreover, even this apparent simplicity of operation is deceptive. The court noted, and did not dispute, our argument that "communicating with the electorate is essential to effective deliberation because it elicits responses to guide a Congressman's legislative decisions and because it helps to put pressure upon other legislators." (P.W.C. 9a & 10a.) It simply dismissed the argument as "staggering." (*Ibid.*)

[36] It is, of course, possible that in such cases the privilege might operate to bar the admissibility of evidence concerning a congressman's "legislative acts . . . [and] his motives for performing them." *United States* v. *Johnson*, *supra*, at 185. See also *Ex parte Wason*, L.R. 4 Q.B. 573 (1868). In this sense, the speech and debate privilege would operate testimonially, in a manner akin to the privilege against self-incrimination of the attorney-client privilege.

[37] IV Eliot's Debates 569 (1800). See also I Works of James Wilson 310 (McCloskey ed. 1967):

"The order of things in Britain is exactly the reverse of the order of things in the United States. Here, the people are the masters of the government; there, the government is the master of the people."

[38] *New York Times* v. *Sullivan*, 376 U.S. 254, 275 (1964).

[39] And Dean Landis emphasized this function as an inherent part of the legislative process in representative government:

"[The Congressman's] duty is to acquire [knowledge about administration], partly for the purposes of further legislation, partly to satisfy his mind as to the adequacy of existing laws. Yet the ultimate basis for the duty is the broader presupposition of representative government that the legislator is responsible to his electorate for his actions. Responsibility means judgment, and judgment, if the word implies its intelligent exercise, requires knowledge. The electorate demands a presentation of the case. . . . The very face of representative government thus burdens the legislature with this informing function. . . .

". . . That duty, however, is not distinct from the legislative process, but implied and inherent in it." Landis, *supra*, at 205–206 & n. 227.

[40] It is certainly relevant in this regard that although the war in Vietnam was never declared by Act of Congress, there is a considerable constitutional dispute as to whether Congress nevertheless authorized it and/or knowingly acquiesced in it.

[41] See, *e.g.*, C. L. Clapp, The Congressman: His Work as He Sees It (1963) (Clapp was then head of the Governmental Studies Staff of Brookings):

"The principal educational tools of the congressman are his newsletter, radio and television programs, speaking engagements, and letters in response to constituent correspondence. There is considerable concern within the Congress that the general public is not well informed regarding the way the legislative body functions, and some members consciously seek to educate their districts in this area as well as about specific public issues." (P. 100.)

"Hearings also inform the public and interested groups that a particular measure is under consideration, thus providing the voters with an opportunity to make their wishes known in advance of congressional action. In making this point one Congressman said: 'the hearings serve a very useful purpose because, as a whole, they are open hearings, covered by members of the press and given considerable publicity. They constitute one of the few places where any publicity goes out over the country that a bill is moving along. By *informing* people that bill has reached the point of hearings, correspondence is stimulated before you reach a vote on it.'" (P. 265.) (Emphasis in original.)

"Indeed, although some congressmen consciously pursue the 'educator' role more actively than others, there are few who do not in some measure seek to enlighten the people they represent." (P. 101.)

J. Bibby and R. Davison. On Capitol Hill (1967), (Bibby is a professor at the Univ. of Wisconsin, and Davison is a professor at Dartmouth):

"The activities of Congress are 'news' and Congress is a prime subject for national news media coverage. Because of this capacity to generate publicity, Congress performs the functions of *Public education*. That is, Congress through its deliberations informs the public on issues and raises the level of public interest in current problems. With its well-publicized committee hearings and floor debates and the press releases that constantly flow from members' offices, there are few matters that do not receive congressional publicity. Often the publicity surrounding congressional activities has helped crystallize public opinion on issues and has thus facilitated the passage of new legislation . . . .

"Congress is thus more than an object of public opinion. Its relation to the electorate is reciprocal. Influenced by the voters, it is also constantly engaged in current issues and in influencing public thinking." (P. 13.) (Emphasis in original.)

J. P. Harris, Congress and The Legislative Process (1967) (Harris is Professor of Political Science, University of California at Berkeley):

"The informing function is performed today largely through committee hearings on important legislative proposals and through congressional investigation . . . it is the proceedings of the major committees rather than the floor debates that attract greatest attention." (P. 41.)

E. S. Griffith, Congress: Its Contemporary Role (1956) (Griffith was then Director of the Legislative Reference Service):

"The political education of the public is one of the recognized functions of Congress." (P. 185.)

"More frequently than not such political education is a by-product rather than the chief end of Congressional behavior. The chief ends remain: to put through a policy or program, to solve a problem, and to be re-elected. The education of the electorate is chiefly valued as it contributes to one of these, but regardless of whether or not it is consciously sought, it nevertheless takes place continuously." (P. 185.)

"Second only to the publicity attending floor debate is that accorded the committee hearings . . . . To the serious student, the records of the hearings are mines of information. Here are set out in detail, and subjected to cross-examination, much of the basic data relating to the nature of the economy, the underlying factors in foreign relations, the future of our resources, the strategy of national defense, the problems in labor relations, and many another field of importance and interest . . . a number of the committees deliberately plan some of their hearings with the education of the public in mind and choose subjects and witnesses accordingly." (Pp. 186–187.)

"There is high hope that this particular function of Congress of political education will continue to be performed, as it has been of late, with increasing responsibility, intelligence, and effectiveness. It lies near the heart of the democratic way." (P. 189.)

The Reorganization of Congress, a Report of the Committee on Congress of the APSA (1945):

"The other three functions of Congress today are exercised, in one manner or another, every day it is in session. They are: 1. The legislative function . . . 2. The public opinion function—to reflect, express, and with the aid of the press, to inform and guide public opinion on the great issues of the day. With the decline of Congress as an original source of legislation, this function of keeping the government in touch with public opinion and of keeping the public opinion in touch with the conduct of government becomes increasingly important. Congress no longer governs the country; the Administration in all its ramifications actually governs. But Congress serves as a forum through which public opinion can be expressed, general policy discussed, and the conduct of governmental affairs exposed and criticized." (Pp. 13–14.)

This view is shared by analysts on all parts of the political spectrum. Compare, *e.g.*, Laski, *supra*, with J. Burnham, Congress and the American Tradition 233–234 (1959). See also D. Truman, The Governmental Process 372–377 (1951):

And Walter Bagehot observed the same process at work in the House of Commons:

"The third function of Parliament is what I may call preserving a sort of technicality even in familiar matters for the sake of distinctiveness—the teaching function. A great and open council of considerable men cannot be placed in the middle of a society without altering that society. It ought to alter it for the better. It ought to teach the nation what it does not know.

"Fourthly, the House of Commons has what may be called an informing function . . . . Since the publication of the Parliamentary debates a corresponding office of Parliament is to lay these same grievances,

these same complaints, before the nation, which is the present sovereign. The nation needs it quite as much as the King ever needed it . . . . Any notion, any creed, any feeling, any grievance which can get a decent number of English members to stand up for it, is felt by almost all Englishmen to be perhaps a false and pernicious, but at any rate possible—an opinion to be reckoned with. And it is an immense achievement." The English Constitution 152–153 (1963).

[42] See, *e.g., Clapp, supra,* at 89–100, containing interviews with a cross section of congressmen; K. G. Olsen and C. E. Bennett, The Service Function of the United States Congress, in Congress: The First Branch of Government 345–353 (1969); V. Hartke, You and Your Senator, 202, 233–234 (1970); W. L. Marrow, Congressional Committees 163–165 (1969); D. G. Tacheron and M. K. Udall, The Job of a Congressman 117, 280–288 (1966).

[43] "Such provisions include the franking privilege for sending letters, the telephone and telegraph allowance, the stationery allotments, use of the Joint Senate-House Radio-Television facilities, free distribution of the Congressional Record, favorable prices on personal reprints from the Record, and free use of the folding rooms which collate, fold, stuff, package and mail Congressional newsletters, polls, and other communications directer to constituents." C. F. Hawver, The Congressman's Conception of His Role 59 (1963). See also *Clapp, supra,* at 59–60, 89; J. Harris, *supra,* at 202, 234.

[44] "In 1962 a confidential House survey showed that 231 of 437 members of the House used franked-mail newsletters, mailed weekly or on another periodic basis. Of the 231, some 15 Congressmen sent out 400,000 or more pieces of free mail each during the first seven months of the year while 19 sent out 300,000 to 400,000 pieces . . . In the middle range, well scattered between 30,000 and 300,000 pieces, were 186 (about 73%), while only 29 sent out 5,000 pieces or less." Howver, *supra* at 56. The Post Office has reported that the amount of franked mail increased from 44.9 million pieces in 1955 to 63.4 million in 1958 and 111 million in 1962. Clapp, *supra,* at 59.

[45] See, *e.g.,* the results of congressional surveys in Tacheron and Udall, *supra,* at 280–288; Olsen and Bennett, *supra,* at 351–353.

[46] See generally Harris, *supra,* at 4, 233; Bibby and Davison, *supra,* at 13.

[47] See Frankfurter, Hands Off the Investigators. The New Republic, May 21, 1924, at 329–331.

[48] For example, the Fulbright hearings in 1966 were not only televised in their entirety but later printed privately and distributed widely to the public. See n. 111, *infra.*

[49] See Frank, Hugo L. Black, in 3 Justices of the Supreme Court 2328–2329 (Friedman & Israel ed. 1969). Of the latter investigation, Nicholas Johnson wrote: "He stimulated the nation's conscience, creating demand for Congressional maritime reform." Senator Black and The American Merchant Marine, 14 U.C.L.A. L. Rev. 399 (1967).

[50] The publication and widespread circulation of committee reports is often accomplished with the assistance of private printers. See pp. 85–88, *infra.*

[51] In light of a misconception by the Court of Appeals (P.W.C. 9a), we wish to reiterate that we do not urge and never have urged that simply because a number of congressmen are said to engage in a certain kind of conduct it necessarily follows that the conduct is within the ambit of the clause. For example, intervening before an executive agency, on behalf of a constituent, with respect to a matter pending before it for decision is not privileged. See *United States* v. *Johnson, supra,* at 179. Such conduct is not necessary to fulfill any goal of representative government since it involves a matter committed by law to a coordinate branch of government for determination. Moreover, it is not customarily done—at least not to the same extent as the informing function, inasmuch as many congressmen believe such conduct to be improper and refuse to engage in it. *Galloway, supra,* at 202–205. Very few congressmen go beyond sending a letter of inquiry to the agency. Of course, if a congressman believes that an injustice has been done by an agency, he has adequate legislative tools at his disposal—he may hold hearings, expose the injustice, and propose legislation.

[52] Mr. Justice Stewart joined in this analysis but did not agree that there was any factual support for any conclusion other than that Barr was seeking merely to defend his own reputation. *Id.,* at 586.

[53] The framers, who gave congressmen the power to set their own salaries, seemed to have more faith than the Court of Appeals that Congressional power would not be perverted for commercial gain.

[54] 8 Works of Thomas Jefferson 325 (Ford ed. 1904).

[55] While Vice President, Jefferson compiled the authoritative Manual on Parliamentary Practice.

[56] Letter from Madison to Jefferson, August 5, 1797, in Presidential Papers Microfilm, James Madison Papers, Series I: 1796 Jan. 5—1801 June 14 (Library of Congress).

[57] 8 Works of Thomas Jefferson 322–331 (Ford ed. 1904).

[58] 8 Works of Thomas Jefferson 331 (Ford ed. 1904).

[59] Letter from Madison to Jefferson, *supra,* n. 56.

[60] See Koch and Ammon, The Virginia and Kentucky Resolutions: An Episode in Jefferson's and Madison's Defense of Civil Liberties, V William & Mary Quarterly (Third Series) 152–153 (1948); J. M. Smith, Freedom's Fetters 95 (1956).

[61] *Tenney* v. *Brandhove, supra,* at 313.

[62] W. Wilson, Congressional Government 303 (1885), quoted *supra,* p. 38.

[63] Quoted in Lasswell, National Security and Individual Freedom 62-63 (1950). See also 4 Papers of James Madison 236–237 (Hutchinson ed. 1965).

[64] See generally 1 Anson (Law and Custom of the Constitution 158 *et seq.* (3d ed. 1897); May, Constitutional History of England.

[65] See, for example, Patrick Henry's impassioned plea in the Virginia Ratification Convention:

"Give us at least a plausible apology why Congress should keep their proceedings in secret. . . . They may carry on the most wicked and pernicious of schemes under the dark veil of secrecy. The liberties of the people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness.

". . . Under the abominable veil of political secrecy and contrivance, your most valuable rights may be sacrified by a most corrupt faction, without you having the satisfaction of knowing who injured you. . . . We may labor under the magnitude of our miseries without knowing or being able to punish those who produced them." III Elliot's Debates 170, 315–316 (1788). Along the same vein, see III *id.,* at 376–378.

[66] See, *e.g.,* in The Virginia Ratification Debates, III Elliot's Debates at 331–332 (Madison,) 399–400 (Madison), 401 (Randolph), 403–409 (Madison), 459 (Mason), 460 (Madison and Mason).

[67] Protest, *supra,* pp. 55–58.

[68] *Lyon's Case,* Case No. 8, 646, 15 Fed. Cas. 1183 (C.C.D. Vt. 1798). This case is also discussed in detail in J. M. Smith, Freedom's Fetters, *supra,* at 221–241 in a chapter aptly titled "The Ordeal of the Critical Congressman."

[69] 15 Fed. Cas. at 1187.

[70] *Id.,* at 1185, 1187.

[71] *Id.,* at 1189.

[72] *Id.,* at 1190.

[73] *Id.,* at 1190–1191.

[74] 15 Fed. Cas. at 1191.

[75] See, *e.g.,* McIlwain, *supra,* at 42–44; Wittke, *supra,* at 110–112; W. C. Townsend, History of the House of Commons, 412–416 (1843); Report of House Committee on the Privileges of Parliament (1771), reprinted in 8 S.T. 16–17.

[76] See pp. 27–29, *supra;* Wittke, *supra,* at 103–106.

[77] See Report of the House Committee on the Privileges of Parliament (1771), reprinted in 8 S.T. 16–17:

"This proceeding the Convention Parliament deemed so great a grievance, and so high an infringement of the rights of Parliament, that it appears to your Committee to be the principal, if not the sole object of the first part of the eighth head of the means used by King James to subvert the laws and liberties of this Kingdom, as set forth in the Declaration of the Two Houses . . . ."

[78] See generally, J. Pollock, The Popish Plot; A Study in the History of the Reign of Charles of Charles II (1944).

[79] See 9 C.J. 630–695. On November 15, 1680, permission was given to Mr. Dugdale; on November 19, to a nonmember, Signior Francisco de Ferra; and on December 23, to Mr. Dennis. See also 9 C.J. 670, for the order permitting other papers about the Popish Plot to be published. The printing continued through 1681 as new information was received. See 9 C.J. 709, 711.

[80] 9 C.J. 649.

[81] II J. Torbuck, A Collection of the Parliamentary Debates in England 96 (1741). (Courtney's statement was made on March 24, 1681.) Another member said, less ominously:

"The Privy Council is constituted by the King, but the House of Commons is by the choice of the people. I think it not natural nor rational, that the people who sent us hither should not be informed of our actions." *Id.,* at 92.

[82] The earlier cases included the Trial of William Staley, 6 S.T. 1501 (1678); Trial of Edward Coleman, 7 S.T. 1 (1678); Trial of Ireland, Pickering and Grove, 7 S.T. 79 (1678); Trial of Green, Berry and Hill, 7 S.T. 159 (1679); Trial of Whitehead, Harcourt, Fenwick, Gowen and Turner, 7 S.T. 311 (1679); Trial of Langhorn, 7 S.T. 418 (1679).

[83] See VI Holdsworth, A History of English Law 502 *et seq.* (1924); J. Pollock, *supra,* at 266–287.

[84] Proceedings Against Sir William Williams, 13 How. St. Tr. 1370 (1686–1688).

[85] Atkyns had been dismissed from the bench for contradicting a dictum of Chief Justice Scroggs that the presentation of a petition for the summoning of Parliament was high treason. For in the life-and-death struggles of the King and his ministers against those who opposed despotism, state trials were not impartial inquiries; the task of the judge was to defend the King's case and if he went astray, as did Atkyns, the penalty was dismissal. J. Pollock, *supra,* at 282–287. "It is due to their connection with these trials that posterity has branded the names of three judges (Jeffries, Pemberton and Scroggs) with lasting infamy." *Id.,* at 265. Two of these judges—Jeffries and Pemberton—sat on the court that tried and convicted Sir William Williams. Townsend, *supra,* at 413.

[86] *Id.,* at 1383–1407.

[87] *Id.,* at 1410–1413.

[88] "I might enumerate a vast multitude of Animalia Majora, no small flies, that have in several ages been catched in the net or web of an inquiry made by the House of Commons, who fish only for such greater fish, such as we call the pike, who by oppression live upon the smaller fish, and devour

them. The Commons to that end fish with a net that has a wide and large mesh, such as lets go the small fry, and encompasses none but those of the largest size." *Id.*, at 1413. "The plea shows, that one great lord was convicted . . . by impeachment of the Commons, and attained before the Lords. The King's speech shows that there was need of further enquiry, and that it was not as yet thoroughly done, nor himself, nor the two Houses safe . . ." *Id.*, at 1414.

[89] *Id.*, at 1414–1415.

[90] *Id.*, at 1415–1417.

[91] *Id.*, at 1417–1418.

[92] *Id.*, at 1418.

[93] *Kilbourn* v. *Thompson, supra,* at 204.

[94] Townsend, *supra,* at 413. Jeffries earned the nickname "The hanging judge" when he was dispatched by James II to try participants in the unsuccessful Scot revolt; James II is said to have commented that there was no doubt as to the outcome: "Jeffries will try them and they shall surely hang." See also fn. 85, *supra.*

[95] See *Rex* v. *Williams,* 2 Show. K. B. 471, Com. 18, 89 Eng. Rep. 1048:

"[Williams' counsel] began, 'The Court of Parliament . . .'

"Lord Chief Justice [interrupting]: 'Court, do you call it? Can the order of the House of Commons justify the scandalous, infamous flagitous libel? . . . Let judgment enter for the King.' "

Williams paid 8,000 pounds, and the King acknowledged satisfaction. No better case of "intimidation by the executive and accountability before a possibly hostile judiciary," *United States* v. *Johnson, supra,* at 181, is found in the reports.

[96] 10 C.J. 15 (January 29, 1689).

[97] 9 Grey's Debates 81, reprinted in Report from the Select Committee on the Official Secrets Act 24 (House of Commons, 1939).

[98] 10 C.J. 21 *et seq.*

[99] 10 C.J. 215. A bill to reverse the conviction and compensate Williams for the fine was sent to the House of Lords. The Lords did not act favorably upon it because that would have required payment to Williams of the not insubstantial amount of 8000 pounds from a greatly depleted treasury. There was "no disposition to make pecuniary compensation to any of those who had suffered illegally during James' reign, unless a source independent of the public purse could be found for that purpose." Townsend, *supra,* at 415. See also 13 How. St. Tr. at 1438–1439. Consideration was given to confiscating the estates of Jeffries and Sir Robert Sawyer, who had filed the information against Williams, but the Lords declined to do so in 1695. On that occasion, Williams spoke eloquently:

"I value much more your rights and my own honor, than I do my estate . . . . It is my glory that I have left a record for the rights and freedom of Parliament. In this proceeding posterity will justify me." 13 How. St. Tr. at 1440.

[100] After all, the order of only one House does not constitute law.

[101] See II T. E. May, Constitutional History of England 34 (10th ed. 1891).

[102] See T. E. May, Parliamentary Practice 53 (15th ed. 1950); Parry, Legislatures and Secrecy, 67 Harv. L. Rev. 737, 742 (1954).

[103] See II T. E. May, Constitutional History of England 33–49 (10th ed. 1891).

[104] This argument was made by several constitutional law experts in Congress during the debates in Sam Houston's case in 1832. A Congressional opponent of Houston had attacked him in a speech on the floor and then had the speech reprinted in a Texas newspaper. Houston later assaulted violently this congressman on a Washington Street, for which he was tried for contempt of Congress. One of Houston's defenses was that he had not committed a breach of the free speech privilege because the assault was motivated by the publication and not the speech. Although this defense was rejected on the facts, it did set off a marathon debate on the scope of the speech and debate privilege. The virtually unanimous view of the House was that publication of speeches and reports was encompassed within the privilege. Representatives stressed the functional nature of the Speech or Debate Clause as protecting all the necessary and customary duties of office. They viewed the informing function as just a duty implicit in our system of representative government. And they distinguished English cases as resting on the standing rule of the House of Commons which prohibited publication. See especially Gales & Seaton's Register 2840–2852 (May 8, 1832) (Mr. Ellsworth); 2871–2884 (May 9, 1832) (Mr. Doddridge); 2930–2968 (May 10, 1832) (Mr. Crane) 2970–2971 (May 10, 1832) (Mr. Burges); 2983–2984 (May 11, 1832) (Mr. Archer); 2989–3002 (May 11, 1832) (Mr. Kerr).

[105] P.W.C. 9a.

[106] "We will not hold that there is a constitutional privilege to print privately what, we must assume for present purposes, were classified documents simply because intervenor (Senator Gravel) had first disclosed them to a Senate subcommittee whose function was totally unrelated thereto." (P.W.C. 10a.)

[107] Of course, as with other variants of the political question doctrine, when a committee infringes upon an individual's constitutional rights, the courts may be obliged to examine enabling legislation in order to determine whether there is an overriding governmental interest. *E.G., Watkins* v. *United States,* 354 U.S. 178, 205 (1957). Here, no such claim is made by the Government, and the matter is "peculiarly within the realm of the legislature." *Ibid.* See also *Yellin* v. *United States,* 374 U.S. 109, 121–122 (1963), which drew this distinction precisely.

[108] Moreover, even if somehow the Court of Appeals possessed the constitutional power to substitute its judgment for Senator Gravel's or what is relevant to the subcommittee, its conclusion that the documents in question are not, is a mere *ipse dixit.* The Court of Appeals did not even examine the enabling rules of the Subcommittee; nor did it investigate past practices; nor did it consider the impact of the fact that there is no germaneness rule in the Senate; nor did it answer Senator Gravel's point that the war in Vietnam was relevant to the business of many subcommittees, including his own, because of its effects on the availability of funds for domestic programs.

[109] The Court in *Kilbourn* v. *Thompson, supra,* at 205, cited the kind of "usurpation" of authority which would fall outside of the privilege:

"If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act so as to imitate the Long Parliament in the execution of the Chief Magistrate of the Nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment, we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate."

[110] See Violence in America, Historical & Comparative Perspectives (Graham and Gurr et als., Task Force on Historical & Comparative Perspectives, Report to the National Commission on the Causes and Prevention of Violence) (1969); To Establish Justice, To Insure Domestic Tranquility (National Commission on the Causes and Prevention of Violence, introd. by Reston) (1970) ("Eisenhower Commission Report") (1969); The Challenge of Crime in a Free Society (President's Commission on Law Enforcement and Administration of Justice, introd. by Silver) (1968); Rights in Conflict: The Violent Confrontation of Demonstrators and Police in the Parks & Streets of Chicago During the Week of the Democratic Convention of 1968 (Report to the National Commission on the Causes and Prevention of Violence, introd. by Max Frankel) (1968) ("The Walker Report") (1968); Report by the U.S. National Advisory Commission on Civil Disorders (1968) ("The Kerner Commission Report"); Report of the Commission on Obscenity and Pornography (1970).

[111] The Vietnam Hearings (copyright and intro. by J. W. Fulbright) (1966); The Truth About Vietnam: Report on the U.S. Senate Hearings (analysis by Wayne Morse, intro. by J. W. Fulbright) (1966); U.S. Policy Toward China: Testimony Taken from the Senate Foreign Relations Hearings (1966).

[112] Juvenile Delinquency (Youth Employment) (1968); Juvenile Delniquency: National, Federal and Youth Serving Agencies (1968); Juvenile Delinquency: Comic Books, Motion Pictures, Obscene and Pornographic Materials, Television Programs (1969); Juvenile Delinquency: Treatment and Rehabilitation of Juvenile Drug Addicts (1969).

[113] The Manpower Revolution: Its Policy Consequences (1965).

[114] Summary of Hearings on the Wagner Housing Bill (National Association of Housing Officials 1936).

[115] Reorganization of the Federal Judiciary (1970).

[116] American Imperialism and the Philippine Insurrection (1969).

[117] New Orleans Riots of July 30, 1866 (1969).

[118] Memphis Riots and Massacres, 1866 (1969); Memphis Riots and Massacres (1969); Background for Radical Reconstruction (1970)

[119] Report of the Joint Committee on Reconstruction (1971).

Other privately published congressional committee reports, listing of which is found in, among others, the Library of Congress card catalogue, include: The Jewish National Home in Palestine (House Committee on Foreign Affairs) (Hearings, 1970); The Computer and Invasion of Privacy (House Committee on Government Operations Subcommittee) (Hearings, 1967); China, Vietnam and the United States (Senate Committee on Foreign Relations) (Hearings, 1966); The Ku-Klux Klan (House Committee on Rules) (Hearings, 1969) (reprint of the first publication of 1921); Invasion at Harper's Ferry (Senate Select Committee on the Harper's Ferry Invasion) (1969); Abridgement of the Debates of Congress, from 1789 to 1865 (1857–1861) (work then in progress); Affairs in the Late Insurrectionary States (Joint Select Committee on the Condition of Affairs in the Late Insurrectionary States) (1969); American Foreign Policy: Basic Documents, 1941–1949 (Prepared at the request of the Senate Committee on Foreign Relations by the staff of the Committee and the Department of State) (1971);

Report of the Joint Committee on the Investigation of the Pearl Harbor Attack (Joint Committee on the Investigation of the Pearl Harbor Attack) (1972); The Journal of the Joint Committee of Fifteen on Reconstruction (B. B. Kendrick) (1969); Urban Crisis in America: The Remarkable Ribicoff Hearings (C. O. Jones and L. D. Hoppe, eds.); Reports on Crime Investigations (Senate Special Committee to Investigate Organized Crime in Interstate Commerce) (1969); Third Interim Report (Senate Special Committee to Investigate Organized Crime in Interstate Commerce) (1951); American Indians: Facts and Future, Toward an Economic Development for Native American Communities (Joint Economic Committee) (1970); National Priorities: Military, Economic, and Social (Joint Economic Committee, Subcommittee on Economy in Government) (1969);

Soviet Economic Growth: A Comparison

with the United States—A Study Prepared for the Subcommittee on Foreign Economic Policy of the Joint Economic Committee (Library of Congress, Legislative Reference Service) (1968); An Economic Profile of Mainland China (Select papers contributed by invited specialists for the study which was undertaken by the Joint Economic Committee) (foreword by William Proxmire) (1968); Comparisons of the United States and Soviet Economies (Joint Economic Committee) (1968);

Investigations of Senators Joseph R. McCarthy and William Benton, Report of the Subcommittee on Privileges and Elections to the Committee on Rules and Administration (Senate Committee on Rules and Administration) (1953); Enough Rope: The Inside Story of the Censure of Senator Joe McCarthy by his Colleagues—the Controversial Hearings that Signaled the End of a Turbulent Career and a Fearsome Era in American Public Life (Senate Select Committee to Study Censure Charges) (1969); A Second Federalist—Congress Creates a Government (Selected from the Annals of Congress by Charles S. Hyneman and George W. Carey) (1967); Communism, Its Plans and Tactics (House Committee on Foreign Affairs) (by Frances P. Bolton, chairman, and other Members of Congress) (1949); Hearings on the Permanent Court of International Justice Before a Subcommittee of the Committee on Foreign Relations (Committee on Foreign Relations) (1924);

Investigation of Administration of Louis F. Post, Assistant Secretary of Labor, in the Matter of Deportation of Aliens (House Committee on Rules) (1971); How Bull Run Battle Was Lost—The Ball's Bluff Massacre (Joint Committee on the Conduct of the War) (1863); The Secretary of State and the Ambassador—Jackson Subcommittee Papers on the Conduct of American Foreign Policy (Senate Committee on Government Operations) (1964); Rebel Barbarities—Official Accounts of the Cruelties Inflicted Upon Union Prisoners and Refugees at Fort Pillow, Libby Prison, Etc. (Joint Committee on the Conduct of the War) (1864); Army of the Potomac—History of Its Campaigns, the Peninsula, Maryland, Fredericksburg (Testimony of three commanders; Joint Committee on the Conduct of the War) (1863).

[120] See *Hentoff* v. *Ichord*, 318, F. Supp. 1175, 1180 (D. D.C. 1970) 1 The Parliamentary Papers Act, §§ I and II (3 & 4 Vict., c. 9 (1840); *Wason* v. *Walter*, 4 Q.B. 73 (1868). It should be noted that in this case Beacon Press made its paperback edition available to the public in sufficient quantity at a price of $20 for the set, while the Government Printing Office made available a limited printing of a censored edition, with unnumbered pages (making the work less useful as a research and reference tool) at a price of $50. Similarly, private publications of other important commission reports and congressional hearings have sold much more than the editions published by the Government Printing Office. For example, we have been advised by the Library of Congress that the Bantam edition of the Kerner Commission report had sales of 1,395,000, as compared to 62,500 for the G.P.O. edition (the latter costing almost three times the former); the Bantam edition of the Lockhart Commission Report was 250,000 and the G.P.O. only 10,000 (with a similar price differential); and the combined sales of private editions of the 1966 Vietnam hearings totalled 42,000, compared to 6,023 for the G.P.O. edition.

[121] The Speech or Debate Clause affords "an absolute privilege to members of both Houses of Congress in respect to any speech, debate, vote, report, or action done in session." *Barr* v. *Matteo, supra*, at 569. See also, *e.g., Powell* v. *McCormack, supra*, at 503; *Dombrowski* v. *Eastland, supra*, at 84–85; *Barsky* v. *United States*, 167 F. 2d 241, 250 (D.C. Cir.), cert. denied 334 U.S. 843 (1948); *Cochran* v. *Couzens*, 42 F. 2d 783 (D.C. Cir.), cert. denied 282 U.S. 874 (1930).

[122] The Solicitor General stated in the petition for certiorari that there has never been any intention to call Senator Gravel as a witness before the grand jury (S.G.P. 15). The record makes clear that this simply is not so. Not only did the Justice Department claim the legal right to do so in both the District Court and the Court of Appeals, it also implied strongly that Senator Gravel would in fact be subpoenaed and could invoke his Fifth Amendment privilege "should questions be incriminating" (App. 8). The Justice Department retreated from this position only after the District Court issued its Protective Order.

[123] There is no force in the argument that the Speech or Debate Clause literally prohibits only questioning of Senators and Representatives. First of all, as we have emphasized, with perhaps tiresome reiteration, the Clause is to be read broadly to effectuate its purposes. Secondly, the present form of the Clause is clearly stylistic. The Committee on Detail in the convention wrote the Clause in subject-matter terms following the English Bill of Rights:

"Freedom of speech and debate in the Legislature shall not be impeached or questioned in any Court or place out of the Legislature." III Documentary History of the Constitution of the United States 447 (1900).

This provision was changed to the present form by the Committee on Style and the change was not mentioned as substantive. This Court has twice confirmed that the Clause is "substantially identical" to the English Bill of Rights. *Powell* v. *McCormack, supra*, at 502, n. 20; *United States* v. *Johnson, supra*, at 177–178.

[124] As counsel for Senator Gravel remarked in the District Court at the opening of this litigation:

"If we should, for instance, move to intervene and then it is determined that the issue before the grand jury for which Dr. Rodberg has been subpoenaed has nothing to do with the Senator, then we have no interest or right to be there. If, on the other hand, the questions for which the grand jury has subpoenaed Dr. Rodberg do relate to the Senator's activities, then we want to be very vigorous in our representation." (App. 42.)

Counsel for the Senator in the District Court further disclaimed any belief by the Senator that he could invoke his privilege to protect Dr. Rodberg from questioning with respect to activities, even activities relating to the Pentagon Papers, which predated the establishment of his aide relationship with the Senator. (App. 41.)

[125] It is significant, in this regard, that the usual rules of evidence relating to relevancy, hearsay, etc., do not apply in the grand jury.

[126] "The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 594 (1952) (Frankfurter, J., concurring).

[127] Compare Mr. Justice Brandeis' celebrated statement in *Olmstead* v. *United States*, 277 U.S. 438, 479 (1928):

"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficient. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

[128] Our only quarrel with the District Court's opinion is that it did not define privileged acts broadly enough, *i.e.*, by excluding publication of the record from the protected area.

[129] For historical examples of breaches of the privilege by inquisitorial bodies, see fn. 20, *supra*.

[130] Grand jury transcripts are not readily available, and the District Court summarily denied Senator Gravel's motion for a transcript to be kept and made available to him. (App. 19.)

[131] The *Johnson* court did hold, however, that "a prosecution under a general criminal statute" so "dependent on . . . inquiries" necessarily touching upon the preparation for, delivery of, and motives behind a speech, "necessarily contravenes the Speech or Debate Clause." *Id.*, at 184–185.

[132] Nor, in fact, is such "influence peddling" an act which is "generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn* v. *Thompson*, 103 U.S. at 204. See fn. 51, *supra*.

[133] "Only the question of the applicability of the Speech or Debate Clause to the prosecution of Johnson is before us. The Court of Appeals affirmed the convictions of co-defendants Edlin and Robinson [who were connected with the saving and loan association] whose appeals were consolidated with that of Johnson [in the Court of Appeals] and, except for a brief as *amicus curiae* submitted by Edlin, questions raised in those cases have not been presented to us. The defendant [Congressman] Boykin took no appeal from his conviction." *United States* v. *Johnson, supra*, at 172–173, n. 3.

[134] And see fn. 133, *supra*.

[135] One might imagine a case where it is obvious from the face of an indictment that the criminal charge and a protected legislative activity are so intertwined that prosecution of the indictment necessarily would involve questioning delving into protected legislative activity. This is one of the questions being faced by this Court this term in the *Brewster* case, *supra*, but in the instant case only questioning, and not accountability, is involved. See also fn. 131, *supra*.

After Congressman Johnson was retried and convicted, he appealed on the ground that the indictment was void because original grand jury investigation violated the Speech or Debate Clause. The Court of Appeals stated that evidence taken by the grand jury was "constitutionally impermissible" but, citing the rule of *Costello* v. *United States*, U.S. ( ), held that this did not invalidate a facially sufficient indictment.

[136] The complaint in this case was the same person as the plaintiff in *Wason* v. *Walter, supra*, which established the right of members and printers to publish allegedly libelous speeches and reports.

[137] The New York Times, March 17, 1972, p. 7, col. 1.

[138] A number of such incidents are collected in Wolkinson, Demands of Congressional Committees for Executive Papers, 10 Fed Bar J. 103 (Part I), 223 (Part II) (1949).

[139] In its petition for rehearing with suggestion for rehearing en blanc filed with the Court of Appeals for the Fifth Circuit in *United States* v. *J. W. Robinson et al.* (No. 71–1058), the Justice Department argues that the signature of a close aide to the Attorney General should suffice to validate and authorize an electronic interception application under 28 U.S.C. § 510, notwithstanding the statute's requirement of personal authorization by the Attorney General. "The practice of having a personal aide in whom an official must and does repose total confidence is well known and widely accepted not only in the executive branch, but in the legislative branch as well (cf. *United States* v. *John Doe, Mike Gravel, United States Senator, Intervenor*, Nos. 71–1331, 71–1332, 71–1335 (1st Cir.), decided January 7, 1972, slip op. at 11–12). The nature of such a relationship demands that the aide and the officer be treated as one," *id.*, Justice Department's brief at p. 6. In *Doe* v. *McMillan*, F.2d (D.C. Cir. 1972), the Justice Department successfully argued for the privilege to ex-

tend to congressmen aides, the public printer and committee consultants, who aided a congressional committee to issue a report.

[140] Statement of William H. Rehnquist (June 29, 1971), at p. 11.

[141] *Id.*, at p. 16.

[142] *Id.*, at p. 19.

[143] Mr. Acheson gave the Separation of Powers Subcommittee of the Senate Judiciary a telling argument:

"There was a bill recently under consideration in the House to impeach a Justice of the Supreme Court—if it had gone through to impeachment, I am sure the Chief Justice would have ruled inadmissible the House manager calling upon the law clerks to testify as to their talks with the Justice. One cannot inquire into that confidential relationship. These are practical matters . . . ." Executive Privilege: The withholding of information by the Executive, hearings before the Separation of Powers Subcommittee of the Senate Judiciary Committee, Statement of Honorable Dean Acheson (July 28, 1971), at 265.

[144] Barr was represented by an attorney from the Department of Justice.

[145] Of course, insofar as the adoption of the common law executive privilege is justified by the separation of powers doctrine, the executive privilege might be seen as being of constitutional dimensions, although obviously less explicitly constitutional than the legislative privilege. It should be noted that the Court of Appeals in the instant case concluded that Senator Gravel was protected from questioning about the Pentagon Papers, even though the publication was not covered by the Clause, by a privilege akin to the common law executive privilege enunciated in *Barr* v. *Matteo*. *United States* v. *John Doe*, 451 F. 2d 466 (1st Cir. 1972) (P.W.C. 10a-11a).

Similarly, the English Parliament has acted to guard against a seeming chink in the armor of its privilege of free speech. By the law of Parliament, "a clerk or officer of the House or shorthand writer employed to take minutes of evidence before the House or any committee thereof may not give evidence elsewhere in respect of any proceedings or examination had at the bar or before any committee of the House without the special leave of the House." Commons Journals (1818) 389. This was discussed favorably in the Report from the Select Committee on the Official Secrets Acts (1939) at p. ix.

[146] This is an early "parade of horribles" to which the Government and the Court of Appeals have reverted.

[147] This was, for example, the substance of an amendment offered by Mr. Fitz Roy Kelly and seconded by Lord Eliot, *Id.* at 277–278.

[148] Speech of Lord Eliot. *Id.*, at 278.

[149] The British Attorney General's position on the limits of the privilege in civilized society was apparently adopted by this Court in *Kilbourn* v. *Thompson*.

[150] Thus, the Act provided that once a lawsuit was begun against a publisher, it would end upon production of a certificate in court to the effect that the printer was acting by order of either House. The preamble to the Act sees the Act as a mere remedy for obtaining "more speedy protection" than was theretofore available. This is not unlike the concern of American courts that the mere threat of litigation might be sufficient to deter a legislator, and that the Speech or Debate privilege should be assertable at the earliest stage possible, preferably on a motion to dismiss or motion for summary judgment. See *Powell* v. *McCormack*, 395 U.S. at 505–506, especially n. 25.

[151] Despite some attempts to distinguish the case from *Stockdale*, and even a passing comment that *Stockdale* was left undisturbed, one must honestly conclude that *Wason* did indeed overrule *Stockdale*. One distinction proffered was that *Stockdale* involved a publication which maliciously aimed at damaging an individual, while in *Wason* the publication was aimed primarily at reporting the proceedings of the Parliament for the information of constituents. *Wason* v. *Walter*, *id.*, at 95. It would appear clear that *Stockdale* also involved the function of informing constituents. Furthermore, the *Wason* court made it as clear as it could that, while the Parliamentary Papers Act, 3 Vict. c. 9, was "passed in consequence of the decision in *Stockdale* v. *Hansard*," *id.*, at 92, nevertheless it was not passed because there was thought to be any need "to fix the legality of the publication of parliamentary debates on the sure foundation of statutory enactment," *id.*, at 92; rather, the Act was probably passed as much because of "apprehension" caused by some language used in *Stockdale* "as by any conviction of the defectiveness of the law." *Id.* Finally, the *Wason* court approvingly cited *Rex* v. *Wright*, 8 T.R. 293. See discussion at 77–78, *supra*.

[152] Similarly, while the Constitution mandates that a "journal" be kept of congressional proceedings, it also allows Congress some leeway in using its discretion to keep certain matters secret. Art. I. sec. 5.

[153] See pp. 85–88, *supra*.

[154] Precisely such a misconception led the Court of Appeals to imagine an entire "parade of horribles" in the event that illegal acts were allowed to be "cleansed" by introducing them into a Senate subcommittee's proceedings. ". . . the consequences of such an unlimited absolute privilege would be staggering." *United States* v. *Doe*, 451 F. 2d 466 (1972). The court felt that Senator Gravel was claiming that by "immersing" the papers in a subcommittee record, he would be retroactively cleansing all events leading up to the papers being obtained and turned over to the Senator. *United States* v. *Doe*, Opinion on Rehearing, — F. 2d .

Quite to the contrary, Senator Gravel does not seek to protect any aspect of or actor in the Pentagon Papers case other than his acquisition (not his source's acquisition) of them, his staff's preparation of the papers for the subcommittee hearing, and Beacon Press' preparation of the papers for publication and its ultimate publication and distribution of them.

[155] Anderson involved an attempt by a nonmember to bribe a member to give a speech.

[156] See also *Cochran* v. *Couzens*, 42 F. 2d 783 (D.C. Cir. 1930), where the court granted the defendant Senator absolute immunity from a slander action complaining of words uttered in a Senate speech. The *Cochran* court felt that all that could be done was to send the plaintiff to the Senate to ask that the defendant's peers impose a remedy, presumably under art. 1, sec. 5, cl. 2 of the Constitution. 42 F. 2d at 784.

[157] While Senator Gravel asked the District Court to quash the subpoena altogether, he did offer the alternative that the Justice Department be ordered to specify the questions which it intended to ask of the Senator's aides and associates. (App. 2, 12.) With such a protective order, the Senator would have been satisfied to have the subpoenaed witnesses appear before the grand jury, since he would then not have to guess whether or not the witness would be constant in his refusal to violate the privilege, or worry that the witness' interpretation of the matters protected might differ from his own.

A SERIOUS FLAW IN OUR TAX LAWS

HON. BEN B. BLACKBURN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. BLACKBURN. Mr. Speaker, a number of my constituents have recently brought to my attention the fact that there is a serious flaw in our tax laws. I have received many letters suggesting that our tax structure, while not actually encouraging divorce, does discourage marriage. Under the Internal Revenue Code of 1954, as amended, higher rates are charged to married people filing separately than to those who are single.

The reason given by the Internal Revenue Service for this inequity is that the working wife is considered a luxury. While it is true that most families' incomes are increased substantially when the wife works, a great majority of the working women in this country come from lower and middle-income families, and their employment is necessitated by the ever-increasing cost of living.

It is because of this that I am today introducing legislation which will remove this inequity. My bill will guarantee that married individuals who file separately shall be taxed at the same rate as unmarried individuals.

THE LATE HONORABLE ADAM CLAYTON POWELL

HON. HENRY HELSTOSKI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. HELSTOSKI. Mr. Speaker, I wish to join my colleagues in expressing my sorrow at the passing of Adam Clayton Powell.

Despite the controversy surrounding Adam's last year in the House, much of which was fueled by hypocrisy and racism, I believe that the record shows, and history will show, that he was one of the most effective and committee legislators ever to sit in this House. At least 52 major pieces of legislation were enacted into law during Adam Clayton Powell's 5-year tenure as chairman of the Education and Labor Committee. Among these measures were the minimum wage legislation, the School Lunch Act, the Library Services Act, legislation to implement the war on poverty, a ban on unequal pay for men and women, the manpower development and training legislation, the Elementary and Secondary Education Act, and many more. In short, virtualy all of the progressive legislation of the 1960's bears the indelible mark of Adam Clayton Powell's craftsmanship.

Before attaining the committee chairmanship, however, indeed before coming to Congress, Adam was an outspoken advocate of the rights of black people. Well before Montgomery or Little Rock or Birmingham captured the attention of the American public, Adam Clayton Powell was in the forefront of the struggle for full civil rights for all Americans. In the 1940's and 1950's his was a lonely but powerful voice raised against all forms of discrimination in our society. For this early and courageous leadership he deserves recognition.

Mr. Speaker, perhaps the best evaluation of Adam's achievements—and his failures—was rendered by Charles V. Hamilton in the New York Times of last Sunday. I conclude my remarks by inserting a brief excerpt from that eulogy at this point in the RECORD:

ADAM C. POWELL

During the peak years of his public life, he had been an important symbol for many black Americans, a symbol of achievement, confidence and definance. Many of his early "Powell amendments" seeking to deny Federal funds to discriminatory projects are now laws of the land, if not always facts of life. If he failed to accomplish more, it was not, as some have been prone to conclude, simply because of his flamboyant style and sometime arrogance. He was a man of his time, a black man who was what he was and did what he did to win a place of power in a nation responding too slowly to racial injustice. Had America been different, Adam Powell might have been less "difficult"—but with it all, he will be remembered not only for his excesses but for his very real achievements.

RAILROAD SPONSORS "FISHERMAN'S SPECIALS"

HON. SEYMOUR HALPERN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HALPERN. Mr. Speaker, with the summer months fast approaching, all of us await the day when we can travel to fresh air and clean waters for rest and recreation. A weekend of fishing for example, is a joy to any family but developments are underway in Long Island, N.Y., which will make fishing this season, an added joy. The Long Island Railroad will be sponsoring "Fisherman's Specials" to fishing areas on the Island for all New Yorkers and visitors.

In a recent issue of Passenger Transport, I read a fine article outlining the Long Island Railroad's initiative in this area. For the benefit of fishing enthusiasts everywhere, but especially on Long Island, I wish to insert this article into the RECORD. The efforts undertaken by the Long Island Railroad to allow New Yorkers to fish in areas over 50 miles from the city should be commended and encouraged. Our citizens deserve recreation areas and Long Island Railroad's efforts to transport city dwellers to the fishing areas of the State is a step in the right direction.

FISHING TRIPS FOR NEW YORK SET BY LIRR

NEW YORK, N.Y.—"Gone Fishing" signs appeared everywhere in the Metropolitan area starting April 8 when the Long Island Rail Road once again this year began operating its highly-popular "Fisherman's Specials" to Captree State Park, located 47 miles east of New York City.

Anglers aching to land the really "big ones" are being offered a pair of appealing round-trip package trips while the weekend "'Fishermen's Specials" run each Saturday and Sunday through May 27. The daily "Fishermen's Specials" start May 28 and run through Sept. 4.

OPEN PARTY

Package No. 1, costing $10, includes train ride to Babylon from Flatbush Avenue or Penn Station, bus trip to Captree State Park to board an open party boat for fishing on Great South Bay (ocean fishing is available at extra cost).

Package No. 2, costing $12.25, offers all of the above plus a fried chicken box lunch as well as use of a fishing pole and all the necessary tackle. Bait is extra on both package trips and may be purchased at the dock.

Over 2,500 anglers took advantage last year of the LIRR's "Fishermen's Specials." Catches included flounders, weakfish, fluke, black fish, sea bass, porgies and king fish. Ocean fishermen brought back pollack, striped bass, blue fish and cod.

PARK FACILITIES

Captree State Park is a 298-acre beach-marina located 15 miles east of Jones Beach. Under the jurisdiction of the Long Island State Park Commission, Captree offers, in addition to excellent boating and fishing facilities, unexcelled surf, bathing beach and picnic grounds.

A NEW APPROACH TO STABILIZATION POLICY

HON. WILLIAM J. GREEN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. GREEN of Pennsylvania. Mr. Speaker, I wish to bring my colleagues' attention to a proposal, made by Mr. John S. Atlee, an economist from my district, for a new approach to the problem of achieving stable full employment growth with stable prices and stable interest rates. Mr. Atlee has a Ph. D. in Economics from Columbia University, has taught commerce subjects at the University of Pittsburgh, has done research in macroanalysis and stabilization policy for the Ford Foundation, and has published articles in professional journals on the flow of funds approach to social accounting. Thus, he is an extremely competent professional in his field, and his ideas are worth studying.

I agree heartily with the stated objectives of this proposal, and I am convinced that it warrants careful study by all House and Senate Members. If it could actually achieve the results claimed for it, it would prevent future Republican Presidents from thrusting our economy into a depression, as the Nixon administration has done—and it would make it more difficult for any president to drag us into another disaster such as the Vietnam military quagmire.

The first item, entitled, "A New Approach to Stabilization Policy," sets forth the key elements of this proposal in fairly readable terms with some of the historical and analytical background. The second item, entitled "It's Time for a New Full Employment Bill," is a detailed preliminary draft of the proposed comprehensive legislation.

The material follows:

A NEW APPROACH TO STABILIZATION POLICY

(By John S. Atlee)

In the early days of aviation when instruments were few and unreliable, pilots flew "by the seat of their pants"—by the "feel" of the plane. But their subjective feelings were often misleading, with tragic results. Today a jet pilot merely sets his course and turns on the "automatic pilot." Then its servo-mechanisms take over and keep the plane stable and on course. The more-or-less continuous "stabilization adjustments" of the automatic pilot are so small and precise that they are never even felt by the passengers. This is the way our whole economy should—*and could*—be managed.

When it comes to managing the economy, our present system is even worse than the old-time seat-of-the-pants approach to flying. It's not just that there's no automatic pilot. It's almost as if there were *three* pilots, with Congress, the President and the Federal Reserve all authorized to take an occasional stab at it, with passengers continuously haranguing them with advice (and, one might even say, speaking in several different languages, since even professional economists use incredibly vague and unscientific terms to describe the operation of the economy!), with no firm agreement on where they are going or how to get there, and with none of them fully responsible for what actually happens. In fact, when the President becomes preoccupied with foreign policy and Congress becomes preoccupied with an upcoming election, the economy is pretty much left to fly itself—as if the three pilots went back in the cabin to play cards or talk with the stewardess!

There are indications today that most of the passengers are becoming fed up with this nerve-jangling method of managing our economy. An individual business run that way wouldn't last long, and that kind of unpredictable national economic environment makes it much more difficult to run a private business—especially if it's a small or black business.

Continuing the airplane analogy for a moment, it is important to note that there are two quire distinct aspects in the modern approach to flying. The pilot himself has to set the flight plan—the course, altitude and cruising speed. The automatic pilot merely *keeps* the plane on this course. The same distinction is also vital to effective management of the economy.

The policy-target aspect of economic management.—A "flight plan" for the economy would include such policy targets as the unemployment rate, price trend and interest rates. The unemployment rate is probably the most basic—and most comparable to the course set by an airplane.

With regard to the interest rate target, the new approach to stabilization policy outlined below will make it possible, for the first time in our history, to stabilize and control interest rates as a public policy decision.

In the long run both the price trend and the growth rate of current-dollar GNP (Gross National Product=total spending) are determined primarily by the growth rate of the money supply. Therefore, when the stabilization aspect of economic management is carried out by the means proposed below, a stable monetary growth rate should become the basic policy. This would be approximately the same rate as the "real" GNP growth rate, but governed more precisely by a fixed and explicit formula.

(It should be noted here that "money" includes only the checking deposits and pocketbook currency which people can buy things with and pay bills with. It does *not* include interest-earning savings accounts, whether they are in a commercial bank, a savings bank or a savings and loan association. This error is merely another example of the slip-shod character of much current economic thinking!)

In the short-run perspective of two or three years the price trend is determined primarily by the economy's *structural balance* (rather than by the unemployment rate, as implied in another fad of current economic thinking!)—and by the extent to which past imbalances are being effectively corrected by current policy.

The GNP growth rate is not considered as a primary policy target for two reasons:

(a) The *trend* growth rate of *full-employment potential GNP*—which must be the ultimate policy target—is very largely implicit in our 20-year-ago birth rates and the trend growth rate of productivity, both of which are largely inherent in the basic institutional nature of our society and little

affected by any but the longest-run policy decisions.

(b) The relationship of the *actual GNP growth rate* to the growth rate of full-employment potential GNP does, in fact, determine the unemployment rate. But *politically* the unemployment rate in the more important policy target, with the GNP target being adjusted accordingly.

The stabilization aspect.—Now let's turn to the stabilization aspect of economic management—the problem of preventing short-run fluctuations in the GNP growth rate and the unemployment rate. These are caused primarily by structural changes in the economy: for example, those caused by the 1955 automobile-and-housing "boom," by the Korean and Vietnam wars, and by inappropriate policy decisions by Congress, the Administration or the Federal Reserve—such as the failure of Congress to synchronize the reduction in taxes with the reduction in military spending after the Korean War, the failure of President Johnson and Congress to increase taxes to finance the Vietnam War, and the wild gyrations of monetary policy during 1953–60 and 1966–71. To offset the ill effects of the inevitable human (and political!) errors in judgment and timing, effective economic stabilization needs the equivalent of the airplane's automatic pilot.

The present "automatic stabilizers."—Certain aspects of the way our economy works already tend to reduce the magnitude of fluctuations. These are what the economists have traditionally called "automatic stabilizers." When a decline in the rate of business investment or government military spending or consumer debt-financing of automobiles causes a decline in the GNP growth rate this causes increased unemployment and a reduction in business profits. But this in turn causes a reduction in government tax receipts (from both corporate profits and personal incomes) and an increase in government spending for unemployment benefits, welfare payments and farm subsidies—which tend to reduce the net decline in the growth rate of consumer take-home pay (disposable income) and consumer spending. In the other direction, an increase in the GNP growth rate tends to increase tax receipts and reduce depression-relief payments, thus tending to hold down the growth of consumer disposable income and spending.

However, since the compensatory effects of the present automatic stabilizers are brought into action only by the very fluctuations which we want to prevent, they cannot actually eliminate these fluctuations. In fact, they offset only about one-third of the original destabilizing impetus. Moreover, even this effectiveness depends heavily on the present high rate of military spending and the resulting high tax rates.

Thus, recent ("Keynesian") fiscal policy has been mainly concerned with augmenting the automatic stabilizers with *discretionary* compensatory changes in government spending and/or taxation (with resulting indirect effects on the disposable income and spending of consumers and businesses).

Weaknesses of discretionary fiscal policy.—The main trouble with compensatory government *spending* is that it can't—and shouldn't—be turned on and off like a spigot. If it is for a socially useful and needed purpose its amount and timing should be determined on its own merits—on the real need for that type of spending. If its purpose is of questionable utility (such as a good deal of our "defense" spending), it faces—and should face—strong opposition from taxpayers and Congressmen. Therefore, there has been an increasing tendency for compensatory fiscal policy to rely primarily on tax-rate changes. However, since there is presently no way to clearly separate temporary stabilization changes from changes in the permanent tax structure, and since tax changes have often been determined more by political considerations than by the needs of the economy, they have usually been inappropriate in both timing and amount.

"Formula flexibility" of tax rates.—About 10 years ago the prestigious Commission on Money and Credit (CMC), sponsored by the Committee for Economic Development, noted that the most promising means of achieving really effective stabilization was to completely separate the *compensatory/stabilization* aspects of fiscal policy from the ordinary *budget* aspects which provide the basis for Congressional policy decisions on the basic "permanent" structure of tax rates and decisions on ordinary (non-depression-relief) expenditures.

The CMC proposed that stabilization tax rate adjustments (hereafter referred to as STA) should be made "automatically" on the basis of a fixed formula. They called this approach "formula flexibility" to distinguish it from proposals for giving the President discretionary power to adjust tax rates.

Since the formula itself would be ratified by Congress—and could be changed at any time if Congress decided it was not working out properly—Congress would be giving up none of its Constitutional tax powers. In fact, it would actually increase Congress' effective control over basic tax policy by making it possible to legislate the "permanent" structure of tax rates on its own merits, uncomplicated by transitory economic conditions. But formula flexibility would indeed tend to take stabilization policy "out of politics," in much the same way that civil service has done for much government employment, and would thus tend to eliminate another area of potential conflict between social responsibility and political expediency.

The Full Employment Budget.—A year ago President Nixon took a big step in this direction when he sent Congress a Full Employment budget (FEB). In the FEB, estimates of tax receipts and government spending are based on a constant rate of unemployment. This tends to give Congress far more effective control over the budget because it eliminates the effect of economic fluctuations and thus faciiltates comparison of budgets for years with different economic conditions.

(Actually, President Nixon's budget is more accurately called "high" employment than "full" employment, because it is based on an official rate of 4% unemployment, which is more than double the rate that many European countries consider politically intolerable, and which results in 25–30% unemployment among ghetto teenagers. It would be much better to use a standard of 2% unemployment, so that it would not have to be changed after we get our unemployment below 4%.)

The formula flexibility approach has languished until now mainly because there has been no really satisfactory statistical indicator on which to base the formula. The official unemployment rate reflects changes in the GNP growth rate only very inadequately and after considerable time lag. Even the official estimates of GNP are subject to large errors and revisions, so that a significant change in the real GNP growth rate may be well underway before it is clearly identifiable. Furthermore, because the National Income Accounts (which provide the estimates of GNP and the statistical basis for Keynesian approaches to stabilization policy) are unable (either conceptually or statistically) to deal with the very important credit and monetary aspects of our economy, it was impossible to develop a reliable formula for relating changes in tax rates to desired changes in GNP and unemployment.

New basis for STA formula.—The new approach outlined here focuses not on *spending* but on *credit*. This is partly because the most unstable elements of total GNP spending—business investment (particularly inventory investment), household investment in houses and major durable goods, short-run fluctuations in Federal spending (especially for "defense")—tend to be financed very largely with credit. It is also partly because credit flows are much more volatile, much smaller, and much more easily influenced than spending flows.

But credit flows and spending flows are very closely related. The relationship is easiest to understand if we think of the flow of spending and income as "circular," since money itself is never "used up" in the process, but merely passes from one person to another indefinitely, with each person's spending being the next person's income. We can think of the credit flows as merely a small (about 9% of GNP) diversion from this main spending/income flow: the "supply" of credit from one person's financial saving (in savings deposits, life insurance reserves, purchases of securities, etc.) represents merely a temporary withdrawal from the main flow until someone else borrows and spends the money.

Newly created money—or "credit creation," as it is sometimes fuzzily called—is a small but crucial component of the total supply of credit which represents, of course, a net addition to the main flow, and which is thus, essentially, the only means of financing the growth of GNP (in current-dollar values).

Thus, the function of the formula-controlled Stabilization Tax Adjustments would be to make sure that *compensatory* changes in Federal borrowing precisely offset any net imbalance between the total supply and demand for credit caused by changes in consumer or business borrowing—or even by inappropriate fiscal actions of the Federal government itself.

It is easier for socialist economies to maintain a continuous balance between the total supply and demand for credit because all their credit must flow through the state bank(s). But our financial system is so complex and decentralized that it has been impossible to develop any reliable and current estimates of the *total* flow of credit.

The ICB and STA.—This proposal solves the problem by establishing an *Intermediate Credit Bank* (*ICB*) which serves as a "bankers' bank" or "central credit pool," accepting interest-bearing deposits from any major financial institution with surplus funds and making "wholesale" loans (at the same interest rate) to any such institution whose "retail" demand for loans exceeds its inflow of deposits. Thus, all the "marginal" surpluses and deficits of the whole economy would tend to be funneled through the ICB, and the relationship between its own total deposits and loans would be exactly the same as the relationship between the whole economy's total supply and demand for credit.

The operation of the Stabilization Tax Adjustment would then be as follows:

a) When ICB deposits exceed loans, the STA would reduce payroll tax deductions, so as to increase Federal borrowing (i.e. increase the Federal deficit or reduce the surplus, as the case may be).

b) When ICB loans exceed deposits, the STA would increase payroll tax deductions, so as to reduce Federal borrowing.

(In practice, the tax adjustment would have to be slightly greater than the difference between ICB loans and deposits, to allow for the fact that a change in take-home pay affects saving as well as spending.)

Payroll tax deductions would provide the initial vehicle for such tax adjustments because most large payrolls are already computerized and the adjustments could be made very simply on the basis of periodic directives from the U.S. Treasury. Those whose incomes do not come through computerized payrolls would be subject to the same net adjustment when they file their regular tax returns. (*Net* adjustment is specified because these adjustments would be so

frequent and in such small amounts—like the adjustments of the jet's automatic pilot—that they might very well cancel each other out over the period of a whole tax year!)

This formula-controlled stabilization mechanism would not only *mitigate* economic fluctuations; it would tend to entirely *eliminate* them, by counteracting the basic structural maladjustments before they have a chance to show up in the official unemployment rate or the GNP growth rate—like the plane's automatic pilot stabilizes its flight.

It would also make possible a steady, planned, recovery to real full employment. A moderate, non-inflationary recovery rate would make it possible to get our unemployment down to Europe's 2% by about 1975. From then on, stable full-employment growth of the economy would be maintained automatically, with mass unemployment as obsolete as the medieval blood-letting which it so much resembles!

The anti-inflationary effects of full employment.—Continuous, stable full employment would greatly facilitate long-range business planning, reduce overhead costs, reduce minimum "safe" profit margins, increase opportunities for small business and other healthy types of competition, reduce Federal, state and local tax rates, and cause many other structural changes in the economy which would tend to hold down prices and exercise the bogey of potential conflict between full employment and stable prices.

Most current discussion of the "Phillips Curve Problem" overlooks the fact that most of our actual historical approaches to full employment have involved an abnormally high "recovery" rate of GNP growth—a condition which is inherently inflationary unless very carefully managed. In contrast, during the final two years of the Korean war we had *both* very low unemployment and stable prices—because the inflationary influence of the war and the pre-war recovery growth rate was suppressed by price-wage-credit controls until the structural maladjustments were dissipated.

Policy control of interest rates.—Because the STA would make possible direct and precise control of the total supply and demand for credit, the ICB interest rate (which would tend to become the basic standard of reference for most other interest rates) could be set by Congress on the basis of considerations of national policy. For example, if desired, interest rates could even be "rolled back" to the pre-Korean level of about 2%. This would facilitate financing of pollution control equipment, better insulated buildings (and other measures to conserve scarce fuels), construction of new schools, etc.

Guarantees against "credit crunch"—The operation of the STA and ICB together would completely eliminate the possibility of another "credit crunch" such as those of 1966 and 1969–70 which led to the formation of the Hunt Commission (Presidential Commission on Financial Structure and Regulation), by much more effective means than these recommended in its report.

Basis for international monetary system.—When this approach to national economic management is also adopted by most of the other major industrial nations it will tend to coordinate their economic policies even more effectively than the old-fashioned gold standard system, and will thus facilitate the establishment of a sound international monetary system. (However, it would probably do little to help clear up the present mess which has resulted from the apalling mis-management of the past 7 years. That will require special emergency measures.)

Facilitates reduction in military spending.—One of the fringe benefits of this method of managing the economy is that it completely separates the problem of stabilization and full employment from the particular content of the GNP. Stable full employment can be achieved equally well whether government spending—or business investment—is high or low. By helping to put an end to the pernicious myth that jobs and profits depend on war and military production, and by facilitating reconversion, this approach would also facilitate a reduction in military spending, much of which is appropriated as a "politically viable" means of creating (or saving) jobs rather than for any really necessary contribution to defense.

This reform is as "radical" as the initial establishment of the Federal Reserve System, the graduated income tax, the FDIC and the "Keynesian Revolution"—and as badly needed now as they were in their time!

This article includes only the major features of a comprehensive "Full Employment Bill" which has been submitted to several committees of Congress, and which is, in turn, based on a forthcoming book on marco-economic analysis and policy.

It's Time for a New Full Employment Bill

(By John S. Atlee)

Part I. Analytic Framework and General Description of Proposed Reforms

For the past 20 years unemployment in most of Europe and in Japan has averaged about 2% or less. For many years West Germany actually kept her unemployment below ½ of 1%—by our definition. After World War II Italy came to be known derisively as "the sick man of Europe" because of her high unemployment. Shall we now allow the United States to fall heir to that dubious honor?

The need for a more scientific and business-like management of our economy

Using an economic depression and mass unemployment to cure inflation is comparable to the medieval practice of blood-letting to cure disease. It is hardly worthy of a modern industrial nation which believes in the scientific approach to knowledge and the solution of problems.

In the early days of aviation when instruments were few and unreliable pilots flew "by the seat of their pants"—by the "feel" of the plane. But their subjective feelings were often misleading—with tragic results. Today a jet pilot sets his course, turns on the "automatic pilot" and the servomechanisms take over to keep the plane stable and on course with such frequent and precise adjustments that they are never even felt by the passengers. This is the way our economy could and should be managed!

This article is based on my forthcoming book on macro-economic analysis and policy. It is the result of more than 10 years of study of the financial structure and operation of the American economy, in an effort to devise more effective and more systematic governmental machinery for managing the macro-economic growth and stabilization aspects of monetary and fiscal policy—for "framework planning" of the overall economic environment to make possible the achievement of steady, non-inflationary recovery to full employment, and, thenceforth, the maintenance of continuous stable full-employment growth—with stable prices and stable low interest rates. This particular "package" of proposed reforms is the result of a very recent major "breakthrough" in this research.

In terms of governmental structure and institutions, these reforms could be said to carry forward and functionally integrate two earlier basic reforms: the establishment of the Federal Reserve System in 1914 and the general adoption of the Keynesian theory of compensatory fiscal policy after World War II.

Policy-wise, these reforms combine Milton Friedman's prescription for stable monetary growth, the fiscal policy "formula flexibility" proposed by the 1961 Commission on Money and Credit, and Congressman Wright Patman's populist policy of low interest rates—with a pathbreaking new method of achieving precise coordination between them.

However, it must be noted that in several respects these reforms are based on a fundamentally new approach to economic analysis and policy, and that this may present some problems for those brought up in the now-conventional Keynesian/National-Income framework. Thus, it is perhaps useful to quote Keynes' prescient introduction to his own path-breaking new approach 36 years ago:

"Those who are strongly wedded to what I shall call 'the classical theory' will fluctuate, I expect, between a belief that I am quite wrong and a belief that I am saying nothing new . . .

"The ideas which are here expressed so laboriously are extremely simple and should be obvious. The difficulty lies not in the new ideas but in escaping from the old ones, which ramify, for those brought up as most of us have been, into every corner of our minds." (*General Theory*, pp. vii)

The basic economic balances

Functionally, the reforms proposed here provide an effective means for precise control of the three basic macro-economic "balances":

1) The balance between *total spending* and the total full-employment *productive capacity* of the economy (i.e. between total GNP demand and potential supply);

2) The balance between the actual *money supply* and the full-employment demand for *cash "inventory"* (i.e. between the total actual stock of currency and checking deposits and the "money inventory" needed to service the full-employment volume of GNP);

3) The balance between the total *supply of credit*, from financial saving and monetary expansion, and the total *demand for credit* to finance GNP expenditure.

During 1971, total spending was about 12%, or $140 billion below its full-employment level (by Europe's 2% definition of full-employment). The money supply was perhaps $25–30 billion below its full-employment level. The total demand for credit was probably close to its full-employment level, but this was too high, proportionately, for the 1971 level of GNP.

Stabilization

The *stabilization function*—i.e. the federal government's "compensatory" action to offset destabilizing structural changes in the rates of spending, saving and borrowing by either private or government sectors—would be performed, under these proposals, by formula-controlled *Stabilization Tax Rate Adjustments* (*STA*), through changes in income tax payroll deductions by employers with computerized payrolls, to maintain a continuous balance between the total supply and demand for credit.

Weaknesses of conventional Keynesian/National-Income approach.—The now-conventional Keynesian approach to economic analysis and stabilization policy is based statistically on the national income accounting system—which is unable (both conceptually and statistically) to comprehend credit and monetary flows. Therefore it could not deal effectively with the second and third of the basic economic balances cited above. Consequently, as a practical matter, it tends to focus policy attention on compensatory government *spending*. A basic weakness of this approach is that the timing and amount of changes in government spending cannot be precisely controlled, even theoretically; and in the world of practical politics they are usually quite inappropriate in both respects.

Since there is greater potential flexibility in the timing and amount of tax rate changes (particularly through payroll deductions), those who argue for more precise "fine-tuning" of the economy tend to prefer taxes rather than spending as the medium for stabilization policy. However, within the Key-

nesian/National-Income analytical and policy framework, both are subject to the same problem: there is no precise "indicator" of the appropriate timing or amount. The official unemployment statistics are quite inadequate for this purpose and lag several months behind the related changes in GNP. Furthermore, the statistical estimates of GNP are themselves compiled only on a quarterly basis and are subject to large errors and revisions, with even the preliminary estimates only becoming available a month or more beyond the end of the quarter.

"Fine-tuning" the economy—and reducing the risk of unfavorable macro-economic effects of a basic new tax or expenditure program (such as the proposed value-added tax or an income-maintenance program)—requires that stabilization adjustments (like the adjustments made by the auto-pilot of an airplane) be made frequently and in precise small amounts—ideally, even before the maladjustment becomes clearly evident in such crude measures as unemployment and GNP.

The new approach.—The approach of this proposal is distinctly different from the now-conventional Keynesian/National-Income approach in both concept and practice. Conceptually, it is based on the Flow-of-Funds type of economic accounts, which are able to show in considerable detail the functional relationships between spending flows and credit and monetary flows. However, it differs from the conventional approach to credit and money in that this uses a dynamic or flow perspective, rather than the static accounting perspective.

Theoretically, credit and spending flows are complementary: the credit flows represent merely a temporary "detour" from the basic "circular" flow of income and spending and have no net effect on its volume as long as all the financial saving is borrowed and spent by someone else. Monetary expansion, however, represents an "exogenous input" which increases (or permits an increase in) the total volume of the circular flow. Since the credit flows are much smaller in amount than income and spending flows, proportionately equal errors of measurement in the credit flows are much smaller in absolute amount and therefore easier to deal with in compensatory policy. Furthermore, credit flows tend to be much more sensitive as "indicators," since their percentage changes tend to be many times as large as the corresponding percentage changes in the GNP growth rate.

Unfortunately, the institutional make-up of our financial system is so complex, and the actual statistical data on financial flows still so imperfect, that it has not previously been practical to use credit data as the basis for stabilization policy. This proposal solves the problem by establishing an *Intermediate Credit Bank* (*ICB*) which would serve as a "banker's bank" or "central credit pool", accepting interest-bearing deposits from any major financial institution with surplus funds and making loans to any such institution whose demand for funds exceeds its inflow of deposits. This would produce in the credit market such a high degree of liquidity that the individual "marginal" surpluses and deficits of the whole financial system would tend to be transferred almost immediately to deposit/loan accounts at the ICB rather than being held in idle "speculative" or "precautionary" cash balances and borrowings.

If, then, the overall supply and demand for credit (as reflected, marginally, in the total deposit and loan balances at the ICB) are kept in balance by means of stabilization tax adjustments (i.e. with destabilizing changes in private credit being precisely offset by compensatory changes in federal government credit), the resulting overall credit flows would quite accurately represent a "mere detour" from the basic circular flow of spending and income, and the stabilization changes in federal credit would have a precisely equal stabilizing effect on the total flow of spending and income.

Note for economists.—The old Keynesian problem of how to handle the *ex ante* inequality of saving and investment is here solved by use of the Flow-of-Funds type of national economic accounts and the "egogenous" flow concept of monetary expansion, in which money only *becomes* part of financial saving—if an increase in cash is considered as "saving" rather than a unique kind of "inventory investment," which is functionally more appropriate—after the borrowed funds which initially bring forth the monetary expansion have actually been spent.

Full employment growth

The functional role of money.—The full-employment growth of GNP would be achieved under this proposal primarily by stable monetary growth. In this it agrees with Friedman that discretionary monetary policy should never be used for stabilization purposes; that an "urgent need is to prevent the Fed from being a source of disturbance," and that monetary policy should be insulated "both from the arbitrary power of a small group of men not subject to control by the electorate and from the short-run pressures of partisan politics."

The functional role of money—The functional relationship between monetary expansion and GNP growth is not always clearly understood. Functionally, the *stock* of money plays the same role in relation to the *flow* of money income and spending as the grocer's physical inventory *stock* plays in relation to the physical *flow* of his incoming shipments and his sales to customers. In both cases the inventory stock serves as a "buffer" or "reservoir" to allow for the differences between the relatively large periodic inflows and the smaller and more frequent outflows. In both cases there is some "normal" average stock/flow ratio which must be maintained in order to avoid disruption of the flows; and growth of the flow requires a corresponding growth of the stock.

The definition of money.—To the shame of the economics profession, it is still necessary, in a discussion such as this, to define "money". For analytical and conceptual clarity money can have only one definition: mean payment—what you buy things with. This includes only checking deposits and currency. It does *not* include commercial bank time deposits, which are functionally no different from savings and loan deposits or Treasury bills (except for the legal reserve requirement on commercial bank time deposits, which has indeed been a source of much confusion in both analysis and policy). The crucial distinction is that a time deposit, like any other credit instrument, must normally be "liquidated"—i.e. *exchanged for* money (either a checking deposit or currency) before it can be used to pay for things. (The *degree* of "liquidity" has nothing whatever to do with it: on Sunday a used car is more "liquid" than a time deposit if the bank is closed and the used car dealer is open!)

In macro-economic terms the distinction is equally clear-cut: speculative "hoarding" of *money* (i.e. checking deposit balances or currency) by some people tends to reduce the money supply available to the rest of the economy (assuming no change in total bank reserves) just as effectively as a reduction in the total supply of money. But the hoarding of "wealth" in the form of mutual savings bank deposits (to avoid the problem of legal reserve requirements on commercial bank time deposits) or any other type of credit claim does not deprive the rest of the economy of the funds. (If the depository institution fails to lend them, or the borrower fails to spend them, that's another question, but the responsibility is shifted.)

The monetary multiplier.—The mechanism by which monetary expansion is transformed into increased GNP is conceptually very much like the mechanism by which, in a fractional reserve banking system, an increase in reserves is transformed into increased total deposits: the borrower who receives the initial increase in money spends most of it, keeping a small portion as his share of the total increase in money stock (to correspond with his share of the total increase in spending and income), and passes on the rest (as expenditure) to someone else, who does likewise. Thus, an increase in the money supply tends to increase GNP by the reciprocal of the stock/flow, Money/GNP, ratio. This might be called the "monetary multiplier."

Note for economists.—When the Flow-of-Funds accounting system becomes the standard statistical basis for macro-economic analysis, and when the resulting full integration of the financial and non-financial aspects has become "conventional," it will undoubtedly be found that the Keynesian "investment multiplier" is actually the "monetary multiplier" described above, since the "exogeneity" of investment is dependent on the availability of "exogenous" funds with which to finance it—and they can come only from monetary expansion or the spending of "surplus" cash balances, which has the same effect as monetary expansion; a structural shift of a given amount of spending from consumption to investment would have no multiplier effect; in fact, quite the opposite, since it would tend to cause excess capacity and a subsequent reduction in both investment and consumption.

The Money/GNP Ratio.—A change in the normal method of carrying on business operations will, of course, affect the normal and necessary Money/GNP ratio, just as it will affect the grocer's inventory/sales ratio. This ratio tends to be *reduced* by greater credit market liquidity and credit availability (which tends to reduce the utility of "speculative" and "precautionary" cash balances), by "check credit" accounts, computerized payment systems, etc. It tends to be *increased* by lower interest rates (which make it less worthwhile to devote costly time and effort to precise "cash management" so as to keep every spare penny fully invested), and by lower bank requirements for minimum or "compensatory" cash balances. Ascertaining the most appropriate Money/GNP ratio for a genuinely scientific monetary policy will require detailed research into the probable net effects of these conflicting tendencies—something that the present cavalier attitudes toward monetary policy has tended to avoid.

Note to economists.—The Money/GNP ratio, in inverted form, is sometimes referred to as the "velocity of circulation", just as the inventory/sales ratio is sometimes referred to as the "turnover rate." But it makes for more effective analysis and policy if the "active" variable is used as the denominator of the ratio.

Interest rates

Instead of attempting to "influence" the demand for credit and the amount of investment spending, indirectly, through the imprecise and ineffective method of interest-rate changes, this proposal would *stabilize interest rates* at a level to be determined by public policy considerations, with the STA maintaining a continuous balance between the actual supply and demand for credit—at the desired interest rate—in much the same way that fixed international exchange rates are maintained. The method by which this ultimate stable rate is achieved, and the rate of transition, are open to policy decision (See II-E).

The inflation bogey and the rate of recovery

Adoption of these proposals will at last *make possible* the achievement of continuous stable growth with very low unemploy-

ment, low interest rates and stable prices. However, there are still many people who fear that really full employment can be achieved only at the cost of an unacceptable rate of inflation. I myself am convinced that this idea is mainly a "straw man"—a bogey created partly by an honest misreading of our past experience, but probably even more by the cynical propaganda of those who, because of their vested interests or obsolete economic ideology, are basically opposed to both the full-employment objective and the framework economic planning necessary to achieve it.

Those who entertain such inflation fears should distinguish carefully between the two basic aspects of this proposal: (1) The *structural reforms*, which are as fundamental—and as vitally needed—as the original establishment of the Federal Reserve System and the progressive income tax, and (2) the *specific policy targets*, which will remain open for review.

It is indeed inherent in the nature of these reforms that they will tend to *stabilize* our economic growth rate and prevent erratic fluctuations. They will also tend to provide a downward "ratchet" on the unemployment rate. That is, they tend to provide an effective guarantee that mass unemployment will never again be used as a policy tool and that any reduction in the unemployment rate will tend to become a new permanent ceiling on that rate. These changes will themselves tend to *reduce* the potential structural conflict between full employment and inflation (i.e. to cause a downward shift in the Phillips Curve. See Part III).

However, the actual rate of progress towards real full employment is left open to future political decision (See II-A-2 and II-B-3). These structural reforms do not *inherently* imply or require any *particular* definition of full employment, rate of recovery to full employment, rate of monetary expansion growth rate of prices or level of interest rates—any more than the establishment of the Federal Reserve System implied any particular rate of monetary expansion (in spite of the fears of the "easy money" bloc) or the 16th Amendment implied any particular income tax rate. These new reforms merely provide—for the first time in our history—an effective governmental "machinery" by which these things can be determined, systematically and predictably, as matters of public policy, through our regular political processes.

PART II. THE SPECIFIC MEASURES TO ACHIEVE ECONOMIC RECOVERY AND TO MAINTAIN STABLE FULL-EMPLOYMENT GROWTH AND LOW INTEREST RATES

NOTE: In this presentation, notes on the *Effects and Implications* of the provisions will be preceded by "E/I" to distinguish them from the specific provisions of the legislative program.

A. NATIONAL COMMITMENT TO STABLE FULL-EMPLOYMENT GROWTH

(1) There must be a firm, explicit, credible, permanent federal commitment to achieve and maintain a stable full-employment "economic environment." E/I: This is an essential element in the program because it will tend to bring about a number of basic changes in the attitudes and practices of labor, business and households which will tend to counteract the inflationary tendency of full-employment market bargaining power. (See Part III, below)

(2) *"Full employment" must be defined, ultimately, as no more than 2% unemployment.* This has been about the *average* actual rate in Europe for many years (Germany has had well below 1%), and it is doubtful if the problem of "structural unemployment" can be solved with any greater degree of overall "slack" in the economy. However, the rate of recovery towards this ultimate goal is something which should be decided on the basis of careful study, in the light of other policy considerations (See B-3).

(3) *Publish the Operating Rate of the economy* (OR) (actual GNP as % of full-employment GNP) in all government chart books and periodic economic releases.

E/I: This is the most basic standard of reference for evaluating the performance of the economy, and would provide the public (and Congress) with a simple, understandable indicator of the extent to which the government is living up to its full-employment commitment. (It is primarily for precisely this reason that this indicator is not now published currently in any government publication! It was recently published in a special article in the 9/71 *Review* of the Federal Reserve Bank of St. Louis.)

(4) Initiate urgent, intensive research (both government and private) to determine more precisely the *true value of full-employment GNP* and its growth rate. (The trend growth rate of "real" F-E GNP is now somewhere near 4½% a year. Allowing for a 1½% "normal, non-inflationary" rise in the official GNP price index, this would imply a 6% growth rate for current-dollar GNP.)

(5) Give high priority to government and private research leading to a *sounder and more socially meaningful definition of GNP and its major components*, and, as soon as possible, revise the official National Income statistics to reflect these new definitions.

B. STABLE MONEY

(1) *Research on Money/GNP ratio.*—Determine what M/GNP ratio would be appropriate for the new Intermediate Credit Bank (ICB) interest rate (F-1, below) under conditions of relatively stable prices and stable full employment. The M/GNP ratio is now about 22% but may well be changed by the net effect of the various reforms included in this proposal (cf. p. 5, above).

(2) Post-recovery stable growth.—Changes in the monetary growth rate must never be used for short-run stabilization purposes. This function must be allocated entirely to the Stabilization Tax Adjustment (D, below).

After recovery to full employment and achievement of a relatively stable M/GNP ratio—the money supply should grow steadily at a rate equal to the full-employment GNP growth rate—i.e. about 6% a year, with 1½% allowance for a "normal, non-inflationary" increase in the official Consumer and GNP price indexes. (This differs from Friedman's prescription in that he assumes continued economic fluctuations and would base the monetary growth rate on the long-run average actual GNP growth rate, rather than the growth rate of stable full-employment GNP, which is somewhat higher.)

(3) Recovery program.—Within the framework of these proposals, the rate of recovery is determined primarily by the growth rate of the money supply.

(a) Develop an appropriate formula for stable monetary growth during a transitional period of steady non-inflationary recovery to full employment and establishment of a stable long-run norm for the M/GNP ratio. This formula should be developed on the basis of careful research and public hearings, and should be openly published for the information of all concerned.

(b) At the same time develop a contingent plan for changing this formula if necessary, specifying the particular conditions which would warrant such a change and how the change should be made. This also should be published.

E/I: The money supply is now probably $25–30 billion below what would be required to service a full-employment level of GNP. Past experience suggests that, in peacetime, real GNP can grow at a recovery rate roughly double the normal full-employment rate (i.e. about 8–9%) without significant inflationary effects until unemployment goes below about 4%. This suggests a maximum current-dollar GNP recovery growth rate (with a similar monetary growth rate, assuming no net change in the present 22% M/GNP ratio) of about 12% during 1972 (allowing for the 3% inflation assumed by Mr. Nixon), then a gradual decline to the normal 6% when full-employment is reached—by about 1975.

(4) 100% money.—Develop a program for gradual transition to a 100% reserve system. This is essential to facilitate operation of the ICB (C, below), to facilitate more precise management of the money supply, and to provide a clearer conceptual and statistical distinction between "money" and "credit"—so as to facilitate better public (and Congressional!) understanding of the operation of our financial system.

(a) Gradually increase the legal reserve requirement to 100% on all checking (demand) deposits.

(b) Federal Reserve purchase enough Treasury bonds (in the open market) to prevent this transition from affecting the planned growth of the money supply. (With 100% reserves, Fed holdings of Treasury bonds will be approximately equal to the money supply.)

(c) Fed pay interest on required reserves. (This is to prevent a reduction in bank "earning assets" and thus eliminate a major potential cause for commercial bank opposition to this reform.)

(d) Fed keep each commercial bank's reserves at the required level by "automatic" daily transfers between its reserve account and its deposit/loan account at the Intermediate Credit Bank (ICB, C, below).

(5) Other related banking and monetary reforms:

(a) Remove all legal reserve requirements on commercial bank time deposits.

E/I: This would put commercial banks on the same basis as other financial institutions in competing for time and savings deposits. It would also remove a basic source of confusion regarding the conceptual and statistical definition of the money supply and the distinction between money and credit, and would facilitate more precise management of the money supply by eliminating the reserve effects of shifts between time and checking accounts.

(b) Remove all interest rate ceilings on time deposits.

E/I: This reform, which the operation of the ICB would make both practicable and desirable, would tend to prevent the present huge shifts of deposits between different types of savings media and the present gross inequities in the interest paid to different classes of savers.

(c) Prohibit allowances for minimum or average checking account balances in the computation of service charges. These represent implicit interest payments on checking accounts, something which is already implicitly prohibited by present laws.

E/I: This reform would probably be welcomed by the banks because it would reduce their bookkeeping costs. The nuisance of such deductions was forced on the banks in the first place only by competition for accounts—like trading stamps were forced on grocery stores. Depositors, for their part, can usually earn higher interest by transferring their surplus funds to savings accounts, and the inauguration of deposit/loan accounts with automatic transfers to and from checking accounts (see C-1, E/I, below) would tend to facilitate the maintenance of relatively low average checking account balances.

This reform would tend to facilitate determination of the correct M/GNP ratio by reducing the components of checking account balances which are not basic to the inventory function of money, and by further sharpening the distinction between money and credit.

Although it is not really crucial to the basic purposes of this bill, this reform should be included in this legislative package because the new lower interest rates would in

any case make it necessary for banks to recompute these deductions, and it would be simpler to merely eliminate them.

(It would also be desirable to eliminate bank requirements of "compensatory balances" for business depositor/borrowers. But it would be very difficult to enforce a legal requirement to this effect, and it is likely that the increased availability of credit and increased competition among lenders which would result from operation of the ICB and STA would tend to reduce the banks' practical ability to enforce such requirements.

(d) Include U.S. Treasury checking deposits as part of the nation's money supply. But by means of "automatic" daily transfers to and from the Treasury checking account at the Federal Reserve keep total Treasury demand deposits (including "tax and loan" accounts at commercial banks) equal to about $8 billion (this amount being increased "by formula") as the federal budget increases).

E/I: This will provide a more complete and appropriate measure of the nation's total money supply without its being erratically affected by Treasury operations.

C. INTERMEDIATE CREDIT BANK (ICB) (A SUBSIDIARY OF THE FEDERAL RESERVE BANK)

(1) Provides "central bank" deposit/loan accounts which pay interest on positive (deposit) balances, charge interest on negative (loan) balances.

(a) A deposit/loan account would be opened for any bank, any other "prime" private financial institution (savings & loan insurance company, mortgage bank, etc.), for the U.S. Treasury and any Federal government credit agency, and for any "prime" state or local government. "Prime" would be defined in such a way as to maintain the "central bank" character of the ICB and the "wholesale" character of its operations, and to keep the number of accounts within easily manageable limits. The specific definition would probably include some combination of capitalization, total transaction volume, average transaction size and credit rating. The selective "screen" might also include a relatively high flat monthly service charge.

(b) Interest rate should be the same for both deposit balances and loan balances, in order to provide maximum administrative simplicity and to induce maximum credit market liquidity. (ICB operating costs could induce maximum credit market liquidity be subsidized, as a public service, by the Fed, which would still derive sufficient income from the Treasury securities which it has bought, in effect, with Federal Reserve Notes.)

E/I: This rate (set as described in F–1, below) would tend to serve as the basic, standard, reference rate to which all others in the economy are tied by market forces and/or the administrative decisions of the various financial institutions (e.g. as many commercial banks now tie their prime rates to some free-market rate).

(c) ICB "open line of credit"—The ICB would make loans "on demand" to any insitution with a deposit/loan account (and a "prime" credit rating) which finds that its demand for credit exceeds its own supply (from deposits, securities issues or current surplus).

E/I: This would tend to greatly reduce the use of "money-market" instruments such as Treasury bills, commercial paper and certificates of deposit for short-term fund-raising.

E/I: ICB as "central depository".—The ICB's open line of credit would tend to make the ICB interest rate the highest obtainable for a "riskless and liquid" investment of surplus funds, so that all such funds would normally tend to be deposited in the ICB. This would tend to greatly reduce the investment demand for short-term money-market credit instruments.

E/I: Commercial bank "retail" deposit/loan accounts.—With free access (in both directions) to ICB deposit/loan accounts, commercial banks could afford to make similar deposit/loan accounts available to nonfinancial business firms and smaller financial institutions on terms almost as favorable as those of the ICB, with interest rates which differ from the ICB rate for deposits only by a small service charge, and for loans by only a small retail markup plus, of course, any appropriate risk or "credit-insurance" premium and any allowance for the administrative costs of a particular loan size.

The availability of these "retail" deposit/loan accounts would further tend to minimize the use of short-term money-market instruments.

E/I: Commercial bank "automatic" transfers between deposit/loan accounts and checking accounts.—Computerization of bank accounting will make it possible for banks to work out with their depositors (including the U.S. Treasury, for its tax-and-loan accounts) standing agreements whereby "surplus" checking account balances (above some agreed-upon amount) are transferred automatically, on a daily basis, to a deposit/loan account, and whereby loans will be made automatically (within the agreed-upon "line of credit," as in present 'check-credit" accounts) when the checking account balance falls below some agreed-upon minimum. (To simplify bookkeeping and minimize the number of such transfers they could be limited in both directions to "round numbers" of a fairly significant amount.)

(2) The ICB makes daily reports to the U.S. Treasury on the total ICB loans and deposits, to provide the statistical basis for the formula-controlled "automatic" Stabilization Tax adjustments (D, below).

D. STABILIZATION TAX ADJUSTMENT (STA)

This was referred to in the 1961 Report of the Commission on Money and Credit as providing "formula flexibility" for the automatic stabilizers.

(1) Separation of the administrative/legislative budget from the Stabilization Function.—There must be a clearcut separation between the budget, which provides the basis for government tax and spending policies (and which should therefore always be presented on a full-employment basis to maintain comparability under different economic conditions—see G, below), and the stabilization function, which should be performed entirely by the "automatic" formula-determined STA, since this is the only means of assuring that adjustments will be fully appropriate in both timing and amount.

(2) STA operates initially through payroll tax deductions.—Employers with computerized payrolls would be sent the necessary information in periodic Treasury directives. Equivalent net adjustments would be made in the regular tax returns of all other taxpayers.

(3) Direction of the STA determined by ICB deposit/loan balance.

(a) Excess demand for credit (and/or insufficient financial saving—as indicated by an excess of ICB loans over deposits) would call for an increase in tax deductions to bring about a larger federal surplus (or smaller deficit, whichever the case might be at the time). In terms of non-credit flows this would absorb the excess money supply and the excess consumer purchasing power which accompanies excessive borrowing. It would thus prevent any possibility of inflation from excessive monetary expansion or excessive deficit in the full-employment budget (G–2, below).

(b) Insufficient demand for credit (or excess financial saving) in the ICB balance would call for smaller tax deductions, and a resulting larger Federal deficit (or smaller surplus). In terms of non-credit flows, this would bring the money supply up towards its normal growth-trend value and increase consumer purchasing power. This would prevent any recession due to inadequate monetary growth or an excessive surplus in the Federal full-employment budget.

(4) Amount of minimum individual STA.—The specific amount of the minimum practicable STA would be determined (on the basis of careful research and analysis) by considerations of administrative convenience—balancing the theoretical desirability of frequent small adjustments against the cost and inconvenience of making such adjustments. (For simplicity, they could be made in even dollar amounts.) The specific amount of ICB deposit/loan imbalance which would trigger a tax adjustment would then be determined by the change in the total tax receipts which would result from the minimum acceptable STA.

The leverage of such adjustments can be illustrated by an example: if there are 50 million workers on computerized payrolls, a mere $1.00 a week adjustment, which would amount to less than 1% of take-home pay, would have a $1.2 billion effect (annual rate) on Federal tax receipts and the Federal fiscal balance. This is small in absolute amount, but its effectiveness is magnified by its precise timing and amount—like frequent small adjustments to the steering wheel in driving a car.

(5) Adjustment of STA formula for "marginal propensity to consume (or save).—One of the arguments against sole reliance on tax adjustments for stabilization is that consumer spending may respond to the change in disposable income only after a lag, and possibly not fully even then. Actually, the empirical evidence on the importance of this tendency is rather inconclusive. But in any case it presents no problem to the operation of the STA. For example, if a reduction in tax deductions should turn out to cause, on the average, an immediate increase in consumer and business spending of only 80% of the increase in disposable income (the other 20% going into increased financial saving), then the formula for tax adjustments would call for a tax reduction of 125% of the excess deposit balance in the ICB, so that the increase in Federal borrowing would absorb not only the present excess deposits, but also the additional deposits resulting from the increased financial saving.

It must be emphasized that the present proposal is concerned primarily with maintaining continuous stable growth after recovery to full employment rather than with the transitional period of recovery, whereas the presently conventional approach to stabilization assumes an indefinite continuation of the present unpredictable instability. Where the overall economic environment is stable and predictable, households and business firms (as groups) tend to behave in a consistent and predictable manner. After a few years' actual experience with stable full employment growth, the STA formula could be adjusted for extremely "fine tuning." In the meantime, whenever any individual STA turns out to have been too small or too large there would merely be another one to correct the error as soon as the error shows up in the ICB deposit/loan balances, following the time-honored process of successive approximation.

E. STABLE LOW INTEREST RATES

(1) The ICB interest (S–1–b, above) would be a policy determined rate, maintained at the desired level by the STA (D, above) in much the same way that fixed international exchange rates are maintained—i.e. by changes in the Federal surplus or deficit which directly affect the relationship between the total supply and demand for credit—without credit rationing or other administrative interference in the market.

Since it would be desirable that this basic interest rate, once fixed, should remain stable, it should be based on adequate anal-

ysis of the probable effects and implications of various possible rates:

(a) One approach would be to set a rate as near as possible to the "natural" or free-market rate which would result from a *balanced full-employment Federal budget*. This rate could probably be determined only after recovery to real full employment (2% unemployment or less) and several more years actual experience with stable full-employment growth. This rate would probably be in the range of 3 to 4%. 4% was roughly the immediate pre-Vietnam rate, while 3% is probably closer to the long-run trend in the U.S.

(b) Alternatively, it would be possible to set the rate mainly on policy considerations—i.e. a rate which would have the most beneficial effect on such long-term investment as pollution control equipment, pollution-free power production, housing (where better insulation would reduce the power requirements for heating and cooling), mass transit, etc., and on the distribution of income and wealth (since interest tends to be *paid out* mainly by middle and lower incomes and *received* mainly by the upper middle and upper incomes). Such a rate might be as low as 2% (the pre-Korean level).

If this rate should tend to cause consistently positive STA's (i.e. frequent increases in payroll deductions), indicating a basic imbalance between the "natural" supply and demand for credit at this rate, it would be possible to change the basic Federal tax structure in such a way as to generate larger surpluses in the Full-Employment Budget, as a means of "forced saving". (This would result in a continuous reduction in the federal debt. But it is likely that it would have little effect on the total debt of the whole economy because the low interest rates would tend to cause an equivalent increase in private debt.)

(c) If, during recovery to full-employment, the ICB interest rate is initially set at approximately the existing free-market rate (whether for reasons of political expediency, uncertainty regarding the international effects of low domestic interest rates, or mere "caution in unchartered waters"), a program should be worked out for steady reduction of this rate towards the ultimately desired rate.

(2) *Provide for the refinancing of all existing long-term debt*, so as to prevent exceptional windfall capital gains for creditors and excessive hardships or inequities for debtors and financial institutions as a result of the lower ICB interest rate.

(a) This would provide that all debts with fixed interest rates higher than those which result from the new ICB rate (F–1, above) could be paid off or re-financed at the then-current market rates for that type of loan or security. This would include household debt such as home mortgages and automobile loans, as well as investment-type credit claims such as certificates of deposit, life insurance, pension funds, and all other fixed-interest credit contracts made during the extraordinary credit-market conditions of the Vietnam War.

(b) To neutralize the opposite source of inequity, and to sweeten the legislative package for investors (if a way can be found to do so without excessive windfall profits and inequities) there might also be provision for refinancing the older very-long-term government bonds which have coupon interest rates lower than the new ICB rate, and for providing retroactive compensation to financial institutions and investors who have already sold these bonds at a loss as a result of the post-Korean rise in interest rates, while recapturing part of the resulting windfall profits by an appropriate special capital-gains tax.

(c) To limit such refinancing to those cases involving a serious problem, there might be provision for a "penalty" of a year's interest.

F. FULL-EMPLOYMENT BUDGET (FEB)

(1) A Full-Employment Budget using 2% unemployment as the definition of "full" employment should become the basic federal budget for policy consideration of tax and expenditure programs. This would make for comparability of the budgets for different fiscal periods during the recovery period until full-employment is reached.

(2) Under this budget the basic standard of realistic "fiscal responsibility" would be whether the proposed budget results in a "neutral" STA—i.e. an STA which would average out to zero over the fiscal year (or perhaps over the two or three most recent years). Whether this budget would be "balanced" or not would depend on the interest rate chosen for the ICB (F, above), and on the behavior of the private supply and demand for credit.

(3) Federal credit programs should be separated from the basic budget, so that Federal lending programs are financed directly by Federal borrowing, (as with private financial institutions), and expenditure programs are financed by appropriate tax programs. This may mean that the basic "non-financial" FEB will show a larger surplus, but it would be desirable for purposes of fiscal control to keep the two types of finance separate.

G. GENERAL EFFECTS ON THE CREDIT MARKET

E/I: Liquidity effects.—The operation of the ICB would greatly increase the liquidity of the credit market from the point of view of the individual borrower or investor. There could be no "credit crunch", for instance. The operation of the STA (D, above) would reduce the degree of macro-economic liquidity which makes possible destabilizing (inflationary or deflationary) shifts in total flows between spending and saving.

E/I: More homogeneous credit market.—The operation of the ICB would tend to reduce interest rate differentials between different geographical areas, maturity dates and types of financial institutions and instruments.

E/I: Institutional specialization.—With an open line of credit at the ICB some savings and loan associations might find it more profitable to concentrate entirely on home mortgage financing, and leave the savings deposit function entirely to commercial banks. But the same changes in the credit market, combined with the 100% reserve system, would probably make it possible for commercial banks to engage more extensively in the financing of long-term mortgages and bonds, if they felt this to be profitable. In general, the increased competition would probably lead to increased specialization, regardless of legislative restrictions. (If so, this tendency would be the exact opposite of that envisioned in the Hunt Commission Report.)

E/I: Increased efficiency of credit market: These reforms would tend to reduce the amount of intermediate and "circular" credit flows ("fluff") needed to accommodate the different needs of saver/investors and borrowers, tax payments, and large financings of the U.S. Treasury and nonfinancial corporations.

E/I: Effect on international monetary system: One of the most basic difficulties in developing and maintaining a sound international monetary system has been the fact that individual nations pursue divergent internal monetary/fiscal policies (or non-policies!). If all major "free enterprise" nations were to manage their economies by the principles and policy tools proposed here, they would be "automatically" coordinated even more effectively than by the discipline of the classical gold standard, and the mechanics of achieving a sound international monetary system would become relatively simple.

PART III. RECONCILING FULL EMPLOYMENT AND PRICE STABILITY

THE PHILLIPS CURVE BOGEY

Today there is widespread professional and political concern over the possibility of inherent conflict between full employment and stable prices. It has recently become focused on the "Phillips Curve," which purports to show the relationship between various rates of unemployment and the corresponding rates of inflation. The Phillips Curve has about as much (and as little) analytical utility as the old-fashioned supply-and-demand curve which it so closely resembles. It does express one tendency in economic relationships. But when it is pinned down to actual empirical values it—like the traditional supply and demand curves—tells us very little of practical use. This is simply because there are many other (including precisely opposite) tendencies operating at the same time. Among these it is most important to note that Continued, Stable full employment, which is the primary aim of these reforms, would tend to bring about many changes in market structure and in the attitudes and the standard accounting and price-setting practices of both business and labor which would tend to counteract the increased "sellers' market" bargaining power of a full-employment economy.

For instance, Continuous, Stable full employment would tend to increase business productivity and reduce overhead costs through higher average operating rates and lower interest rates; it would tend to increase the total profits available for investment while reducing the profit margins (markups) necessary for the financial security of business firms and increasing opportunities for small business and other healthy types of competition; and it would make possible a significant reduction in the burden of federal, state and local taxes by increasing the revenue from any given tax rate and reducing the cost of "depression-relief" and interest on public debt.

These factors would tend to cause such a "downward shift" in the Phillips Curve that it would probably not be a significant problem even when unemployment gets down to the European standard of 2%. (These factors are further analyzed in my paper "Why continuous, stable full employment would actually contribute to price stability rather than to inflation.")

THE BASIC ROLE OF PRICE COMPETITION IN A FREE-MARKET ECONOMY

If we really had "perfect competition" in the classical sense—with all buyers and sellers having full and accurate information about all the available products and services and their sellers, with so many buyers and sellers of each product and service that no one of them could significantly affect the price and with no collusion among them to rig the price artificially, and with effective mobility of capital, labor and consumers—each seller would find it profitable to keep on reducing his price until he could sell all he could produce (or, if the market price falls below his costs, until he goes broke!), "overproduction" and unemployment would be impossible.

Obviously this doesn't describe real market conditions today—or even in "the good old days." Prices tend to be "administered" within a market environment of mass (misinformative!) advertising, brand loyalties, price leadership by the strongest firms, patent monopolies, unlimited "product differentiation," and very inadequate consumer information about most products and services—conditions which present huge obstacles to the effective working of old-fashioned price competition. As a result, "list prices" tend to be unrealistically high and to be maintained even when the producer is operating at 25% or even 50% below capacity. The only people

who get a really fair deal in the consumer market are those who have the time and skill for effective "comparison shopping" of "discount" sources (or who have privileged access to "wholesale" prices!), and these tend to be mainly the better-off middle class suburbanites of the type who read Consumer Reports.

It is today generally recognized by most knowledgeable people (liberals as well as conservatives) that detailed government controls over prices and wages and production would, in the long run, in a peacetime economy, be next to impossible to administer and would do more harm than good.

Thus, if we are really in earnest about achieving and maintaining stable full employment—and making some progress towards the elimination of poverty and gross inequalities of income and wealth—it is imperative that the power of government be used to bring the conditions of actual market bargaining power a good deal closer to the ideal of "perfect competition." In other words, if we reject the idea of direct controls we have to make the market work so as to produce socially acceptable results.

A. MEASURES TO REDUCE MARKET FRICTIONS AND RIGIDITIES

Because the main focus of this paper is on the reforms necessary for a more business-like management of "total demand" the following list of structural reforms is presented here only in briefest outline form, to suggest the most useful approaches. This aspect of a comprehensive full-employment policy will be treated more adequately in the book.

(1) *Consumer Department.*—Establish a cabinet-level Consumer Department, to represent consumer interests with the same weight that the departments of Labor, Commerce and Agriculture represent their constituencies, and to coordinate the related efforts of other Federal (and state and local) government agencies.

(2) *Product testing and rating.*—The Federal government, through the Bureau of Standards and/or other agencies, should perform for consumers the same kind of product testing and rating services which are now provided for its own military and other services. Small private agencies like Consumers Union cannot possibly do an adequate job with such a large number of products and such frequent model changes.

(3) *Informative labeling.*—Making quality information effectively available to consumers would include requiring all producers to print it, in terms understandable to the average consumer, on the label of every unit and in their advertising, and would also require the publication by the government of current "catalogs" of available products, presented in such a form that consumers can actually "comparison shop" the catalogs to find where they can get the things that will best serve their needs at the lowest prices. In addition to helping the consumer, this would greatly help individual retail stores in effective buying, and would make it possible for new and smaller firms with good products to effectively enter the market without the huge advertising and promotion expense that only the giants can afford. Furthermore, this should facilitate the badly needed decentralization of our industry by permitting local firms which can produce high quality goods at competitive prices to actually compete effectively against the giants in local markets. (Yes, there would be a need for new methods to prevent corruption and bribery in the rating services, but we have solved harder problems before!)

(3) *Advertising.*—Allow advertising costs to be tax-deductible as a necessary business expense only when it performs a service which is clearly useful to the consumer, by informing him of new products or features, price reductions, etc. (but not allowing deduction for "public relations"-type ads or ads which are more misleading than informative). Also, means should be devised for taxing advertising space in such a way as to induce sellers to rely more on useful information than on sheer space to get attention and to induce sellers of similar products to locate their ads adjacent to other ads for the same product, so as to facilitate "comparison shopping" by consumers. (This would have the ecological benefit of tending to reduce advertising space in newspapers and magazines, thus reducing the amount of "solid waste" and use of forests for paper.)

(4) *Patent laws.*—(a) Require non-restrictive licensing of all patents at reasonable royalties. This would tend to reduce the amount of useless "product differentiation" and insure that all desirable features of a product are incorporated in all brands, rather than forcing the consumer to make an always-unsatisfactory choice between different desirable but "exclusive" features.

(b) Devise new methods for sharing the rewards for new inventions when several individual inventors and corporate research teams have come to approximately the same result at about the same time. The present "winner-take-all" patent system leads to excessive secrecy in research, industrial thievery, gross inequities in rewards, and monopolistic control of results.

(5) *Research on business pricing policies and markups.*—To determine which are justifiable in terms of consumer interests and which have been the result of economically unsound market conditions and practices. For instance, there are cases where competitive advertising and sales promotion costs have escalated in such a way that this has become a major cost for all companies in the industry, yet none of them is really profiting by it. In other cases (e.g. auto service stations, residential real estate, life and auto insurance) market conditions have been such as to induce too many small firms to enter the business, with the result that costs, markups and prices are very high, yet few firms have an economically sound volume of sales or are making even satisfactory profits. Detailed research of this kind could provide valuable guidelines for many kinds of remedial action.

(6) *Computerized public real estate and apartment rental agencies.*—The economic and social inefficiency of the present system in these areas is as great as in the case of job placement.

(7) *Computerized public employment services and "job banks".*—These would make it easier to distinguish between genuine "structural" unemployment (which would be minimized) and a general shortage of jobs which can only be solved by monetary and fiscal policy.

(8) *Research on job requirements and wage structure.*—One of the main problems of the present wage control program—and a major problem in reconciling full employment with stable prices—is the extent of gross inequities in the labor market—i.e. where people with similar abilities and occupying jobs with comparable requirements are getting greatly different wages merely due to the chance that they happen to be working in different places.

The Civil Service System has made a detailed analysis of job requirements in government employment, in terms of training, experience, skill, responsibility, attractiveness of working conditions, etc., and has established a corresponding system of job and salary categories. Most large corporations have been forced to do much the same within their own firms, merely to prevent worker dissatisfaction from glaring inequities. It should be quite possible for the Labor Dept. to work out a similar classification system for most of the jobs in the economy, and to establish "standard" rates of pay possibly in terms of a small *range* for each job. This would greatly facilitate the operation of a nationwide computerized job placement service, and could provide very useful wage guidelines for any compulsory arbitration which becomes necessary in public service industries.

B. TRANSITIONAL STANDBY PROVISION FOR DIRECT CONTROL OF PRICES, WAGES, INVESTMENT AND CREDIT

The abnormally rapid GNP growth rate which *necessarily* accompanies recovery to full employment (particularly the "accelerator effect" on investment and credit) tends to cause temporary structural maladjustments in the economy which tend to be inflationary in effect. (In fact, it is this structural maladjustment *during recovery* from the usually higher unemployment rate which provides the main empirical basis for Phillips Curve fears.)

This effect generally does not tend to become very significant as long as the recovery growth rate is less than twice the trend growth rate of full-employment GNP. However, it would probably be desirable for any comprehensive full-employment policy to include standby provision for transitional direct controls which could be put into effect if they seem necessary to achieve the goal of full employment with stable prices.

Actually, the most useful of these controls—and the easiest to administer—are those over consumer and business credit, which indirectly control consumer and business investment. It is highly unlikely that direct price and wage controls would be necessary if the rest of the recovery program were properly conceived and administered.

FORMER AMBASSADOR COMMENTS ON THE APPOINTMENT OF CONGRESSMAN F. BRADFORD MORSE TO U.N. POST

HON. CHARLES W. WHALEN, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. WHALEN. Mr. Speaker, few are as equipped to assess a situation as one who has been in its midst for many years. Thus, I believe a great deal of credence can be attached to the article recently written by former Ambassador Charles W. Yost. Mr. Yost was chief U.S. delegate to the United Nations from 1969–71, and he has had 40 years of diplomatic experience. In his statement, he praises the appointment of my good friend, Congressman "BRAD" MORSE, to the post of Under Secretary General for Political and General Assembly Affairs.

I certainly concur with Ambassador Yost's appraisal. With great pride in the honor which "BRAD" has received, I insert this article in the RECORD:

"TROIKA" AT THE UNITED NATIONS?

(By Charles W. Yost)

Few appointments could give more encouragement to those concerned for the future of the United Nations than that of Congressmen Bradford Morse as Undersecretary General for Political and General Assembly Affairs, the senior post occupied by a United States citizen in the UN Secretariat. President Nixon is to be congratulated for nominating, and Secretary General Kurt Waldheim for appointing, so able and well-qualified a man to this important post.

The next secretary general confronted immediately upon taking office a series of difficult decisions in regard to his senior staff.

Each of the five permanent members of the Secretary council feels entitled to and has usually held an important undersecretaryship.

The entry of the People's Republic of China and the death of Ralph Bunche at the end of last year upset arrangements and balances which had grown up over the years. On the one hand, Peking no doubt expects to play more of a role and hold a more significant senior post than did Nationalist China. On the other hand, no American could expect to wield the influence which Dr. Bunche, a Nobel Peace Prize winner in his own right, had built up over the quarter century of his tenure.

The fact was that, while a Soviet citizen has always been Undersecretary for Political and Security affairs, and this post has been filled by such distinguished Soviet diplomats as Arkady Sobolev and Anatoly Dobrynin, Bunche nevertheless was, under the rather nebulous designation of Undersecretary for Special Political Affairs, a more trusted and influential adviser of the first three secretaries general than was any of his Soviet counterparts.

The reason was, not only Bunche's outstanding personal qualities, but the fact that the secretaries general soon found that Bunche was more scrupulous in observing the cardinal charter prescription regarding UN officials—that they "shall not seek or receive instructions from any government or from any authority external to the organization"—than any of the Soviet undersecretaries was permitted by his own government to be.

By virtue of these two qualities—competence and impartiality—responsibility gravitated to Bunche over the years. He came to be responsible in fact, under the secretary general, for the UN's most important political activities—those in the field of peacekeeping in the Middle East, the Congo and elsewhere.

Presumably these responsibilities will now be more widely shared. The incumbent and able Undersecretary for Special Political Affairs, Roberto Guyer, an Argentinian who also takes most seriously his obligations as an international civil servant, is likely to continue to be the secretary general's chief adviser in the peacekeeping field, as he has been since Bunche was incapacitated by illness a year ago.

It is to be hoped that Brian Urquhart, an Englishman who has been with the UN since 1945, who was for years Bunche's principal, most perceptive and most dedicated assistant, will be given increased status and responsibilities, particularly in regard to the Middle East which he knows so well.

The secretary general's most ticklish task, however, will be to determine how to obtain political advice from his U.S., Soviet and Chinese undersecretaries in a manner which will both preserve an appropriate balance among them and at the same time will have none of the flavor of a "troika" which would seek to monopolize power to the exclusion of the other 129 member states.

This task will challenge the new secretary general to display to the fullest the diplomatic qualities and the indefatigable energies for which he has long been notable.

The new United States Undersecretary is therefore moving onto a shifting scene marked by both pitfalls and opportunities. Fortunately no better man to avoid the former and seize the latter could have been found.

His 12 years in Congress, his service in the Interparliamentary Union, his devotion to the principle of the United Nations as demonstrated by his leadership of the Member of Congress for Peace Through Law, will all stand him in good stead.

While he will be primarily in charge of the organization of the annual meetings of the General Assembly, the full scope of his responsibilities will depend in the longer run on his personal qualities, his usefulness to the secretary general, the confidence he generates among all the member states and, perhaps most of all, on the leadership which his own government chooses to exercise or not to exercise in and through the United Nations.

If the United States Administration chooses to bypass the UN in its handling of the great international political issues of our time, if the Congress chooses while voting billions for armaments to be niggardly in providing for the very modest needs of the world's chief peacekeeping organization, then neither the United Nations nor its American undersecretary is likely to play the significant role in the world our troubled times demand.

Fortunately the nomination to this post by the Administration of a Republican member of Congress who deeply believes in the United Nations is a happy augury that henceforth both the executive and legislative branches of our government may be induced to resume that United States leadership in the UN which contributed so much to its earlier successes, and which remains so profoundly in our national interest and in the interests of the world community.

HYPOTHETICAL INTEREST RATES THREATEN TO PULL THE PLUG ON NATION'S WATER PROJECTS

HON. ROBERT L. LEGGETT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. LEGGETT. Mr. Speaker, the decision as to whether a given water project of the Corps of Engineers or the Bureau of Reclamation shall receive Federal aid involves an interest-rate calculation which is not applied to any other aspect of Federal support, which has only the most tenuous connection with economic reality, and which now threatens to send nearly all the water projects in the country down the drain.

This is how it works: The Army Corps of Engineers as an example, does cost versus benefit studies on proposed water projects—flood control, irrigation, and so forth. If the benefit/cost ratio is clearly better than unity, the project is approved, subject, of course, to limitations imposed by available funds, environmental impact, and other considerations. If the benefit/cost ratio is less than unity—that is, if cost exceeds benefit—the project is dead, unless it can be redesigned to improve the benefit and/or reduce the cost. All this is perfectly reasonable.

But in calculating costs, the real expected costs are increased by a given percentage called the "discount rate." Although this discount rate functions like an interest rate, it is not really interest, since nobody pays interest to anybody. Rather, it is based on what is called the "opportunity cost of Government investment." This is the average return which the Government could expect if it invested the same amount of money in the private sector.

The rationale is that the same money could be invested at interest in the private sector, and the taxpayer's interest must be protected by assuring that water projects will yield an equal or better rate of return.

For years, a 3½-percent interest rate was used by the Federal Government. Early in the Nixon administration the discount rate was arbitrarily reset at 5.375 percent. Now the National Water Resources Council has a proposal before it to again reset the discount rate of 7 percent, with the possibility of increase in 5 years to 10 percent. Such interest increases have cataclysmic effects when calculated on a long-term basis. For example, the Fairfield Streams project in my district has an excellent 1.4 benefit/cost ratio with the 5.375-percent discount rate. But raise the rate to 7 percent, and the benefit/cost ratio drops to an unacceptable 0.9. At 10-percent discount, the ratio drops even further to 0.6. At 10 percent, all current water projects in California become unfeasible. Under my theory, however, the fact would remain that until Federal funds are made available for this project, segments of the population will continue to navigate the main street of Fairfield by boat in wet years.

Mr. Speaker, there are a number of reasons why the increase in discount rate is undesirable and should be dropped. In fact, there are several good reasons why the discount rate should be eliminated entirely.

First, there is no basis for the concern that Federal financing must not undercut private financing. The fact is that private capital has never been interested in financing these kinds of projects; it has always been government or nothing.

Second, there is no need to artificially deflate the benefit/cost ratio in order to protect the taxpayers. As a matter of routine, very large sums of Government money are stored—not used, stored—where they draw no interest at all. It is stored in private banks, which are then free to lend it out at commercial interest rates. Some years, banks loan $10 to $15 billion of Government funds for which they do not pay a dime.

Third, we live in a time of high unemployment and low economic growth. It is during times like this that Government expenditure for constructive public works programs makes the most sense. We put people to work on the project itself. We increase our farm income with the results of the project, and farm income operates with a multiplier of approximately 7; each dollar of farm income generates $7 of other income. Contrast this with the WPA attitude we have toward many nonessential defense programs, in which we spend huge sums of money while receiving no economically useful goods in return; this is the essence of inflation.

Fourth, the direct economic benefit of water projects has been excellent in the past, and there is no reason to doubt that it will continue to be so. Since 1900 the Bureau of Reclamation alone has invested $1.6 billion in California water projects—less than the cost of a single carrier task force with planes—and has yielded a gross crop value of $11.4 billion.

In summary, water projects constitute a socially useful and economically profitable investment outlet for the taxpayers' money. If we are going to throw

"fudge factors" into our benefit/cost calculations, they should reflect this fact. Instead, they are presently programed to nearly eliminate this essential Government support.

I insert at this point a discussion of the problem by Russell Millsap, a distinguished attorney representing the Dunnigan and Yolo-Zamora Water Districts of Yolo County, Calif. I also insert a statement by the California Water Commission, which includes a table showing the disastrous effects an increase in the discount rate would have on California water projects.

The material follows:

MILLSAP & MILLSAP,
ATTORNEYS AT LAW,
Woodland, Calif., March 15, 1972.

Re: Proposed Principles and Standards for Planning Water and Related Land Resources.

DIRECTOR, WATER RESOURCES COUNCIL,
Washington, D.C.

DEAR SIR: This statement is presented on behalf of the Dunnigan Water District, and the Yolo-Zamora Water District, both of which are located in Yolo County, California. The Dunnigan District, comprising approximately 12,000 acres of farm land, is within the service area of the Tehama-Colusa Canal which is an authorized feature of the Central Valley Project. The Yolo-Zamora Water District, located immediately south of the Dunnigan District and comprising approximately 23,000 acres of farm land, is not within the service area of the Tehama-Colusa Canal, but is within the service area of the projected West Sacramento Canal Unit of the Central Valley Project. Immediately south of the Yolo-Zamora District lies the Yolo Flood Control and Water Conservation District which comprises several hundred thousand acres of farm land in Yolo County and whose plans envision receiving a large amount of water from the West Sacramento Canal Unit.

As counsel for the Dunnigan Water District and the Yolo-Zamora Water District I have read the report of the Water Resources Council by the Special Task Force dated June, 1969, and have also reviewed the Proposed Principles and Standards for Planning Water and Related Land Resources of the Water Resources Council that was published December 21, 1971 in the Federal Register.

Admittedly the proposed principles and standards are intended to encompass a broad and comprehensive program. One must agree that a comprehensive set of principles and standards should be established in order to satisfy not only ecological concepts but also water resource development. That is not to say, however, that any set of principles or standards would be satisfactory. There may be a great deal involved in the principles and standards that are projected with which one might quarrel; on the other hand, one cannot help but note that practically all of the principles and standards proposed are set forth in rather general terms and are, of course, subject to a great deal of latitude in interpretation. The cumulative effect of such interpretations would provide an opportunity to arrive at almost any preordained result. On the other hand, the standards for determination of the interest rate are set forth in more precise terms, and a projection for the next five years at the rate of seven percent (7%) per annum is provided. No such precision is made in any other aspect of this report. For that reason, it is difficult to respond to the report.

One might say that if other principles were interpreted sufficiently favorable so as to cancel out the effect of the seven percent (7%) interest rate as an internal factor in determination of repayment schedules, that the entire program would be acceptable. However, there are no guarantees or even indications that that would be the case. On the contrary, one has the feeling that many proposed projects would be now found to be infeasible under the proposed new principles and standards.

The fact that many aspects of the Program are rather general, but the interest rate is fairly precise, leads to a question as to whether or not procedural due process has been complied with. The purpose of holding hearings in regard to this matter are, of course, to give all interested parties and agencies an opportunity to present their views such that decisions can be made taking into account all such interests. How does one respond to such a proposed plan? It is difficult to criticize or question the general aspects of the plan, but it is quite clear that the seven percent (7%) rate, or an even higher rate, presents a serious danger signal. We cannot even tell from the principles whether the results would bring forth a higher rate without other compensating features in the plan, or whether there would be compensating features; hence, the great difficulty in responding to the proposals made.

Assuming that there are no new principles to balance the rate increase, one should then go directly to a consideration of paragraph IV(D) entitled "The Discount Rate". While there may be questions as to how the rate would be computed, it has been made clear in the report that a seven percent (7%) rate will be used for evaluating water resource projects during the next five (5) years. In this particular section we have a concept called "The Opportunity Cost of Government Investment". It is roughly recognized to be the real rate of return on non-federal investments and that the best approximation to the conceptually correct rate is the average rate of return on private investment in physical assets, including all specific taxes on capital or the earnings of capital and excluding the rate of general inflation, weighted by the proportion of private investment in each major sector.

The report also states that "The best approximation to the conceptually correct rate that can be made is the average of the average rates of return on private investment, weighted by the proportion of investment in different parts of the private sector." This pretty clearly indicates that the Government is moving towards an interest rate that is comparable to or equivalent to ordinary bank rates. In fact, this is fairly clearly indicated in the report where it states "The difference between the interest paid on federal borrowings and the opportunity cost rate in the private sector is due in part to the fact that private rates of return must be sufficient to pay taxes on earnings of capital. When investments are made by the federal government, these tax rates are foregone. Use of the opportunity cost rate in evaluating federal investments is necessary therefore to *achieve equity* from the standpoint of the federal taxpayer who must finance federal investment. *The federal government should not displace funds in the private sector unless its return on investment is equal to or larger than that in the private sector.*"

One of the principal reasons in the past several years for not presenting the Westside Canal Project to the Congress for approval has been the fact that the cost-benefit ratio had come very close to a one to one ratio. The project technically was feasible under the old formulas, but so close to being infeasible that the project would probably not be approved. The interest rate at that time was 5.375%. Since then, rising costs and inflation generally have taken a further toll on the cost-benefit ratio. The project under today's circumstances might possibly be declared infeasible. There is no question but what it would be infeasible if an interest rate of seven percent (7%) were imposed.

It should be pointed out that the land in the Sacramento Valley of which the Dunnigan District and the Yolo-Zamora Water Districts form a part are among the most fertile land in the entire nation. However, with rising costs and increases in real property taxes, it is absolutely essential that such land be farmed more and more intensively, and this requires dependable and adequate water supplies. We are not talking about unproductive land which is to be reclaimed from the desert, but land which has been under production for at least 100 years or more, only less intensively. These farmers have no option other than to continue to farm the land.

It is my understanding that irrigation projects under the Department of the Interior are the only kind of federal projects which have to have a repayment capacity in order to justify the project. Of course, an interest rate lower than the market rate for borrowing money would indicate a subsidy to some extent. However, the granting of subsidies by the federal government to all sorts of enterprises is the rule rather than the exception. The repayment of project costs is, on the other hand, an exception rather than the rule among federal projects. Needless to say, the persons to whom these so-called "subsidies" are given in fact pay substantial amounts of income tax and property taxes. Considering that the average dollar of farm income generates Seven Dollars of other income in the communities served, we see that there is a very substantial repayment of income tax to the federal government for the so-called "subsidy". Probably no other beneficiary of a subsidy pays as much in return to the federal government.

The net result of these new principles and standards will result in the termination of many necessary and worthwhile projects, and in the long run will introduce not only a lower return of income to the federal government through the income tax, but will also create economic chaos and high unemployment in the local communities where such projects are needed. We must recognize that this will probably be the ultimate result, and that we are not dealing with simply a minor and acceptable adjustment of one small factor in this entire formula.

The report seems to be saying that the federal government should not be competing with private capital in the development of these projects. It states "The Federal Government should not displace funds in the private sector unless its return on investment is equal to or larger than that in the private sector." Historically, private capital has never been able to provide the kind of financing necessary for these projects. This has only been accomplished through the Bureau of Reclamation in more recent times, and this has come about because of longterm financing at low interest rates provided by the federal government.

The report recognizes that "The Revealed Preferences of the Federal Political Processes clearly indicate a desire to transfer income to the people in specific regions by subsidizing water resource projects." The report then points out that these subsidies have been for the most part implemented by the use of an interest rate that is lower than that which they now propose. The report, therefore, apparently accepts "The legitimacy of the political process in determining income transfers and subsidies", but then contends that the use of a "low interest rate, unfortunately, is often an inefficient instrument for these purposes because it also biases the design of

these projects towards those with higher near-term costs and lower near-term benefits." That is the only justification given in the entire report for the increased rate to accomplish what they evidently accept as a desirable political purpose. However, there is not a single bit of evidence, or discussion presented to justify such a conclusion. We question the validity of such a claim. Their objection simply makes clear what we have always known—i.e., that a sound project had to be adequate over the long term, and this required facilities built to high standards to guarantee a period of usefulness at least equal to the repayment period, and an initial development period to stabilize the project. The proponents of the new criteria in viewing these essential features as objectionable factors have clearly missed the point and have failed to understand the realities attendant to the development of such projects. What they apparently desire is a cheap, inadequate project with built-in obsolescence, at high interest rates, and financed preferably by the private sector! This is installment buying at its worst.

However, those having the responsibility for adoption of this program should realize what many farmers already know:

(1) That many billions of dollars of federal funds are placed in private banks throughout this country, and that those banks pay no interest rate to the federal government whatsoever. Yet these same banks are entitled to loan out that money at the highest attainable rates. This money is money supplied by the American taxpayers, including farmers, who get no return whatsoever from the bank but who are expected to pay the going commercial interest rates.

(2) That it is customary for the defense department in its contracts with the aircraft industry, to make progress payments before completion and delivery of a product. This has the effect of providing interest-free money to these manufacturers. This is not simply money at a rate lower than market, but no interest at all!

(3) That we have witnessed in the case of the Lockheed Aircraft Corporation an example of business mismanagement which could not be tolerated by the Bureau of Reclamation in the operation of any reclamation project under its supervision. In the case of Lockheed Aircraft Corporation, the contracts, although not publicized, were rewritten to some degree under more favorable terms for the company and the government agreed to underwrite an additional loan of 250 million dollars in order to keep the company still in business.

These are all subsidies of no mean proportions. And completely belie the claim of the Executive Branch that its proposed interest rate formula is predicated upon "Achieving equity from the standpoint of the federal taxpayer who must finance federal investment."

An economist testifying recently before the Joint Committee on Economics headed by Senator Proxmire commented that the main cause of inflation and the failure of our economy to right itself was due to the tremendous impact of the Defense Department on the economy. He stated that since such spending does not put goods into the market place, it is responsible for the lion's share of inflationary pressures. That budget is now being increased over its average of 77.5 billion dollars per year over the last five (5) years to 83.5 billion dollars for fiscal 1973. This, along with related expenditures, eats up approximately sixty-eight cents to seventy cents of each tax dollar. Unfortunately, all of our domestic programs must compete for a far lesser part of the tax dollar—about twenty cents. This is simply not enough to meet domestic needs.

There is no legitimate argument among proponents of our various domestic programs for the establishment of strict priorities. There is no real quarrel between environmentalists and water resources people over who should have preference in federal financing. All of these programs are essential and even interdependent. The environmentalist cannot go without water in his cities, or food from the farms, or a healthy, sound economy generally. Neither can water resource people ignore the warnings of environmentalists. In fact, we are all part of the ecological system. What all people who are concerned about domestic programs need to realize is that they have, in fact, a common adversary in the competition for federal funds. That common adversary is the unbridled, wasteful and extravagant use of funds in National Defense and related programs. This is not to decry the need for National Defense, or to strike a blow for Isolationism; rather it is simply a protest against extravagance, waste, and mismanagement in National Defense matters generally. To impose such principles and standards on water resource projects when they are already receiving a pittance from the federal treasury, and to do so in the name of "achieving equity" among taxpayers is, in all candor, absurd.

It is, of course, not within the province of the Water Resources Council to take action in regard to the defense budget or to the deposit of interest-free money with banking institutions. However, it is appropriate that these objections be made at this point by us for two important reasons. First, because of these circumstances it is clear that the federal government has established a double standard for the expenditure or the lending of public funds. There is no basic reason, however, why this should be the case. Second, the members of the Water Resources Council are for the most part members of the President's Cabinet, and do have the opportunity to influence expenditures and the standards for expenditures in all areas of government.

In hearings this past year before the Senate and House Sub-Committees on Public Works it was pointed out by the Counsel for the Westlands Water District, who was formerly a member of the California Water Commission, that approximately 13 billion dollars of public funds which had been earmarked for domestic programs had been impounded, insofar as we know these funds have never been released. The Chairman of the Sub-Committees were not able to give satisfactory answers as to why funds which had been appropriated by the Congress could be arbitrarily impounded by the Executive Branch. This whole matter indicates the high degree of frustration that all of us feel when we see our projects underfunded year after year, when monies appropriated for them are not used because of directions from the Executive Branch of the government, and now when criteria are to be established which will essentially destroy those projects. The new principles and standards as they pertain to the financing of water projects are an anachronism in that it would result in imposing a program of financing comparable to private financing which was proven to be inadequate many years ago. To deny the possibility of designing and building for long-term advantages, and allowing near-term low returns during a development period is, in fact, to deny the projects in their entirety. The effect of these guidelines will be devastating not only to the projects themselves, but to the economy that those projects support.

Respectfully Submitted,

RUSSELL MILLSAP,

Counsel for the Dunnigan Water District and the Yolo-Zamora Water District.

RESOLUTION NO. 72-02—EXPRESSING CONCERN ABOUT IMPLEMENTATION OF THE WATER RESOURCES COUNCIL'S PROPOSED PRINCIPLES AND STANDARDS FOR PLANNING WATER AND RELATED LAND RESOURCES

Whereas, the Water Resources Council has published in the Federal Register of December 21, 1971, its Proposed Principles and Standards for Planning Water and Related Land Resources, which, if approved, will supersede the Policies, Standards, and Procedures in the Formulation, Evaluation, and Review of Plans for Use and Development of Water and Related Land Resources, approved by the President May 15, 1962, as supplemented and amended; and

Whereas, the California Water Commission is of the opinion that the Proposed Principles and Standards are extremely complicated and numerous problems may result from early implementation of such Proposed Principles and Standards; and

Whereas, the Proposed Principles and Standards contemplate the use for calculating project benefits and costs of an interest or discount rate based on "opportunity cost", which roughly approximates the average return from private investments and which is estimated at 10 percent; and

Whereas, the discount rate is set initially at 7 percent for a five-year period; and

Whereas, in order to implement the commendable objective of the Proposed Principles and Standards to take account of "the need to balance national economic gain, regional growth, and environmental quality", considerable time will be required for development of new methods, procedures, and criteria; and

Whereas, discount rates of 7 percent to 10 percent will unfairly disadvantage water resources projects until such time as other public works projects requiring federal funds receive the same rigorous economic analysis; and

Whereas, the public cannot measure adequately the full impact of the Proposed Principles and Standards until the new methods, procedures, and criteria for measuring national economic development, regional development, and environmental quality are formulated and applied to the projects now being planned: Therefore be it

Resolved by the California Water Commission, That the Water Resources Council and the Office of Management and Budget are hereby requested to delay implementation of the Proposed Principles and Standards for Planning Water and Related Land Resources until detailed procedures have been formulated and applied to projects now in the planning stage to determine their full impact, and until the Congress has had an opportunity to hold hearings and investigate the full effects of such Proposed Principles and Standards to determine whether they should be modified; and be it

Resolved further, That the objective of the Proposed Principles and Standards to balance national economic gain, regional growth, and environmental quality, be considered by the Office of Management and Budget and the Congress for all areas of public works expenditure; and be it

Resolved further, That the Executive Officer of the California Water Commission is directed to transmit copies of this, resolution to the Water Resources Council; the Office of Management and Budget; Members of the California Congressional Delegation; the Governor of the State of California; and members of the California State Legislature.

The foregoing resolution was adopted by the California Water Commission, State of California, at San Bernardino, California, on March 3, 1972.

EFFECT OF INCREASED INTEREST RATE ON CALIFORNIA PROJECTS

[All costs in millions of dollars]

[Legend: A—Authorized, UI—Under investigation, (x)—Below unity, N.A.—Not available, BCR—Benefit cost ratio]

	Status	Discount interest rate	BCR	Total 1st cost	Discount interest rate: 5⅜ percent BCR	5⅜ percent Cost	7 percent BCR	7 percent Cost	10 percent BCR	10 percent Cost
Butler Valley	A	3¼	1.6	48.1	1.3	(48.1)	0.96	(x)	0.6	(x)
Chester	A	3¼	1.2	2.4	.7	(x)	.6	(x)	.4	(x)
Cottonwood	A	5⅜	1.2	181.0	1.2	(181.0)	.8	(x)	.5	(x)
Cucamonga	A	3¼	1.6	48.9	.8	(x)	.5	(x)	.3	(x)
Fairfield	A	5⅜	1.4	6.7	1.4	(6.7)	.9	(x)	.6	(x)
Goleta	A	5⅜	1.6	21.4	1.6	(21.4)	1.1	(21.4)	.7	(x)
Lakeport	A	3¼	1.5	18.2	1.0	(18.2)	.8	(x)	.6	(x)
Marysville	A	3¼	1.3	190.0	.8	(x)	.6	(x)	.4	(x)
Merced	A	5⅜	1.5	41.0	1.5	(41.0)	1.1	(41.0)	.8	(x)
Morrison	UI	5⅜	1.3	51.3	1.3	(51.3)	.9	(x)	.6	(x)
Newhall-Saugus	UI	5⅜	1.6	60.0	1.6	(60.0)	1.1	(60.0)	.7	(x)
Pajaro	A	3¼	1.4	20.1	.7	(x)	.5	(x)	.3	(x)
San Diego River (mission V)	A	3¼	1.3	33.4	.7	(x)	.5	(x)	.3	(x)
San Luis Rey	A	5⅜	1.4	12.8	1.4	(12.8)	.9	(x)	.5	(x)
Sonoma Creek	A	3¼	1.6	15.9	.8	(x)	.5	(x)	.3	(x)
University Wash	A	5⅜	1.1	8.4	1.1	(8.4)	.7	(x)	.4	(x)
Alhambra Creek	A	3¼	1.2	10.5	.6	(x)	.4	(x)	.3	(x)
Knights Valley	A	3¼	1.3	260.0	1.3	(260.0)	1.0	(260.0)	.6	(x)
Total				1,030.1		708.9		382.4		0

STATEMENT OF THE CALIFORNIA WATER COMMISSION* BEFORE THE U.S. WATER RESOURCES COUNCIL ON PROPOSED PRINCIPLES AND STANDARDS FOR PLANNING WATER AND RELATED LAND RESOURCES

Mr. Chairman and members of the council: My name is Ira J. Chrisman. I am chairman of the California Water Commission.

The California Water Commission is an official agency of the State of California with specific statutory responsibilities of representing the State of California before the appropriations committees of Congress with regard to flood control and reclamation items.

The California Water Commission advises the California Department of Water Resources and the Governor in matters concerning the coordination of planning, construction, and operation of state and local projects with federal water development and flood control projects. To this end, the Commission confers with the appropriate executive agencies of the United States.

Administratively, the Commission is in the Department of Water Resources. Today its statement should be considered as supplementary to that made by the Department on behalf of the State of California.

At its meeting in San Francisco on February 4, the Commission invited representatives of the Bureau of Reclamation and the Corps of Engineers to report on the impact of the proposed new discount rates on federal projects in the planning stage.

Mr. Phillip Dunn, Jr., assistant chief, Planning Division, South Pacific Division of the Corps of Engineers, and Mr. Rodney J. Vissia, regional planning officer, Bureau of Reclamation, appeared in response to those invitations.

At the Commission meeting on March 3 in San Bernardino, the Commission adopted a resolution expressing the Commission's concern relating to the opportunity cost concept which results in proposed discount rates of 7 and 10 percent. A copy of Resolution 71-02 is attached.

This statement will elaborate on our concern with the proposed Principles and Standards.

As we understand it, the objectives of the proposed Principles and Standards are as follows:

(a) To enhance national economic development by increasing the value of the nation's output of goods and services and improving national economic efficiency.

(b) To enhance the quality of the environment by the management, conservation, preservation, creation, restoration, and improvement of the quality of certain natural resources and ecological systems.

(c) To enhance regional development through increases in the region's income; increases in employment; distribution of population within and among regions; improvements of the region's economic base and educational, cultural, and recreational opportunities; and enhancement of its environment and other specific components of regional development.

The objectives are desirable. However, the proposed high discount rate could make it impossible to qualify desirable projects and therefore make it difficult to accomplish the objectives.

The present discount rate is 5⅜ percent. Prior to 1968 it was based on the long-term borrowing costs of the United States. Since 1968 the base has been the yield of long-term Government Bonds. The proposed 7 and 10 percent discount rates contained in your proposed Principles and Standards are based on the opportunity cost in the private sector.

The Corps of Engineers made a comparison of the benefit-cost ratios using the existing 5⅜ percent, the proposed 7 percent, and the proposed 10 percent interest rate figures. The comparisons using the proposed 7 and 10 percent discount rates were of a preliminary nature. They were made using available data. They did not include reformation of projects, which might result in some changes in benefit-cost ratios. Using a grand total of 578 national projects of all categories, the results were very startling. Of the 578 projects, the Corps estimated that 440 of them would be justified on the basis of the standard benefit-cost ratio of at least 1 to 1 using the 5⅜ percent interest rate; 295 would qualify using the proposed 7 percent figure; and only 143 would qualify using the proposed 10 percent interest rate.

The Corps of Engineers' comparison included 18 projects within California. The projects were those which were either authorized or for which studies were nearly completed. The projects represented $1.03 billion worth of work. With the present 5⅜ percent interest rate, projects that would qualify reduced to $708.9 million; at the proposed 7 percent, the projects would reduce to $382.4 million, and at the proposed 10 percent, no projects could qualify. The list of projects compared is attached.

At our meeting on February 4, the Bureau of Reclamation discussed 12 projects in California. While the Bureau was not sure what effects the new standards and procedures would have on their projects, they indicated the irrigation service might have to be drastically reduced in many of the projects. On balance, it appeared to the Bureau of Reclamation that qualification of projects would be more difficult.

It seems to us that excessively high discount rates will leave water resources undeveloped as compared to other aspects of the nation's economy.

The rationale for establishment of the discount rate on the basis of the opportunity cost concept is questionable. The concept is based primarily on the rate of return to private capital investments. However, the rate of return on investments such as agriculture have recently been at a low of 1.8 percent. The returns on agricultural investments have rarely, if ever, exceeded the proposed discount rates.

Information available to us indicates that interest rates charged for certain federal loan programs range from 0 to approximately 7 percent. Recently, long-term United States Treasury Bonds are yielding approximately 5 to 6 percent. The State of California has recently sold bonds for financing of the State Water Project at interest rates between 5 and 5½ percent. Bonds sold by the State of California for veterans and clean water programs have been sold for interest rates of 4½ to 5 percent. The recent income of industries represented on the major stock exchanges has been substantially less than the proposed discount rates. At a time when the Water Resources Council is proposing to increase the discount rate, major banks are lowering their prime interest rates to less than 5 percent.

It should not be the function of the Federal Government to achieve a rate of return on its investments consistent with that expected by private capital. Private investments generally are concerned with short-lived projects that contain a considerable degree of risk. Government investment does not contain the same degree of risk. Further, in the field of water, government only invests in areas where private investors and local agencies are unable to participate.

For several years, the discount rate used for evaluating water projects has been based on the long-term borrowing costs of the United States. It seems appropriate that the method of determining the discount rate not be changed.

In conclusion, we question the establishment of the discount rate on the basis of the opportunity cost concept. We are concerned that the resulting discount rates of 7 and

*Presented by Ira J. Chrisman, Chairman, in San Francisco on March 14, 1972.

10 percent will have the effect of greatly reducing appropriation of funds for water projects and of diverting the funds to other federal programs which may or may not be of higher value to our nation. It could result in the rejection of the concept that the Federal Government has a role and responsibility concerning development and use of water resources and the protection of the public from the ravages of flood.

The public should be given an opportunity to understand more fully the full impact of the proposed Principles and Standards. The Congress should be allowed an opportunity to hold hearings to investigate the effects of the proposed Principles and Standards.

We urge that the Water Resources Council and the Office of Management and Budget delay implementation of the proposed Principles and Standards until detailed procedures have been formulated and tested to projects now in the planning stage. We will also urge the Congress to hold hearings and investigate the full effects of the proposed Principles and Standards.

CIVILIAN TARGETS IN LAOS

HON. BELLA S. ABZUG

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mrs. ABZUG. Mr. Speaker, the duplicity of the Nixon and Johnson administrations regarding our military activities in Laos has been exposed repeatedly. We know now that our forces have been carrying on a massive, highly destructive, secret air campaign against Laos for years, but much of the story continues to be concealed.

Fortunately, thanks to the work of astute journalists and other private individuals who have visited Laos, some information about the effects of the air war there has reached the public despite Government efforts. Most of us who have been exposed to the evidence are convinced that the devastation which U.S. war planes have brought to the innocent civilian population of Laos is indeed ghastly and indiscriminate.

Our Government continues to deny, in the face of the strongest contrary evidence, that U.S. air forces have systematically attacked civilian targets in Laos. Therefore we must continue to expose the truth with every bit of data available. To this end I am inserting at this point in the record two very revealing, well-written articles on the air war in Laos. I commend them to your attention:

BOMBING OF LAOTIAN VILLAGES REVEALED

(By Joe Nicholson Jr.)

NEW YORK.—Twenty four U.S. war veterans, including seven combat pilots, say that U.S. warplanes have bombed hundreds of Laotian villages. Their charges are confirmed by members of U.S. Special Forces units who have fought in Laos.

The war veterans, including 15 still on active duty, described in interviews the bombing of Communist-controlled areas in Laos which President Johnson began secretly in 1964 and President Nixon sharply escalated in 1969. The bombing is still going on, with current reports of B–52's being used on northern Laos for the first time.

Defense Department spokesmen have conceded that the seven-year bombing campaign against the Ho Chi Minh Trail, in southern Laos, and the plains controlled by the Communist Pathet Lao, in northern Laos, have made the primitive land-locked kingdom the most heavily bombed nation in the history of aerial warfare.

But these officials have repeatedly denied that the U.S. planes have bombed inhabited Laotian villages and towns.

All seven pilots interviewed, however, recalled seeing numerous destroyed villages and vast areas in which the civilian population had been cleaned out.

Jon Randolph Floyd of Austin, Texas, a former Marine captain who flew an A6 Intruder bomber, said, "To the extent that I knew, we were bombing villages all the time. Our bombing was generally just a matter of releasing bombs at certain coordinates."

Capt. Gary Hemingway, an Air Force electronics warfare officer on an EC–121 reconnaissance plane who is now stationed at Fairchild Air Force Base, Washington, said, "I logged 500 hours combat time, 90 per cent of it over Laos. I do not recall seeing any villages left standing on the Plain of Jars in northern Laos."

An Air Force major who directed high-altitude bombing by radio from his low-flying O–1 spotter plane said, "I would be given flights of fighter-bombers by the aerial command post and occasionally I would guide the fighter-bomber into villages.

"We referred to this as 'opening up villages.' It happened on numerous occasions, primarily in the hooches (houses) located up on the sides of mountains, particularly the Bolovens Plateau, said the 15-year veteran who operated with the 20th Tactical Air Support Squadron, 504th Tactical Air Support Group of the 7th Air Force, but who asked to remain unnamed.

"The bombers used 500 pound bombs, CBU (cluster bomb unit) antipersonnel bombs and napalm for the destruction of hooches. It was not unusual to destroy villages," he said. "To my knowledge no requests for approval of destruction of villages were ever denied by higher authority."

Michael A. Lewis of Ann Arbor, Michigan, a former Air Force Photo interpreter said, "All the villages in southern Laos below the 17th degree line were already wiped out when I got to Vietnam in June 1969, and started looking at the aerial film. They were all gone."

"I saw photos of the Plain of Jars in northern Laos," said Lewis who worked at the Ton Son Nhut airbase which does final evaluation on aerial photos from Laos. "Moung Soui and the other bombed areas had been destroyed, levelled. The people were gone from the area. The photos showed bomb craters."

Explaining the attitude at Udorn Air Force Base, Russell Heller Jr. of Boise, Idaho, a photo interpreter there from November 1968 to November 1969, said, "We didn't write up damage to villages or towns or water buffalo. You have a different frame of mind over there."

A third Air Force photointerpreter, now serving his second tour of duty at Udorn Air Force Base, Thailand, said, "I saw photographs of between 10 and 25 villages destroyed—all with bomb craters. There were a lot of vehicles destroyed in the villages, indicating they were live villages, inhabited."

"The only place people could exist up there on the Plain of Jars would be either in a dense jungle or in a cave," he said. "And we were bombing caves. A single human path was enough for us to bomb. All human activity was considered enemy activity."

Corroborating the pilots and photo interpreters are U.S. Special Forces soldiers who say they fought in Laos while Presidents Johnson and Nixon were insisting that the U.S. had no combat troops in Laos.

Paul Withers, a former Special Forces soldier now recovering in Boston from war injuries, said, "I am one of hundreds of American Special Forces who fought, killed, and died and were wounded in both northern and southern Laos beginning in 1965. We operated in 12-man 'A' teams. I myself know of 15 Laotian villages which were bombed."

Army Sgt. Barry A. Toll of the Schofield Barracks, Hawaii, said, "I was co-located with two members of the 5th Special Forces Group, Command and Control North, on a mountaintop accessible only by air which served as a communications link for teams operating clandestinely within Laos and manned usually by two 'sanitized' Americans (not identifiably American) and six mercenaries."

"I have served with distinction throughout my military career," he said. "But I have become increasingly incensed with the distortions and outright lies perpetrated on the public by presidential administrations and our military. I am therefore fully committed, to the point of possible criminal prosecution, to present the truth."

BOMBING OF LAOTIAN VILLAGES REVEALED: THE REFUGEES SPEAK

(By Joe Nicholson, Jr.)

NEW YORK.—A little-known survey of refugees in Laos uses the words of surviving relatives to describe how U.S. warplanes attacked civilians in Laotian villages 74 times, killing 108 persons.

The 88-page "Survey of Civilian Casualties Among Refugees from the Plain of Jars" was made in early 1971 by Walter M. Haney, an American fluent in Lao who spent three years in Laos working for International Voluntary Services and later the Lao Ministry of Education.

Haney's survey is more detailed than two U.S. Information Service refugee surveys, published last April, which also concluded that the American bombing campaign—still going on—is directed at the civilian population in the villages of northern Laos.

Haney's survey and the two USIS surveys deal with the Plain of Jars and other areas in northern Laos that are hundreds of miles north of the Ho Chi Minh Trail infiltration routes in southern Laos.

Asst. Secretary of State Harrison M. Symmes, who was shown a copy of the survey by Haney's home-state Senator, Robert Griffin (R.-Mich.), told Griffin in a letter that the survey was "a serious, carefully prepared piece of work" and that Haney was known as "an objective, conscientious individual."

However, Symmes concluded, "We do not accept the conclusion that bombing of the civilian population was intensive. . . U.S. forces, of course do not employ poisonous weapons in Laos."

Refugees interviewed for the survey, which was made at 10 Laotian refugee camps that contain 8500 refugees, said they saw U.S. bombs kill 74 of their relatives and that another 21 relatives, mostly children three to ten years old, were killed by two types of biological warfare materials dropped by the planes.

The survey reports only fatalities which were described by a member of the victim's immediate family. Each interview is accompanied by a photograph and the name and description of the relative interviewed.

"All villagers were living in holes then," said Nang Sida, a young Laotian mother whose husband, Tit Van Di was killed on Nov. 11, 1968, in Ban Nasay village in northern Laos.

"But Tit Van Di went back to the village to get some things to take to the holes," she recalled. "While he was in the village the jets bombed before he could flee."

"The planes came many times every day. Four or five times even at night they came," she said. "Sometimes the T–28s would drop the big bombs (500-pound high explosive bombs) first and then the jets would drop the bombi (hundreds of small, round anti-personal bomblets)."

Like Nang Sida's husband, most of the civilian fatalities in the survey occurred in 1968 and 1969. After that, the refugees said the intensity of the bombing forced them to migrate west from Communist Pathet Lao zones to refugee camps, under government control.

One refugee woman, Sao Pohng of Ban Mene Village, said her 80-year-old father, Ai Tao, was killed by napalm dropped by the planes.

"When the planes dropped the burning oil Ai Tao was hit," she said. "He couldn't get his clothes off fast enough. He was badly burned. Bumps came out all over his body and then they burst and eyes burst also. Four days later he died."

And a refugee who survived with multiple injuries, Thao Phom, 43, of Ban Muang village, recalled the attack which injured him.

"I was coming back from the upland rice field to my house," he said. "A *bombi* exploded, hitting me on the foot, hand arm and back. The *bombi* had been dropped by a jet two or three hours earlier. I had hidden in a hole. I thought they had all exploded, but they hadn't.

"If they saw you they would bomb," he said. "We had to work at night and sleep in the daytime. After cooking we had to put out the fires so they couldn't see them. If it was very cold, we kept branches handy so if we heard a plane coming we could put out the fire."

The widespread killing and destruction described by the refugees was also known by Air Force intelligence, according to a former Air Force staff sergeant who served with the Reconnaissance Intelligence Technical, Squadron, 12th Air Force at Tonsonhut AFB, Viet Nam.

Michael A. Lewis, now living in Ann Arbor, Mich., recalled, "I read the daily intelligence reports. They said the reason the people were leaving the villages was because the planes were bombing the fields and villages and cattle.

"The intelligence reports said the bombing caused the people to live in caves and subsist by farming at night," said Lewis who was at the intelligence command from June, 1969, to June, 1970. "Then, after the bombing was further intensified, the reports said the people were forced to move to the west (government-controlled) areas."

Deputy Ass. Secretary of State William H. Sullivan testified before the Senate Refugee Subcommittee last April 22 that 700,000 refugees have been "generated" during the last decade in Laos. He blamed not the bombing by U.S. planes, but the refugees' dislike for living in Communist areas.

Last August the Senate Security Agreements Subcommittee issued a staff report which said the U.S. was flying 400 bombing sorties over Laos each day from bases in Thailand and Viet Nam.

Congressional sources have estimated the bombing cost, excluding base construction and plane production, at over $1 billion annually. The Pentagon has never given a cost estimate.

The war is directed from the U.S. Embassy in Vientiane, Laos, by Ambassador McMurtrie Godley, described by an American refugee relief officer who spent seven years in Laos as "a military proconsul."

"Ambassador Godley's idea of diplomacy is 'more bombs' and, believe me, that is quite literal," he said. "He was continually fighting for more sorties. His idea of winning the war in Laos was dropping more bombs."

A 5-CENT SOLUTION TO POSTER POLLUTION

HON. SEYMOUR HALPERN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HALPERN. Mr. Speaker, all too often we hear of constitutent complaints concerning the "eye-pollution" political campaign posters and stickers left over after an energetic and whirlwind campaign. Posters sometimes hang on telephone polls for 5 or 6 years, reminders of campaigns past but nevertheless an ecological eyesore to the people that live in the neighborhood. All of us have faced the problem of what to do with the thousands of stickers and posters we had hung throughout our district.

I recently came across a novel solution to this perplexing problem. It appears that the Sun Oil Co., under the able leadership of Mr. Alex B. McIntyre, offered through their oil subsidiaries 5 cents for each poster collected. Youngsters in the Dayton, Ohio, area collected over 30,000 posters in 1970 and the "poster-pollution" problem was solved. Mr. Speaker, I insert in the RECORD an article which depicts the fine example of free enterprise solving some of its pollution problems in America. The article by Bud Davis in the Our Sun magazine can serve as an inspiration for other businesses to follow suit on this fine idea. Let us all congratulate the Sun Oil Co. on this fine contribution to the cause of a clean environment.

The article follows:

A 5-CENT SOLUTION TO POSTER POLLUTION

Months after the furor and oratory of a political campaign have passed and long after the wispy promises of the candidates have evaporated, one thing remains as tangible; eye-polluting evidence of an election; the campaign poster.

Left to fend for itself, the political poster has a life span of one year. Pelted by snow in the winter, buffeted by wind in the spring and bleached by the sun in the summer, it nevertheless clings tenaciously to tree or telephone pole, finally dropping to the ground just in time to provide space for the next election.

Such is the case in most cities, and such was the case in Dayton, Ohio, up until the political campaign of 1970.

Two days after the election that year the life expectancy of the campaign poster was cut short. Thousands of Daytonians—old and young alike—combed the highways and byways of the metropolitan Dayton area, seeking out the offending signs and ripping them down. Within two days, not a poster was visible.

Last year, the posters didn't even last until the day after election. The reason? Civic pride had a lot to do with it, but just as important was the nickel that local Sunoco dealers paid for every old campaign poster brought into their stations.

It all started when Richard E. Swartzman, Sun's Dayton district manager, sat down to lunch with Larry R. Menchhofer, executive director of the Dayton City Beautiful Council. It was the Thursday after the 1970 election, and both men commented on how bad it looked to have the posters still blanketing the area.

By the time dessert had been ordered, the two men had hit upon a solution to poster pollution. Sun would arrange for Sunoco dealers in the area to pay a nickel for every old poster brought into the stations, and Dayton City Beautiful Council would handle the publicity for the program.

Mr. Swartzman turned the project over to his staff, and they worked out the details with Mr. Menchhofer. Ryder Truck Rental agreed to supply trucks for picking up the posters.

"We got good coverage in the newspapers and on radio and TV," says Mr. Swartzman, "and our dealers were swamped with posters."

About 30,000 posters were collected in 1970. Most of them were disposed of through the regular trash pickup, but some 7,000 helped kindle a bonfire at a football game pep rally.

Many youth groups took part in the clean-up campaign and then used their poster money to purchase needed items for their group. But youngsters were not the only ones to profit. One man collected $60 for the 1,200 signs he brought in.

Praise for the program was received from many quarters, including the mayor's office and the Dayton Garden Club. The pastor of a nearby church wrote: "Each year on the Sunday after the election I have taken my Youth Fellowship out to remove political campaign posters. This last election when I went out on the Sunday after, the community was clean, thanks to your remarkable campaign . . . I want to thank you for myself and the community of Germantown for your contribution."

When election time rolled around in 1971, Sun's Dayton district decided to run the program again. But even before the announcement was given to the press, the citizens of Dayton had cleaned the city of posters.

Some people were collecting them in anticipation of Sun's rerunning its 1970 campaign, but the signs also came down for other reasons. Judy Pope, administrative assistant on the Dayton City Beautiful Council, says that the 1970 Sunoco program "shamed the politicians into getting their signs down themselves in 1971."

Only 8,400 signs were turned in to Sunoco dealers. "Because the turn-in was so low, it might look as though our program was a failure the second time around," says Alex B. McIntyre, the Sun man who coordinated the 1971 project. "But the fact is that the real goal was accomplished—every campaign poster in the Dayton area got taken down."

To help reduce air pollution as well as visual pollution, the signs that were collected from the 1971 campaign were recycled through the Dayton Recycling Center, a project of the Dayton City Beautiful Council and the Greater Dayton Jaycees. Manned by high school student volunteers, the center has recovered 660 tons of resources in its first five months of operation. The materials are sold to local industries, and the income from these sales pays for the center's operating expenses.

The 1,404 pounds of political posters turned in by Sunoco dealers, for example, brought $42.12 from a local paper mill.

The 1972 Presidential election will, of course, be much bigger than either of the last two years. The oratory and promises will be proportionately greater and so will the number of political campaign posters.

In Dayton, Ohio, however, Sun's district office is planning to continue its nickel-a-poster program. So you can bet that the posters will disppear just as fast as some of the oratory and promises.

JERRIS LEONARD

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BOB WILSON. Mr. Speaker, under Jerris Leonard's forceful leadership, the Law Enforcement Assistant Administration has made a substantial contribution to the Nixon administration's fight against crime. LEAA has had a major impact on the criminal justice community and a goal of critical importance to all Americans: the reduction of crime. As Administrator, Jerris Leonard has put LEAA in the forefront of the anticrime effort and has not been deterred from attacking problems requiring aggressive and innovative thinking. All of us in the Washington area are proud of the fine job done by Police Chief Jerry Wilson in reducing the crime level in our city. Chief Wilson is to be highly commended and I take this opportunity to share a copy of his recent letter to Jerris Leonard outlining LEAA's assistance to Washington's crime reduction campaign. I can only say, congratulations, gentlemen, and keep up the good work.

The letter follows:

METROPOLITAN POLICE DEPARTMENT,
Washington, D.C., March 20, 1972.

Mr. JERRIS LEONARD,
LEAA Administrator,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. LEONARD: The Metropolitan Police Department's role in reducing Washington's crime rate has received nationwide attention. While we are proud of our accomplishments, we realize other agencies, playing less visible roles have also contributed toward this reduction. Prominent among this group is your agency, The Law Enforcement Assistance Administration.

As our silent partner, LEAA has underwritten significant police crime-fighting programs for the Metropolitan Police Department:

A $1,250,000 grant in the spring of 1970 giving us the equivalent of 1000 additional officers until additional men could be recruited. Overnight our force increased 20%, and crime declined with this extended police coverage.

A $157,000 grant for combatting organized crime. The grant made possible the establishment of an organized crime section.

$342,000 in three different grants permitting the purchase of three helicopters and the training of nine helicopter pilots. Helicopters have been useful in fresh pursuit and on-scene arrest situations.

A $153,000 grant for improving police dispatch and control procedures. When completed, a computerized model for testing alternative police dispatching and patrol patterns will be available to police departments throughout the United States.

A $100,000 grant for developing a Command and Control Master Plan was recently approved. The plan will set forth our command and control needs, including detailed equipment requirements.

A $135,000 grant is enabling us to update our entire recruit training curriculum. Other grants totaling $76,000 have been used to improve a variety of operational and management areas within the department.

All these grants were received within the past two years; significantly, crime in Washington during this same period stopped spiraling upward and dropped 18 percent.

Yet much remains to be done. Our department's goal is to reduce crime to its 1966 level, and the decreasing number of monthly crime index offenses indicates this goal is within reach. With a concerted effort and your continued assistance, we can even drive crime down below that 1966 level.

Your "impact cities" program is a bold, crime-fighting initiative, which could help us achieve our goal. At the same time, it could make Washington a "casebook study" of LEAA assistance. Funds from the program could upgrade our communications, make our crime information processing more efficient, and implement a modern, up-to-date command and control system.

Our partnership was formed in the face of crisis, at a time when Washington was experiencing some 200 crime index offenses a day. Working together, LEAA and the Metropolitan Police Department helped turn the corner on crime in Washington, D.C. With your continuing help we will finish the job.

Sincerely,

JERRY V. WILSON,
Chief of Police.

WIDER BUSES

HON. FRED SCHWENGEL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. SCHWENGEL. Mr. Speaker, while legislation on increasing allowable widths for buses lingers in Congress, public sentiment continues to grow in opposition to this legislation. Many newspapers, magazines, and citizens groups are openly advocating that wider buses must not be allowed to traverse our Interstate System. Recently the Cleveland Plain Dealer editorialized on this controversial subject. I would like to share that editorial with you:

WIDE BUS BILL SHOULD BE KILLED

A bill allowing wider buses to operate on Interstate highways has made its way to the U.S. Senate, the House of Representatives having lacked the good sense to vote it down.

The Senate should show better judgment and kill the bill.

We have heard of no convincing reason why bus widths should be increased to 102 inches. We have heard abundant reasons why this would be a bad idea.

Wider buses would surely increase driving hazards, both because of the visual obstruction they would present to trailing motorists, and because of the "blast effect" that occurs when wide vehicles are passed by, or pass, smaller automobiles.

Depending on wind conditions and relative speeds of the vehicles, the turbulence can pull automobiles toward, or push them away from the larger vehicles. In either case, it is dangerous, and can lead to loss of driver control and traffic fatalities.

Wider buses also would be heavier buses, and it is a demonstrated fact that heavier vehicles accelerate pavement damage.

But most damaging, in our view, is the precedent that would be established for wider, longer, heavier trucks if Congress were to approve bigger buses.

Though the sponsors piously deny that the wider bus bill has anything to do with trucks, we think it inevitable that bigger trucks would follow bigger buses. In fact, we think the case for the wider buses is so weak that we have difficulty in reaching any other conclusion than that the bus bill was introduced purposefully to open the door to giant trucks.

Wider, heavier trucks, of course, would greatly magnify the traffic hazard and the damage to highways. It is frightening to contemplate the damage that would ensue.

The Senate should knock down the bus bill in committee.

FORMULA FOR SHARING

HON. HALE BOGGS

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BOGGS. Mr. Speaker, in the near future we will be called upon to consider legislation of vital importance to the strength and vitality of State and local governments.

The proposal, of course, is revenue sharing, and it is hoped that we can bring it to the floor within the next few weeks.

This legislation, which would provide more than $5 billion annually to State and local governments over a 5-year period, has been the subject of extensive study and labor by the Committee on Ways and Means and its distinguished chairman, Congressman WILBUR MILLS.

Chairman MILLS and his colleagues have reconciled the many divergent views surrounding this proposal and drafted a bill which, I believe, offers an equitable and effective way to strengthen the financial footing of local and State governments by putting the money where it is most needed.

A recent editorial in the New York Times analyzed the proposal of the Committee on Ways and Means and voiced support for the product of its labor.

I am inserting the editorial in the RECORD and calling it to the attention of my colleagues:

FORMULA FOR SHARING

The House Ways and Means Committee has reached a reasonable compromise on the complex issue of revenue sharing. It has approved in principle a bill to provide more than $5 billion a year in Federal money to state and local governments, most of which are in severe financial distress.

From the outset, the argument over revenue sharing has not concerned the financial distress—no one disputes that—but which level of government could best meet the social needs that must be met. President Nixon called for a large vote of confidence in state governments by urging an automatic allocation of Federal money which would be permanent, would rise rapidly—doubling in the first decade—and would be granted with few conditions.

There have been three different kinds of criticism of this proposal. Some liberals opposed it on the ground that, since most state governments are inefficient and some corrupt, the people would be better served if the same money were spent by the generally more honest and more competent Federal bureaucrats.

By contrast, some conservatives have worried that, instead of shoring up the states, revenue sharing might further undermine them. Their theory is that it would encourage state politicians and state electorates to rely upon "free" money from Washington, instead of making the hard taxing and spending decisions for themselves.

A third, more specific criticism, has come from local government officials, particularly

mayors of big cities, who do not trust the states to pass the money down to the urban areas where the problems are most acute.

To greater or lesser extent, the Ways and Means Committee has taken account of all three objections. It has clearly heeded the voices of the mayors. Under its bill, local governments would directly receive nearly two thirds of the money, rather than less than one half as the Administration had recommended.

The committee wisely decided to make the plan automatic with no need for annual appropriations by Congress, but it did set a five-year time limit after which Congress could decide whether to renew or alter the plan. Since ten of the fifty states still do not levy an income tax, the revenue-sharing formula includes a strong incentive for states to improve their own tax efforts. No local or state government can use this Federal money to lower its own taxes.

Where the Administration plan called for a steep rise in the rate of payments, those under the House plan would rise by no more than $300 million annually. Some annual increase had to be provided. Otherwise, as New Hampshire, Tennessee, Texas and other income tax states increased their own efforts, states such as New York which already tax themselves heavily would see their proportionate share decline. But the committee has conservatively decided to make the annual increase in the size of the pie about as small as it possibly could.

On the fund-control issue, the committee met Mr. Nixon halfway. It placed no restrictions on the use a state may make of the Federal money, but it showed much less confidence in the competence and judgment of local governments. The committee would permit local governments to spend the money only for certain purposes—sewage collection and sewage disposal, transportation, and police and fire protection.

In effect, the committee is making a multipurpose block grant rather than sharing revenue in the true sense of that term. But most mayors and county officials will be so glad to get the extra money, they are not likely to complain about the ways in which Congress hobbles their use of it.

Revenue sharing is not a total prescription for all the ailments of this country's federal system of government. Better administration in local and state governments, consolidation of many fragmented local authorities, and much more effective regional planning and intergovernmental cooperation are equally important. But additional money is clearly necessary. The Ways and Means action suggests that limited help is on its way and may actually arrive this year.

MILITARY AID FOR ISRAEL

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. SCHEUER. Mr. Speaker, last year, in response to world public opinion, the Soviet Union permitted 13,000 Jews to emigrate to Israel. This emigration continued at a substantial rate in January and February, and it is now estimated that at least 30,000 Jews will emigrate to Israel from the Soviet Union in 1972.

Many of these new Russian immigrants present psychological problems which increase the burden and costs of absorption into Israeli society. Many of them lack skills and occupations. Most need intensive instruction in Hebrew, which they were forbidden to learn in the U.S.S.R. The costs of the programs to overcome these problems and to successfully assimilate these refugees is estimated to be $35,000 per family.

If Israel's defense burden were not so great, it might be in a better position to bear this cost. Israel's defense budget amounts to slightly over one billion dollars—approximately one-quarter to one-third of the country's gross national product and approximately 40 to 50 percent of the country's budget. Due to these defense expenditures, for the past 10 years, Israelis have owed more in external debt, on a per capita basis, than the citizens of any other country. They also pay more in income taxes, on a per capita basis.

Unlike Cambodia, Greece, Spain, South Korea, Jordan, and a host of other countries, Israel has not substantially benefited from U.S. military grants. Until 1967, Israel received no grant aid whatsoever. All American military assistance to Israel took the form of sales for cash borrowed from commercial sources or on credit. Whether or not Israel has received grant aid since 1967 is not known since that information has been classified.

Today, joined by 19 of my colleagues, I am introducing a bill to authorize $200 million for military assistance grants to Israel for fiscal 1972 and $500 million for fiscal 1973. The enactment of this bill will help to reduce Israel's defense budget and enable the country to devote more of its resources to the absorption of Russian refugees.

The United States has helped Israel with the expense of absorbing large numbers of refugees before. From 1951 to 1959, Israel received American grants for this purpose. Once again, consistent with our country's traditions, we should stand ready for help.

MISSISSIPPI'S STATE HISTORICAL MUSEUM

HON. CHARLES H. GRIFFIN

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. GRIFFIN. Mr. Speaker, recently, the Mississippi State Historical Museum, a part of the Old Capitol Restoration in Jackson, became one of the seven southeastern museums accredited by the Accrediting Commission of the American Association of Museums.

The Old Capitol building which houses the museum was completed in 1839 and used as the capitol of Mississippi until 1903. In 1959, the State restored the building to house the State Historical Museum.

Today this beautiful and historic building stands as a picture of the heritage and development of Mississippi for all to see. The outstanding work of the Board of Trustees and the staff of the Mississippi Department of Archives and History in developing one of the Nation's most interesting and attractive museums and attaining such high recognition is to be commended.

As a part of my remarks, Mr. Speaker, I include the following article which appeared in the Vicksburg, Miss., Sunday Post, on April 2, 1972:

OLD CAPITOL RESTORATION GETS MUSEUM ACCREDITATION

The Mississippi State Historical Museum in the Old Capitol Restoration, Jackson, is one of seven southeastern museums accredited by the Accreditation Commission of the American Association of Museums at its March meeting. Notice of the accreditation has been received by Lt. Gov. William F. Winter, president of the Board of Trustees of the State Department of Archives and History, which administers the museum.

With this official action of the accreditation Commission, the Mississippi museum joins a select list of sixty institutions in the United States and Canada which have been recognized by the Accreditation Commission. Other southeastern museums accredited at the same time are Louisiana Arts and Sciences Center, Baton Rouge; New Orleans Museum of Art; Students Museum, Knoxville; Mariner's Museum, Augusta, Georgia.

Dr. R. A. McLemore, director of the State Department of Archives and History, commented on the accreditation. "This accreditation means that Mississippi's State Historical Museum, known to most of us as the Old Capitol Museum, has met professional standards established by the museum profession." Dr. McLemore further explained that the accreditation process includes a written report, by Dr. Byrle Kynerd, museum director, an on-site investigation of the museum's operation by an accreditation visiting committee, and final review and decision by the Accreditation Commission of the American Association of Museums.

"Accreditation will help the Museum measure its own performance," Dr. McLemore added, "and we are delighted to have our program nationally recognized."

The American Association of Museums began its accreditation program in May, 1970, after two years of development. The purpose was to standardize levels of museum operations in the United States, and to establish guidelines and professional standards for museums. Museum accreditation will also enable the public to identify the museums which meet high standards, and will assist public and private agencies which may be called upon to make decisions concerning contributions, grants, appropriations and contracts.

MRS. ERNESTINE COBERN BEYER

HON. JAMES A. BURKE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BURKE of Massachusetts. Mr. Speaker, I feel as though I should share my good fortune in knowing such a wonderful person as Mrs. Ernestine Cobern Beyer with my colleagues. Yesterday it was my good fortune to host Mrs. Beyer at a luncheon on the Hill. I consider myself fortunate to have found her free, in view of her heavy schedule in Washington, what with teas at the White House and awards in the evening at official banquets. Who is this wonderful woman? This woman, whom I am fortunate to number as one of my constituents from the city of Quincy, Mass., at the ripe young age of 78, can only be re-

garded as having lived life to the fullest, and very obviously continues to do just this. Opera singer, poetess, writer, lecturer, devoted wife, mother of three, she has amazingly found time to do everything. The daughter of the distinguished archeologist, Professor Cobern, Mrs. Beyer found life could be exciting at an early age, as she sat enthralled listening to her father's stories of the latest archeological expeditions in the Middle East. But adventures for her did not stop here. At an early age she was "discovered," as it only seems to happen in the movies, by a great singer who happened to hear her as she was going about her household chores. What she had was an incredibly gifted natural voice which with very little formal training led to a career with the Metropolitan Opera-where she sang with Caruso.

I do not want my colleagues with an interest in the opera to puzzle themselves too long searching their memories for an Ernestine Beyer. The fact of the matter is that she is well known to many opera buffs as Maria Condé. Early on in her life Mrs. Byer made one of those difficult decisions with a conviction that was to characterize her again and again in life and that was, to leave the Metropolitan Opera and a very promising career behind in order to spend more time with her family. Her husband was then with a new company in Boston and was to grow and prosper with it. Mr. Beyer became vice president of Liberty Mutual Insurance Co. Mrs. Beyer adapted her career and became well known as a concert recitalist.

For most people, this would have been enough excitement for one life and quite a career. Not so with Mrs. Beyer. In her middle years, she returned to her first love—as she puts it, "singing with words"—and wrote several well known children's books, some of which have gone through numerous printings. The other night Mrs. Beyer was presented with the National League of American Penwomen's first prize for her very moving poem with a religious theme, "The Pool." I want to share this poem with my colleagues and at this point include it in the RECORD:

THE POOL

(By Ernestine Cobern Beyer)

Upon this pool are mirrored leaf and frond.
The stars so wan, so tremulous and high,
Look calmly down upon the pensive pond
Whereon their shadows tremulously lie.
My dazzled eyes are thrilled and wonder—caught
As silently earth's fairest troth is wrought:
The mystic marriage of the pool and sky.

Why came I to this water, silver-blue,
Which gleams with beauty borrowed from afar?
I came . . . I came in restless search of you—
Only to find how close to me you are!
As pool and heaven meet though worlds apart,
We meet, for on the waters of my heart
Your image lies as on the pool, the star.

The dusk grows deeper. Daylight's eyelids close,
A bird unseen, begins his evening hymn.
Compatible to hues of gold and rose,
The pool is filled with brightness to its brim.
And now, as twilight fades and night appears
I feel you near, and kneel to lave my tears
In chaliced starlight at the water's rim.

I am also adding an article which features Mrs. Beyer, that appeared in the Boston Herald Traveler on April 10, prior to her trip to Washington. It only remains for me to say that none of this does true justice to the true person. I cannot remember when I have met a more captivating person who truly shares with all she comes in contact with a genuine personality and an indomitable optimism about life in general. I know that she would be the first to cringe on reading these words of praise. She is truly one of the most unassuming people I have ever met. Perhaps the best way to put it is, great as her stories are, amusing as much of her poetry is, perhaps the greatest work of art this woman has produced is her own true self. I know none of her stories match her own life story for interest and one unexpected development after another. I am being serious when I say that meeting her yesterday made my whole day brighter, that much easier, and this is not a quality in a person that one encounters too often or forgets too quickly. I hope that she is with us many more years and continues to share with us all her vitality, all her enthusiasm, all her spontaneity.

The article follows:

QUINCY POETESS, 78, TO BE HONORED

(By Betty Curtis)

At 78, Mrs. Ernestine Cobern Beyer of Quincy, feels she shouldn't pass up any experience.

So she's off today for Washington, will have tea at the White House tomorrow and will be among the guests of honor at a banquet there on Wednseday.

How does she rate this V.I.P. treatment?

Out of all the women poetesses and writers in the country Mrs. Beyer has won the National League of American Penwomen's first prize for a religious poem and will receive the award at the Letters Banquet on Wednesday.

"My children encouraged me to go and I felt it would be an exciting new experience," said Mrs. Beyer, widow of David S. Beyer, vice president of Liberty Mutual Insurance Co. "At may age I don't feel you should miss an event such as this."

Over the years Mrs. Beyer has received many awards for her poetry and attributes her success to her sub-conscious which she calls "Jeeves" and which, she says, does all the work.

"I read somewhere, many years ago, that if you place a problem or situation in the hands of your sub-conscious when you go to bed, it will work for you when you are asleep and be solved by morning and that's what I do" said Mrs. Beyer. "In my case it happens to be writing. In the morning I just get a pencil and the words just come. James Barrie, and Somerset Maugham did the same thing and so did Thomas Edison to mention just a few."

"My conscious gets jealous of my sub-conscious sometimes," said Mrs. Beyer. "I start getting thoughts such as 'that came too easily so it can't be good', after I've sent something off to an editor. So I rewrite it and send another version and they always write back and say don't bother to revise it, it was better the first time!"

Daughter of the late Dr. Camden M. Cobern, a Methodist minister and noted archeologist, Mrs. Beyer, sang with the Metropolitan Opera Co. and did a great deal of concert and oratorio work in her younger years but, she says, her heart was always in writing.

"I was singing around the house one day and a famous opera singer who was passing by, heard me, and told my father I had a lovely voice and should take singing up seriously" said Mrs. Beyer, who was a coloratura soprano who could hit F above high C with perfect clarity and ease. "That's how I got started in opera."

Her career as a poetess began, above all things, with an offer to write a catchy advertisement for a bakery firm.

"I couldn't think of a thing" she said, "I put it in the hands of my sub-conscious and it worked. Next morning I picked up the pencil and there it was, a four-line poem. And it went over with tremendous success."

In addition to her poetry, Mrs. Beyer has written four children's books. She also does a great deal of lecturing in schools and says: "They are fascinated by Jeeves."

INTERVENTION AND NEGOTIATION: THE UNITED STATES AND THE DOMINICAN REPUBLIC

HON. JOHN J. ROONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. ROONEY of New York. Mr. Speaker, under the unanimous consent heretofore granted, I should like to include a review of a book entitled "Intervention and Negotiation," by Jerome Slater, professor of political science at the State University of New York at Buffalo. An analysis of the findings of this volume was made by my friend, the Reverend Dr. Joseph F. Thorning, whose work in Latin America is known to many of my distinguished colleagues. The book review was published in the autumn 1971 issue of the Fordham University Quarterly, Thought. It reads as follows:

INTERVENTION AND NEGOTIATION

Considerable new evidence, the result of scientific investigation, is presented in this book and the reasons for President Lyndon B. Johnson's decision to speed armed forces to the Dominican Republic during the upheaval of April 1965. The wisdom of the move was hotly contested shortly after the event by a member of the Senate Foreign Relations Committee and such journalistic figures as Theodore Draper and Philip Geylin. Draper, in a widely quoted series of articles, claimed that U.S. policy makers failed to note "the difference between reform and revolution, between what was at most a little social democracy and communism."

Professor Jerome Slater, who teaches political science at the State University of New York at Buffalo, considers the Fulbright-Draper interpretation "almost certainly incorrect." In supporting his view Slater emphasizes that Ambassador William Tapley Bennett's famous "critic" telegram calling for U.S. help was not his alone, but was "concurred in by all twelve political and military officers of the embassy. . . . " Indeed, the record shows that "all those in our Government who had full access to official information" agreed with the need for immediate action. This was also the judgment of Under Secretary of State Thomas C. Mann, who had served as Ambassador in El Salvador and Mexico. Moreover, as Dr. Slater observes, "the five Latin American members of an Organization of American States investigating com-

mission unanimously reported that, had the United States not intervened, the Dominican revolution 'could rapidly have been converted into a Communist insurrection.' " In short, delay, not intervention, might have been disastrous. The author adds that some members of the United Nations mission also "privately agreed" with the same assessment of the situation.

It is astonishing, however, that the author was unable to verify reports that "the liberal Apostolic Nuncio, who was considered to be very sympathetic to the constitutionalists and later was to play an important go-between role, actually became increasingly disenchanted with the revolution, even concluding at one point that the constitutionalist leadership was under the control of foreign Communist groups." In fact, Jerome Slater nowhere discloses the name of the Nuncio (Emanuele di Clarizio).

Students of diplomatic history will find much valuable material in Slater's account of the many-sided negotiations that, after the intervention and fierce civil war, led to the establishment of a provisional government, headed by Héctor García-Godoy, and to presidential elections in June 1966. The voters turned out in unprecedented numbers. Dr. Joaquín Balaguer won "by a margin surpassing nearly everyone's expectations," receiving 770,000 votes (57 per cent) to Juan Bosch's 525,000 (39 per cent). The author records that "scores of journalists" from all parts of the globe and the members of no less than five different groups, officially or unofficially sponsored, concluded that freedom of choice had been maintained and that the electoral process was "remarkably free, open and fair." Four years later in 1970, President Balaguer was again elected by a decisive margin. Juan Bosch, who has been able to return to the Dominican Republic after a self-imposed exile, now declares that he would accept a "dictatorship with popular support."

This threat to representative democracy is not without importance, because many of the country's socio-economic problems remain acute. Population growth rate, as Slater notes, is reckoned at 3.6 per cent a year, "one of the highest in the world." Farm families tend to pour into city slums, while well-armed Castroite and Maoist groups flourish in the University of Santo Domingo and in the public high schools. Low sugar prices and a stiff austerity program by the Balaguer administration are factors contributing to widespread unemployment or underemployment, periodic wildcat strikes and no little social unrest. Despite such handicaps, the government allots "more money to education than to the armed forces," is promoting more lower-income housing projects and distributing some government-owned land to needy *campesinos*. An expansion of these programs may determine the destiny of the Dominican people in 1971.

POW NEGLECT

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BOB WILSON. Mr. Speaker, regardless of our political inclinations and our views on the President's efforts to end U.S. involvement in Vietnam, we must unite in support of the men who are prisoners of war and missing in action. I ask my colleagues careful attention to the following editorial from the San Diego Union, published on our National Day of Prayer for Prisoners of War and Men Missing in Action:

POW NEGLECT IS WORLD'S SHAME

It is a blot upon the conscience of the entire civilized world that today marks the eighth anniversary of the capture of Army Capt. Floyd Thompson by North Vietnamese Communists, and that the world has not heard from or about him since 1964.

International rules of conduct, codified in the Geneva Convention on proper treatment of prisoners of war, require that Captain Thompson be accorded many rights, including decent treatment, periodic verification of his condition by neutral observers, and mail and packages at regular intervals. He also is entitled to be sent to the United States if he is either wounded or ill. He has been accorded none of these rights. He and his unhappy family are living in a dark half-world of pain and uncertainty reminiscent of the inhumanity of the Spanish Inquisition.

Captain Thompson's sad plight is only characteristic of the scar upon our national conscience created by at least 1,009 other Americans who are listed as missing in action in Vietnam without any hint of their circumstances, along with at least 489 others who are known to be prisoners of war and who are accorded roughly the same treatment as Captain Thompson.

These are problems on which Americans should reflect deeply as they heed a congressional resolution which establishes the next seven days as a National Week of Concern for Prisoners of War and Men Missing in Action. Upon signing the resolution, President Nixon designated today as a national day of prayer "for the lives and safety of these men."

The week comes at a critical period in our national commitment to these courageous men. We have tried to do many things to help them. We have made very substantial military concessions. We are withdrawing our forces from Vietnam with all dispatch. We have offered to discuss the prisoner problem without strings, asking the Communists simply to begin by naming reasonable conditions. The Reds have remained obdurate, saying that they would discuss the matter only when every American is out of Vietnam and we have repudiated the Vietnamese government, and not before.

Against this backdrop of frustration, cynics might insist that another week of American dialogue on the prisoner of war question can do little to influence the North Vietnamese.

This is not necessarily so. The stubbornness of the Communists has largely been a product of their appraisal of the American temper. They believe we are weak, divided and irresolute.

On this basis, an impressive weeklong expression of American support for the government's policy of insisting upon residual American troops in Vietnam as long as Americans are held prisoner may convince the Communists that there is not going to be any cheap way out of the conflict for them, even at this 11th hour.

FATHER JOSEPH F. THORNING

HON. GOODLOE E. BYRON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BYRON. Mr. Speaker, one of my friends, Father Joseph F. Thorning, offered the prayer today on Pan-American Day for the progress and peace of the peoples in the Western Hemisphere. It has been my privilege to know Father Thorning for many years and to respect his knowledge and interest in Latin America.

I would like to include a book review, featured in the winter issue of the Fordham University Quarterly, Thought. The volume in question was edited by Prof. Henry A. Landsberger, chairman of the sociology department of the University of North Carolina, and the review was written by Father Thorning. The book review reads as follows:

THE CHURCH AND SOCIAL CHANGE IN LATIN AMERICA

Professor Henry A. Landsberger, chairman of the Sociology Department, University of North Carolina, served as editor of this symposium. He also wrote an enlightening introduction and contributed the fifth chapter entitled "Time, Persons, Doctrine: The Modernization of the Church in Chile." The other nine chapters cover a wide field: social theory, Church doctrine, historical perspectives, evolution of the Church's legal status, issues of cooperation or noncooperation with Marxist parties, development of continental religious programs under episcopal guidance and the dramatic rise of Catholic radicalism in Brazil.

As might have been anticipated, the overall picture, although fascinating in its multifaceted broad vistas, lacks essential focus. Often enough, the colors and lines blur instead of blending. When cross-references are essayed, however, they do help to illuminate the mass of data. The editor, sensing the difficulty, does what he can to draw the material together and to present a comprehensive frame of reference.

Noteworthy contributions are made by such intellectuals as M. Richard Shaull of Princeton Theological Seminary; Ivan Vallier of the University of California, Santa Cruz; L'Abbé François Houtart; Archbishop Mark G. McGrath of Panama; Renato Poblete, S.J., professor of sociology at the Catholic University of Chile; and Cecilio de Loria Soria, S.M., an official of the Latin American Episcopal Council with headquarters in Bogotá, Colombia.

The most coherent and satisfactory in-depth chapter in this compilation is that by Emanuel de Kadt, Latin American specialist at the Royal Institute of International Affairs, London. He describes the role played by the Young Christian Workers of Belgium, France, Germany and Italy in the creation of a university youth organization in Brazil. Central to the movement's interest in the beginning, he relates, were questions of sex education, the family, motion picture entertainment, retreats, pilgrimages, courses on Catholic culture and the provision of religious services in the universities.

Soon greater emphasis was placed on scientific analysis of rural-urban misery and on somewhat "utopic" programs of socio-economic renewal. This was followed by an effort to awaken factory and farm workers to the need of a transformation of their condition, reaching a climax in advocacy of the use of force in the political order.

As a clue to philosophical outlook and teaching of some leaders in the Brazilian university youth movement, de Kadt quotes the following declaration from a paper written by the French Dominican Friar Thomas Cardonnel: "Violence is not only a fact of revolutions. It also characterizes the maintenance of a false order" (p. 200).

It is fair to conclude that application of such a principle marked a watershed between the ethos and activities of two generations. Moreover, it led to the withdrawal of episco-

pal approval. Another result was the foundation of a new group called *Açao Popular* (Popular Action or AP). The new organization tried to avoid the impression that it was a religious movement, but de Kadt suggests that it "bore the imprint of radical Catholicism until the coup of April, 1964."

The same scholar notes that the Marxist-Leninists in Brazil "played a shrewd game, benefiting greatly from AP's support, without giving much in return. . . ." In short, the disciplines of Moscow and Peking, adopting the tactics of a "united front," attempted to dictate policy and to dominate action. They demanded obedience as "a kind of Holy Office of the Brazilian Revolution," a right they claimed as "the oldest revolutionary force in the country." Indeed, as is evident in the tactics of the "Popular Front" in Chile, a "temporary alliance with error" is not only permissible but even laudable in the eyes of Communists "because it will eventually help the party to attain hegemony."

The dilemma such a situation poses can explain much of the current tension between political and religious bodies in contemporaneous Brazil. In exploring the roots of this crisis de Kadt has accomplished a notable service.

LAST ROUNDUP FOR A SENIOR CITIZEN

HON. JOHN G. DOW

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. DOW. Mr. Speaker, while in Congress I and many other Members have made constant and diverse efforts in every possible way to speak up for older people and to help them with their ever-worsening problems.

The trials of our grandparents are highlighted once again by the death of Alexander Babulya on March 17.

Mr. Babulya was a resident of my 27th Congressional District in New York. He was a very colorful and spirited individual who devoted himself voluntarily to the cause of his fellow seniors. Only a few days before his death, Mr. Babulya represented me at one of their meetings, and I know he did a handsome job.

Allow me to extend below an account of Mr. Babuyla's life and services which appeared in the Journal News, Nyack, N.Y., on March 19. The article is not just a biography of Mr. Babuyla, it cites typical cases of the older people who are neglected and forlorn. This story must be told again and again until we in Congress really heed the story and do something more consequential about it. The article follows:

DEATH STEALS ALEX'S MEMORIES

(By Louise Steneck)

(NOTE.—This article about one of Spring Valley's more colorful senior citizens was prepared for publication in today's edition of The Journal-News. Alexander Babulya died unexpectedly Friday, before he could read this account of an interview earlier in the week.)

In 1918, Alex Babulya was chasing Pancho Villa's bandits across the vast expanse of Mexico. Long black braids and handlebar moustache flying in the breeze, he led 12 men into the desert—only four came back. At 16, he was shot in the back and leg by marauders.

In 1972, Alex Babulya sits in a Ramap Town Hall office smoking cigarettes endlessly and watching the cars whiz by on Route 59. He still has the moustache, though it is white now, and a bullet from those bygone days remains lodged in his back, giving him a twinge now and then on rainy days.

Everything is different than it used to be for Babulya. Those old days, when his horse got fed before he did, when most of the country was a series of "hick towns," and when the best way to Texas was via banana boat around the Americas, are gone.

But Babulya has been both adaptable and lucky. He is one of the fortunate senior citizens who, at 69, still has his health, a moderate income, a driver's license and car, a faithful family and his hold on reality.

But Babulya knows many of his companions have not been so fortunate and their plight literally makes him cry.

As a member of Ramapo's Price and Rent Stabilization Board and Rockland County's number one lobbyist for senior citizens, Babulya says he has seen cases "that just break my heart."

He has seen more than his share of economic destitution, of homes where widows sit huddled in blankets in unheated rooms, where bedridden elderly "rot in bed" because they cannot get a doctor to make a house call and where couples suffer from malnutrition while scraping together enough money to hold onto the family home in the face of spiraling property taxes.

But Babulya says there are worse things about getting old than economic problems—the loneliness, the feeling of worthlessness, the degradation of accepting welfare after a lifetime of working and the terrible feeling that somehow the world has changed and left them behind.

"Somewhere along the line something went wrong with society," Babulya says, remembering the days when grandparents lived with their families and old people were revered and cared for until death.

"They were part of the family. We didn't throw them out and say 'We're too busy' or we can't afford to support you.' "

"It just makes me sick when I see these young people who live in $40,000 houses come down here to town hall to fight public housing for senior citizens when their own parents are living in squalor. I just don't understand it." he said.

Babulya says one of the worst things about getting old and retiring is the feeling of worthlessness. He works without pay for the town on behalf of senior citizens because "I'm not just deadwood. I'm needed."

"If young people would only realize we still have something to offer. There are a lot of senior citizens who could serve as business consultants, or teach hobbies, or even teach history in schools. We need to be needed, otherwise we might as well be dead."

These feelings of worthlessness are often compounded by the need to take monetary assistance during the waning years.

"These people worked hard all their lives, paid their taxes, and fought for their country. Now they feel guilty for taking a little help, a little thanks for their years of service," Babulya said. "It's a big blow to their pride."

A Valley Cottage senior citizen, so embarrassed by the need to accept small welfare payments to supplement his social security that he asked to remain anonymous, explained it this way:

"When we was kids, we was told to work hard. I used to work 12–14 hours a day all my life. Now they kicked me out 'cause I'm too old. I could work, but now I'm just a leech taking welfare. I got no choice—I gotta eat. I feel so low."

But he has a real need for assistance. He and his wife exist on $159 a month social security and a $75 welfare assistance check. Rent on his one-bedroom apartment jumped from $140 to $160 a month several weeks ago.

Loneliness often haunts the old. As children move away and the elderly become restricted in their movements, endless days of solitude set in like a specter of death.

"I sit and think about my grandchildren or remember the happy times with my husband," a Suffern widow said. "I can't drive anymore and had to move away from Pearl River, where I grew up, to get a cheaper apartment and now I'm so lonely."

"I watch television and do crossword puzzles, but my eyes are going so that won't last. I just want someone to talk to who won't treat me as a child or a museum piece. I'm still all here, you know. I'm not dead yet."

Babulya is full of plans to help his fellow senior citizens. He wants more public housing, rent breaks, better transportation, recreation programs and better medical care.

But the major battle—the emotional battle—cannot be won through public assistance.

"There's just something wrong with people these days."

THIRD UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

HON. F. BRADFORD MORSE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. MORSE. Mr. Speaker, today marks the beginning of a most significant conference dealing with the perplexing and complex issues of global development. The meeting, which begins today in Santiago, Chile, and is expected to continue for 5 weeks, is the third United Nations Conference on Trade and Development—UNCTAD III.

Delegations from rich and poor nations will be meeting in an attempt to develop proposals to aid poor nations in their quest for development, and to reach agreement on implementation of those proposals. Among the specific issues to be considered at UNCTAD III are the impact of the present international monetary situation on world trade and development; "terms of trade" and a generalized system of preferences; commodity price agreements; and the extension of special drawing rights.

While there can be no doubt that much has been achieved by the development decade programs the United Nations and its specialized agencies, as well as by various bilateral aid programs, it is also true that the relative share of worldwide wealth held by the less developed nations has actually declined during these years. I believe that the developed nations of the world must make a greater commitment to adjusting this global economic imbalance, and I look upon the UNCTAD III Conference as a significant attempt to bring this adjustment about.

The issues involved, however, are extremely complex. Mr. Paul Laudicina of the Overseas Development Council of Washington, D.C., has recently written a pamphlet which explains in layman's terms the problems that are involved,

and their magnitude. The article, entitled "UNCTAD III: The Development Decade," is No. 15 in ODC's Development Communique series. I commend this outstanding article to my colleagues and print it in the RECORD.

UNCTAD III: THE DEVELOPMENT DEBATE

(By Paul A. Laudicina)

On April 13 delegations from 142 nations will meet in Santiago, Chile, to begin a five-week long debate on global development issues at the third United Nations Conference on Trade and Development (UNCTAD III). Governments from rich and poor countries alike have been hard at work for months examining the many UNCTAD III proposals aimed at building a more just international social and economic order.

Many leaders of the developing world have high hopes that UNCTAD III will prove an effective medium for raising the standard of living of the 2½ billion people of Africa, Asia, and Latin America. If nothing else, some "development observers" except UN CTAD III will be a more successful forum for a discussion of the issues than was UNCTAD I (Geneva, 1964) or II (New Delhi, 1968).

THE UNCTAD BEGINNINGS

UNCTAD was established in 1964—midpoint of the first UN declared Development Decade—as a permanent United Nations organ. Its mandate was to "promote international trade with a view to accelerating economic development, to formulate new principles and policies to this end and to act as a center for harmonizing governmental policies and actions." The international community had formally "discovered" that two-thirds of the world's people were living at standards long ago passed by the industrialized West—and that to improve this situation required deliberate and determined international action. Economic dependence and stagnation was the diagnosis, accelerated growth through savings and investment the prescription.

UNCTAD's chief architect and first Secretary General, Raul Prebisch, charted the course of this new UN body. The centrifugal force required for the developing nations to break away from the Western orbit of economic dependency could only be generated with approval from the West. Trade preferences, commodity agreements, insurance on export earnings, reduction of shipping costs, all aim to increase and stabilize the income poor countries get from selling their goods on the world market. Yet, this "preferential" treatment of the developing world would cost the developed world money—and there's the rub.

UNCTAD I

The UNCTAD I delegates from the poor countries came to Geneva in 1964 with great expectations. The developing nations declared that they looked "to the Conference to help them reach the stage of self-sustaining growth." UNCTAD I spotlighted a trade preferences proposal. With such a trade scheme, the developed nations would give preferential treatment to the exports of the developing nations over those of other rich nations. The increased export earnings of the lesser developed countries (LDC's) would lead to their earlier attainment of self-sustaining economic growth. But agreement was of short supply at the first general session of UNCTAD. Not even the developing nations could concur on an appropriate trade preferences scheme. At the end of UNCTAD I, a resolution was adopted supporting, in principle, the abolition of customs duties by the industrialized world on the manufactured goods of the developing world. A special UNCTAD committee was established to formulate a program for implementing the generalized system of preferences (GSP) that had been agreed to in theory. The report and proposals were to be considered at UNCTAD II—to be held in New Delhi, India, in 1968.

UNCTAD II

In preparation for UNCTAD II, a group of 77 LDC's (henceforth known as the "Group of 77") met in Algiers and issued a position paper called the "Charter of Algiers." The developed nations met in their club—the Organization for Economic Cooperation and Delevopment (O.E.C.D.)—and stated their readiness to negotiate the terms of a Generalized System of Preferences. The stage seemed set for a very successful second general session of UNCTAD. Instead, the conference convened on a vortex of political controversy over the seating of the Cuban and South African delegations.

The proposed system of generalized preferences commissioned by UNCTAD I was systematically picked apart by developing and developed nations alike. The African nations sought trade preferences on their main exports, agricultural goods, while the Latin American delegations pushed for preferences on manufactured goods. Those LDC's already enjoying export preferences from their former colonizers were not quite ready to accept equal preference treatment for all the poor nations. The United States was not prepared to vote affirmatively on a GSP until other developed nations dropped whatever reciprocal preference arrangement they required for their exports to the LDC's. Such agreements were not forthcoming.

The other proposals on the UNCTAD II agenda—cocoa price stabilization, supplementary financing (i.e. a scheme to insure the LDC's export earnings) increased foreign assistance to 1% of donor nation Gross National Product and the untying of aid for purchases from countries other than the donor, etc.—fared no better.

Paul Prebisch reflected the general disappointment with UNCTAD II.

"The great objective was not achieved. The second session of the Conference was able to attain only very limited positive results that are not commensurate with the dimensions and urgency of the development problem . . . it seems that prosperity, in people as well as in nations, tends to form an attitude of detachment, if not indifference to the well-being of others . . . developed countries, with few exceptions, continue to consider the development problem as a residual one that can be tackled here and there with a few insufficient measures instead of bold resolute action . . . (only) in some sectors of developed countries (is there) a far-sighted view of the serious economic and political consequences of allowing the Third World to continue to drift."

But division among the LDC's, as well as an UNCTAD structure which, at times, took on the air of a Rube Goldberg invention, also were factors contributing to UNCTAD II's relative failure. UNCTAD II, like UNCTAD I, ended with agreement (in principle) on a Generalized System of Preferences and authorized the establishment of a special intergovernmental committee to work out a practical proposal for the implementation of a preferences system.

ACTION ON A GSP

By October 1970, UNCTAD's Special Committee on Preferences had worked out all the operational arrangements necessary for a ten-year Generalized System of Preferences. The UNCTAD committee urged the developed nations to implement the scheme as early as possible in 1971. Acting upon this UNCTAD injunction, thirteen industrialized countries have, to date, adopted the GSP. President Nixon may soon send U.S. trade preference legislation to Congress for approval. While the acceptance of a GSP is significant, it is not an unqualified success. Instead of implementing one uniform system of preferences, the developed countries have negotiated a series of individual schemes within the GSP framework. Consequently, not all the same LDC products are covered in the different national schemes. Certain national schemes have also weakened preferences somewhat with escape clause provisions.

THE DECLARATION OF LIMA

The Group of 77 (which has now 95 members) met in Lima, Peru, from October 25 to November 7, 1971, and prepared a joint statement for UNCTAD III. The statement, known as the "Declaration of Lima," expressed dismay and concern with "the persistence and aggravation of the underdevelopment afflicting" their countries. The group was further disappointed by "the shortcomings of international cooperation" that "has shown a progressive deterioration during the past years and has now . . . reached a state of extreme gravity" with the "breakdown of the international monetary system and also the resurgence of protectionist policies which are closing markets at the very moment . . . (they) have the right to expect wider access to them." The spokesmen for the developing nations continue, "The hopes which we had entertained when the Charter of Algiers was adopted in 1967 have been frustrated. Once again, therefore, we confront the conscience of world opinion with facts, figures, agreements, and programs. We trust that the understanding of the Statesmen of the developed world will become more responsive and will generate the necessary political will to lend vigour to international cooperation. On such cooperation will depend not only the success of the efforts to raise the standard of living of a vast majority of humanity, but also the progress and prosperity of all peoples. Indefinite co-existence between poverty and affluence is no longer possible in the world of today."

In the body of the Declaration the Group of 77, besides making the now "ritual" calls for better trade and aid policies from the industrialized world, also stressed that "UNC TAD should be action-oriented and its negotiating role strengthened."

The developing nations acknowledge by now that in one to one confrontations with the mighty developed nations, the poor usually present a weak challenge. The success of the oil exporting countries' price bargaining with the West is a good lesson on the effectiveness of LDC unity vis-a-vis the developed world. The People's Republic of China delegation to UNCTAD III (the first Mainland Chinese delegation to an UNCTAD meeting) will probably add some "big power" support to a united poor world stance. Yet, despite this need for unity, the developing world has infrequently managed to maintain solidarity. The seriousness of developed world negotiation with the LDC's at UNCTAD III will probably be proportionate to the degree of poor world unity exhibited. But the division among the poor nations that existed at the Lima meeting does not augur well for UNCTAD III.

UNCTAD III—THE MONETARY CRISIS

Bets last fall were that UNCTAD III was going to be a showdown on international monetary policy—with the U.S. wearing the black hat. What with President Nixon's unilateral adjustments of the "international" monetary system, the 10% surcharge on imports and a 10% cut in foreign assistance that led to the Senate's hatchet job on the foreign aid package, the United States seemed to be opting out of whatever cooperative development effort existed. Since the immediate crisis has receded—the dollar devalued, the surcharge lifted and most foreign aid cuts restored—much of the anti-U.S. wind has been drawn from the LDC sails. Yet, the fundamental question remains: Should decisions affecting the economic well-being of the whole world community con-

tinue to be made almost exclusively by representatives of the powerful rich nations?

Applying the 10% surcharge to the LDC's was a decision which, as the LDC's claimed, forced the poor countries to help correct an international monetary crisis which they did not create. Evidently, the U.S. expects the LDC's to share the burden of problems which the rich world has created and have no say in the decisions taken to correct those problems. One might wonder what has become of the old American axiom, "No taxation without representation." Moreover, the "Group of Ten" (as the International Monetary Fund leadership is called since it is composed of the West's ten richest nations) makes, *in caucus*, the important decisions on monetary and trading rules which are then confirmed by the Fund membership.

The Declaration of Lima states: "The current international monetary crisis is the result of an imbalance among developed market economy countries and has severely undermined the international monetary system, adversely affecting the international environment and prospects for trade and development of developing countries. The developing countries have fully cooperated in efforts to preserve the stability of the international monetary system. They are in no way responsible for the balance of payments imbalances among developed market economy countries. On the contrary, they have deliberately refrained from aggravating the situation by moving their currency reserves. However, they are now being made to carry a heavier burden in the adjustment process than the developed market economy countries, as a result of the large proportion of foreign currencies in their reserves."

Yet, while the immediate monetary crisis has already peaked, the issues which precipitated it remain. International monetary policy and the policy-making apparatus are at the top of the UNCTAD III agenda.

THE UNCTAD III AGENDA

Besides examining the "impact of the present international monetary situation on world trade and development, especially of the developing countries," the UNCTAD III delegates will consider three other major development issue areas.

TRADE

Exports provide the LDC's with 80% of the foreign exchange earnings or "buying power" they need to purchase the machinery and other goods necessary for development. The poor nations earned about $55 billion from exports in 1970. These export earnings have been growing by about 6% annually during the 60's. Yet, the LDC's *share* of world trade has been declining because the growth of rich country exports has outpaced the poor. In short, then, the poor countries' relative economic position has been deteriorating. While the developing world's *share* of trade is declining, so, too, are the prices of the commodities they sell on the world markets. These commodity prices are declining as the cost of needed manufactured goods purchased from the industrialized nations continues to rise. This relationship of import to export prices is called "terms of trade." The UNCTAD Secretariat estimates that the LDC's lose $2.5 billion of potential foreign exchange annually because of worsening terms of trade. To help rectify this increasing trade imbalance, rich nations must liberalize their trade policies—hence the GSP.

UNCTAD III will encourage the developed countries which have not yet done so to fulfill their commitments to the United Nations International Development Strategy by implementing a generalized preference scheme as early as possible. The LDC's are expected to ask the UNCTAD Special Committee on Preferences to seek improvements in the GSP (e.g. to tighten up escape clauses, to increase the number of LDC products in the preference scheme, etc.).

The developed countries also will be urged to strictly observe the "Principle of Standstill" vis-à-vis the LDC's—i.e. a commitment not to increase existing trade restrictions or adopt any measures detrimental to developing world exports. The Group of 77 has also requested that UNCTAD establish an intergovernmental group to promote the removal of nontariff barriers which adversely affect LDC exports. In this regard, U.S. Congressional approval of any protectionist trade legislation, like the proposed Foreign Trade and Investment Act of 1972, would clearly contravene the UNCTAD accords.

With the free access of LDC goods to developed world markets, certain non-competitive, labor-intensive industries in the rich nations would be adversely affected. Therefore, UNCTAD will research and recommend adjustment assistance measures aimed at helping those affected developed world industries and workers move into new, higher yielding corporate activities.

The UNCTAD Secretariat will also submit a report for the discussion of the conference delegates, which examines "restrictive business practices adversely affecting the trade of developing countries and the consideration of appropriate corrective measures."

COMMODITIES

Nearly three-fourths of the developing nations earn 60 percent of their trade income from the sale of no more than three commodities (e.g. cocoa, coffee, copper). Therefore, the slightest fluctuation in the price of coffee, for example, might disrupt a nation's economic balance. To prevent such disruptions, international agreements have been established to stabilize prices on a number of LDC commodities (e.g. coffee, sugar, tin). UNCTAD III will explore the possibility of securing similar agreements on other commodities (esp. cocoa) as well as investigate ways to encourage the diversification of LDC exports.

SDR'S

Clearly the most important new source of development financing that will be examined and debated at UNCTAD III will relate to the International Monetary Fund's Special Drawing Rights (SDR's). This IMF bookkeeping technique, which puts an extra $3 billion into circulation annually, helps countries settle their debts with one another. Yet, the countries with the biggest debt burden get the smallest share of SDR's. Currently, 73% of this so-called "paper gold" goes to the 25 rich nation members of the IMF and the remainder (27%) goes to the 86 poor nation members of the IMF. A major debate at UNCTAD III, no doubt, will focus on this SDR's distribution formula.

While a number of other "development issues" are on the UNCTAD III agenda (e.g. LDC shipping and freight costs, developing world regional integration, tourism, increasing foreign assistance), those issues outlined above will undoubtedly take center-stage in Santiago.

CONCLUSION

The world will continue to exist after UNCTAD III is concluded on May 19. Yet, the patience of peoples to tolerate a global setting in which the many very poor live side by side with the few very rich will be strained further if UNCTAD III does not help bridge this rich-poor chasm.

It is somewhat significant that the only speaker to draw sustained applause at the Group of 77 meeting last November was Cuban Foreign Minister Raul Roa, who recalled the Che Guevara's words to UNCTAD I:

"If the concrete measures proposed here cannot be adopted by this conference, and if all that emerges is yet another hybrid document plagued by vague pronouncements and declamatory clauses, the underdeveloped nations will continue to face economic situations of escalating difficulty, and tension in the world will rise dangerously."

TOWARD CERTAIN FISCAL DISASTER

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BENNETT. Mr. Speaker, I extend in the RECORD at this point an excellent and courageous editorial from a recent edition of the Florida Times Union, a metropolitan daily newspaper of Jacksonville, Fla. It is excellent because it is factually true. It is courageous because it forthrightly comes to grips with the greatest cause of inflation in this country: Government overspending. It is for this reason that every year I vote against virtually billions of dollars of excessive and wasteful spending. With fine editorials like the following, perhaps more Congressmen may be inspired to follow that paper's leadership.

TOWARD CERTAIN FISCAL DISASTER

A little over two years ago President Nixon stated (in his 1970 State of the Union speech):

". . . In the decade of the Sixties the federal government spent $57 billion more than it took in . . . the American people paid the bill . . . in price increases which raised the cost of living for the average family of four by $200 a month.

"Millions of Americans are forced to go into debt today because the federal government decided to go into debt yesterday. . . ."

Unfortunately, these words of wisdom have turned out to be only words. They have been contradicted by all that has happened since.

And irony is added to fiscal folly by the observation that, while castigating the Democrats for spending "$57 billion more than (the government) took in" during a decade, the present administration is in the process of going in the red a projected $64 billion in just two budget years.

Richard Nixon cannot be held singly to blame for this mockery of his own words; it is Congress, after all, which passes the appropriations bills. But even this does not encompass the whole truth.

Rep. George Mahon, D-Texas, chairman of the House Appropriations Committee, hit close to the heart of the matter when he wrote recently, in Nation's Business, these words:

"Who is to blame for this distressing record? The President? The Congress? The American people?

"I think nearly all of us are. Large segments of the population tend to demand more and more government services, and at the same time there is a demand for lower taxes.

"Public attitudes shape the ultimate course of events—for better or worse. . . ."

The simple truth of the matter (if perhaps the most widely ignored truth in history) is that no government can continually spend beyond income: And the simple fact of the matter is that the U.S. government has spent more than it has taken in (when trust fund surpluses are eliminated) for 37 out of the last 43 years.

Today, we pay more each year in interest on the national debt than it took to run the entire government three decades ago. The debt total, only $367 billion in 1970, long ago soared past $400 billion and is virtually certain to approach, if not surpass the incredible-sounding (and difficult to comprehend) "half trillion" mark by fiscal 1973.

The solution Rep. Mahon proposes is so astoundingly obvious that it's hard to under-

stand why it has been ignored all these years.

Simply, let Congress balance the budget each year (excepting, of course, in all-out war when survival is at stake). If expenditures cannot be reduced, then let income—meaning taxes—be raised.

The public has become so accustomed to lavish governmental programs that it now not only accepts, but clamors for them: Accelerate the war against disease, combat pollution, improve education, raise the standard of living for all, safeguard the consumer, ad infinitum.

But suppose expenditures were directly pegged to taxes—if the income tax rate went up 10 percent when Congress spent 110 percent of the projected income (or 20 percent if Congress spent 120 percent). Then, the man in the street would realize what overspending meant.

The message would not only get to the man in the street—come November it would get to the Congress of the United States (and the occupant of the White House).

Rep. Mahon warns that unless some such policy of balancing income and outgo is taken, then each year "we shall be that much closer to certain fiscal disaster."

Can anyone refute his logic?

HAWAII'S VETS LEAD NATION IN UTILIZING GI EDUCATION BENEFITS

HON. SPARK M. MATSUNAGA

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. MATSUNAGA. Mr. Speaker, the House recently recognized the need to provide increased educational and job training opportunities to returning Vietnam veterans by passing legislation to authorize a 14-percent increase in GI bill educational benefits. The bill, now pending in the Senate, would bring GI bill benefits more clearly into line with tuition costs at our Nation's universities and technical schools.

When enacted, this legislation will hopefully make continued education as attractive to veterans across the country as it is to those from my State of Hawaii. A recently published Veterans' Administration study indicates that my own State of Hawaii surpasses all others in the percentage of Vietnam veterans receiving GI bill benefits. As reported in the March 8, 1972 issue of the Honolulu Advertiser, 53 percent of Hawaii's 19,000 Vietnam vets who have served since 1964 have received GI bill benefits for education and job training. The Hawaii figure is 15 percent above the national average.

The VA figures reflect the great emphasis placed on education and job training by Hawaii's people. I also believe that the figures are due to no small measure to the helpful efforts of the VA's Honolulu regional director, Mr. William Oshiro and his staff, who make it easier for returning veterans to find out about the benefits available to them. Mr. Oshiro, a veteran of the famed 442d Infantry Combat Team of World War II, is himself a disabled veteran who enjoyed VA educational benefits and who rose to the high position he now holds with the greatest of competence. By way of commending Bill Oshiro and his staff, I submit for the RECORD a copy of the Advertiser article. I hope that it will lead to prompt action on the legislation to increase GI bill benefits for our Nation's good:

GI BILL TAKERS HIGH IN HAWAII

(By Dick Paulicka)

Hawaii surpasses all other states in the percentage of Vietnam veterans receiving GI Bill training, according to latest Veterans Administration figures.

Of Hawaii's 19,000 Vietnam veterans, 53 per cent have taken advantage of the GI Bill since it went into effect in June, 1966, Honolulu VA officials said yesterday.

States ranked immediately behind Hawaii are Arizona, 51.1 per cent; Colorado 49.2 per cent; Washington, 48.6, and California, 47.3. Last on the list is West Virginia with 19.9 per cent.

The Hawaii figure is 15 per cent above the nation's average.

In Hawaii, the GI Bill schooling is 30.8 per cent at the college level or above, 13.9 per cent below the college level, 8.3 per cent in on-the-job training and 5.7 per cent in correspondence courses.

Richard K. Okamoto, veterans assistance officer with Hawaii VA, said the 53 per cent figure is a cumulative total and does not represent the number of Vietnam veterans currently receiving GI Bill training. The 1966 GI Bill covers veterans who have served since August, 1964, he said.

A large factor contributing to the high percentage of participation is the ethnic makeup of Hawaii's population, VA officials said.

Traditionally, Hawaii's citizens of Japanese and Chinese ancestry have stressed the importance of education and encouraged their people to take advantage of the GI Bill, they said.

MORE VIET WAR VETS UTILIZING GI EDUCATIONAL BENEFITS

(By Dick Paulicka)

More and more of Hawaii's Vietnam War veterans who can't find jobs are taking advantage of the GI bill to continue their education.

In proportion to Hawaii's population, the number here is greater than it is in many places on the Mainland, Henry Kuniyuki, veterans employment representative, said yesterday.

According to the latest State Labor Division statistics, the unemployment figure here in mid-September was 6 per cent, or exactly the same as that for the nation as a whole.

"But we can't tell what percentage of veterans are out of work because 1970 census figures for the number of veterans in the State are not yet available," Kuniyuki said.

He said that at the end of September some 28,000 males were out of work in Hawaii and 31 per cent or 8,675 of these were veterans. About 80 per cent of the 8,765 were Vietnam veterans.

Also, some 1,200 veterans, mostly from the Vietnam era, are being added to the unemployment rolls each month. This is about 30 per cent of all new applications, Kuniyuki said.

Richard Okamoto, chief of Hawaii's Veterans Administration contact division, said it appears more of these Vietnam veterans will be taking advantage of the GI bill than their counterparts did after World War II and the Korean War.

(National VA chief Donald E. Johnson has said he resents the charge that Vietnam veterans are not using the GI bill to the extent their World War II and Korean War counterparts did. He predicts the 50 per cent participation marks of the World War II and Korean War programs will be surpassed before the present bill ends.)

Okamoto said latest figures indicated some 5,500 Hawaii veterans were enrolled in programs under the GI bill last spring. Of these, 2,305 were enrolled at the college level, 1,660 in community colleges, 956 in on-the-job or apprentice training and the rest in technical, business or other training programs.

It is estimated that figures for the 1971–72 school year will exceed last year's by some 15 per cent. The 1970–71 figures were almost 30 per cent greater than the previous year because of the return of the Hawaii National Guard's 29th Brigade from active duty in Vietnam, VA officials said.

George Higa of the University of Hawaii's financial aids office said 2,088 veterans were enrolled under the GI bill as of Oct. 31. He said the figure, which is roughly 10 per cent of the University's enrollment, was an increase of 118 over last year's figures.

Higa commented on a report of legislation to increase GI bill payments introduced by Sen. Vance Hartke, D-Ind., chairman of the Senate Veterans Committee. The bill reportedly increases the payment for a single veteran from $175 to $220 a month, a veteran with one dependent from $205 to $265, and a veteran with two dependents from $230 to $305.

"Whenever there's an increase, I'm for it. The funds now are insufficient to cover expenses," Higa said.

A criticism of the current GI bill is that it doesn't pay tuition fees as the early versions did and consequently veterans have a rough time at the beginning of each semester when the big tuition fees are due.

Higa said this was especially true for out-of-state students. "They have to pay yearly fees of about $700. This alone takes up much of their GI bill benefits," he said.

"A lot of these guys have trouble finding jobs and the GI bill benefits are all they have."

Higa said he felt the government's investment in these men is returned many times over when they finish their educations and become better qualified members of society as well as taxpayers.

ARMS CONTROL AND DISARMAMENT ACT AMENDMENT

HON. ROBERT L. LEGGETT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. LEGGETT. Mr. Speaker, the Arms Control and Disarmament Agency bill is unexceptionable, and I was glad to see it pass almost unanimously.

In all candor, I have been disappointed by the slow progress of the SALT talks. There is no reason why an ABM ban could not have been concluded 3 years ago; if we had done so we would be billions of dollars richer today, with no sacrifice in national security. It also seems to me that by negotiations we could have obviated the need to proceed with the Minuteman III and B–1 programs.

But the fact that we have not done so is attributable to decisions made in the White House, not in ACDA. The Agency is merely a tool of policy, and given the constraints of existing policy, it is a tool that has functioned quite well.

So I commend the Arms Control and Disarmament Agency for the progress

it has made, and I commend the House Foreign Affairs Committee for the fine bill it has produced.

FOCUS ON PRIORITIES—NATION'S SECURITY MUST COME FIRST

HON. O. C. FISHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. FISHER. Mr. Speaker, at a time when some would reduce our defenses and make of us a second rate power, there is much talk of priorities. One thing is certain: unless we maintain adequate military strength during this crucial time in history we will probably end up with nothing to defend.

Under leave to extend my remarks, I include an article which recently appeared in Economic Comment, published by the Mellon Bank of Pittsburgh:

FOCUS ON PRIORITIES

The need to reorder national priorities has become a familiar argument of those who believe that defense spending must be drastically reduced in order to channel additional resources into social needs. Ironically, demands for further major cuts in the defense budget have intensified at the very time when expenditures have already been pared to a level which some observers believe is barely adequate to ensure the nation's security. Furthermore, the magnitude of the decline in defense-related activities does not seem to have received the same degree of publicity and attention as have the demands for additional cuts in spending.

As a starting point for any balanced assessment of the defense budget, it might be useful to review recent developments in Defense Department manpower. President Nixon's budget for the coming fiscal year calls for 2.4 million persons in the Armed Forces by June 30, 1973—the lowest for any year since 1950. By way of comparison, this figure is 1.1 million below the Vietnam high of 3.5 million and 300,000 less than the pre-Vietnam war level, which had remained essentially unchanged for ten years. At the same time nonmilitary employment of the Defense Department is projected at 1.04 million on June 30, 1973, down 250,000 from 1968 and marking a return to the pre-Vietnam figure.

The dimensions of this massive decline in Defense Department manpower have gone relatively unnoticed largely, it would seem, because budget outlays for national defense have remained essentially on a plateau since reaching a peak of just over $81 billion in fiscal 1969. Critics of defense spending point out, for example, that the fiscal 1973 budget of $78.3 billion is only slightly below the 1969 figure and $25 billion higher than the pre-Vietnam war level of 1964. But these statistics fail to take into consideration the ballooning effects of pay and price increases on the defense budget. Thus, despite the reductions in personnel anticipated between 1964 and 1973, military manpower costs will soar $16 billion, representing about two-thirds of the total increase in defense outlays. Escalating procurement costs have also added substantially to the budget so that the total buying power of $78.3 billion in 1973 will be actually less than the $53.6 billion spent in 1964.

Another frequently voiced criticism concerns the proportion of the Federal budget accounted for by defense spending. Contrary to what seems to be a widely held view, however, expenditures for national security as a proportion of total Federal expenditures have fallen steadily over the years, dropping from almost 59% in 1955 to 50% in 1960 and an anticipated 23-year low of less than 32% in fiscal 1973.

Even conceding this point, many people still take the position that defense spending has diverted needed funds away from social welfare programs. One way of assessing the validity of the argument is to review the increase in spending for domestic welfare programs at all levels of government relative to the rise in defense expenditures. Between fiscal 1960 and fiscal 1971—the latest year for which data are available—Federal and state and local government spending for social welfare purposes climbed from $52 billion to $171 billion, an increase of almost 230%. During this same time span, outlays for defense increased 69%, rising from $45.9 billion to $77.7 billion. Stated another way, social welfare spending at all levels of government has increased over three times as fast as outlays for defense. As a further illustration of changing priorities during the past decade, outlays for social welfare purposes in 1971 represented 51% of total government spending for all purposes as compared with the 38% ratio recorded in both 1950 and 1960. Focusing more closely on the trend of defense outlays compared with some of the major components of social welfare spending, the following tabulation shows both dollar outlays and percentage changes between 1960 and 1965 and 1971.

True, the impact of inflation has sharply reduced the "real" increase in nondefense as well as defense spending. But even in constant 1970–71 prices, social welfare expenditures climbed a substantial 81% between 1965 and 1971, five times the estimated 16% increase in outlays for national security. Against this background it is difficult to accept the contention that defense spending has been heavily responsible for the persistence of poverty and other social ills. To go a step further, the magnitude of the rise in outlays for social welfare purposes in recent years suggests that the greatest need is not necessarily major new spending initiatives, but rather a thoroughgoing reform and restructuring of existing programs designed to increase their efficiency and ensure that maximum benefits are allocated to those with the greatest need.

Obviously, every effort should be made to eliminate waste and extravagance in the military establishment. Also, the nation's global commitments must be periodically reassessed in the light of changing economic and political circumstances. There is, however, a limit to the extent that defense spending can be reduced without jeopardizing the national security—and that point may already be close at hand. To be sure, there is always hope that agreements will be reached which will ultimately end the arms race. But for the moment, the unpalatable fact remains that the world is not a tranquil place. The rival ideologies and nationalistic conflicts, which have contributed to the tensions and disorders of the past 25 years, have certainly not diminished to the point at which large unilateral cuts in U.S. defense spending can be viewed as a responsible course of action. This position is reinforced by reports of a substantial buildup in the military strength of the Soviet Union. Thus since 1964, the U.S.S.R. has achieved, at a minimum, parity—and, more likely, superiority—in the development of both strategic and general purpose forces with respect to the United States.

The defense budget should not be allowed to become the scapegoat for almost every social problem facing the nation. The time is surely at hand for a more balanced and dispassionate assessment of U.S. defense needs. This analysis should begin with the premise that the preservation of freedom and the ability to deter aggression should rank high—not low—on the list of national priorities.

GOVERNMENT EXPENDITURES

[Dollar amounts in billions]

	Fiscal years				
	1960	1965	Percent change, 1960–65	1971	Percent change, 1965–71
Education	$17.6	$28.1	+59.7	$55.5	+97.5
Health and medical care	4.5	6.2	+37.8	10.6	+71.0
Public aid (including public assistance)	4.1	6.3	+53.7	21.8	+246.0
Social insurance	19.3	28.1	+45.6	66.1	+135.2
Defense	45.9	49.6	+8.1	77.7	+56.7

TESTIMONY OF VICE PRESIDENT OF THE ASSOCIATION OF CIVILIAN TECHNICIANS

HON. SEYMOUR HALPERN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HALPERN. Mr. Speaker, today, the Subcommittee on Employee Benefits of the House Post Office and Civil Service Committee heard compelling testimony by Mr. John Hernon, vice president classified of the Association of Civilian Technicians, on why the downgrading of certain National Guard employees is detrimental to the individuals involved as well as the Nation as a whole.

Last month I outlined my position on this matter when I said that the action by the Civil Service Commission is doing a disservice to the dedicated men of the National Guard and was, in fact, making it difficult for the National Guard to attract able and qualified men.

For some time now, the National Guard technicians have worked within the rules of a particular personnel system, but now in the implementation of the National Guard Technicians Act of 1968, these individuals are penalized because the rules have changed. The simple but compelling issue of justice dictates that the Civil Service Commission be barred from downgrading these positions.

Second, any such action by the Civil Service Commission will do much to thwart the hope of ever eliminating the draft and creating an all-volunteer Army.

In testimony before the committee, John Hernon said today that:

The National Guard Bureau is creating a new minority group, the National Guard Technician. This program is a bureaucratic debacle and we are looking for leadership to straighten it out. The Adjutant Generals and the Bureau are out to perpetuate this system so we now look to the Congress to carry our banner.

I sincerely believe that those words present a challenge which this Congress must meet. We must do all that is in our power to see that the Civil Service Commission deals justly with these men.

At this time I should like to insert into the RECORD the testimony offered to the Subcommittee on Employee Benefits by Mr. John Hernon, vice president classified of the Association of Civilian Technicians:

STATEMENT CONCERNING THE DOWNGRADING OF CERTAIN NATIONAL GUARD EMPLOYEES BY MR. JOHN JOSEPH HERNON, VICE PRESIDENT CLASSIFIED, ASSOCIATION OF CIVILIAN TECHNICIANS

Mr. Chairman and members of the committee, I would like to thank you for extending us the opportunity to express our position on these downgradings.

We are here before you because of the downgradings of certain national guard technician positions. This has occurred due to a ruling by the Civil Service Commission that since we are now civil servants our positions must be aligned equally with those in the general schedule and wage board now on board as civil servants. Before we get into the specifics of questioning the procedures used to attain this alignment, We must first answer the basic premise the Commission has used in these actions. The key work in our minds is "equal". If we are to be aligned as equal to all civil servants this denotes the connotation of equality in other fields.

I would question my fellow civil servants as to their requirement to be a member of the national guard in order to hold their job, their requirement to wear a military uniform when they come to the office or shop, whether the last time they submitted, under the merit promotion system, for a job advancement they had to check the job description to see if they held the correct national guard military grade before they could apply, whether they have access to the Civil Service Commission with a grievance or an adverse action or must stop at the Adjutant General, many times the cause of the grievance or adverse action, whether they are paid for overtime, whether they have to wait for their next national guard physical to know if they are still employed as civilians or whether they receive equality in retirement or just 55% of their time prior to 1969.

These are questions of equality. It is simple to make a statement concerning one side of the coin, but we are here to examine the other side and see what's underneath. I would like to bring to your attention just a few requirements that mandatory National Guard membership brings to technicians even though it is not listed in our job description.

The North Vietnamese have launched an offensive of large proportions in South Vietnam and with the draft at a virtual standstill and large numbers of the Armed Forces being released, the National Guard becomes our largest manpower source, if needed. Last week a chlorine barge was hung up on a dam near Louisville, the National Guard, technicians included, were called to assist in the evacuation of the area and to prevent looting.

In the State of New York, the State employees went on strike, 3 upstate prisons found themselves short of guards. They immediately sent National Guard liaison teams to each prison and, if need be, National Guardsmen, including technicians, will be on the walls. One of these prisons is Attica. I don't think any DOD or DA classifier took this into consideration when he was downgrading our employees.

I would also like to point out that we ran into difficulty in obtaining civil service classification standards or comparable job descriptions to evaluate the technicians with individuals of like classification. The Civil Service Commission in New York was very cooperative but could not provide all the classification standards and in the 5801, general mechanic field, we had to settle for a 5823, automotive mechanic standard.

In obtaining like job classifications from the Army Reserve, James Walters, our national representative, was flatly refused access to these by an individual in the civilian personnel office at Fort Hamilton, even though he had the job descriptions on hand. This hampered the preparation of this testimony, especially in the general mechanic field, since the Army Reserve has a similar job that is graded at WG–9 while our downgraded mechanics are WG–8.

I would also like to point out that due to the lack of standards we selected only to comment on 3 downgraded positions. This in no way means that we accept the downgrading on the others but only that the availability of material dictated our preparation.

I would like to address myself first to the general supply assistant who was downgraded from a GS 8 to a GS 7. I question first the terms "operational supervision" and "subsequent guidance and assistance" from the commander or S4 in the job description (inclosure 1). These individuals are national guardsman who show up one night a week or for week-end training. They normally do not have the supply background to guide a man who has upwards of 10 years on the job.

These individuals have their own civilian jobs to run and could not possibly give the guidance these statements intend. Usually this technician has more experience on the job, and especially in the supply field, than the staff administrative assistant and cannot expect supervision or guidance from this individual. We are discussing an individual who independently runs the supply operation of a national guard battalion and instructs those national guardsmen, from the highest to the lowest, in supply, when they attend drill.

The classification instructions on page 3 of inclosure 2 states that supply technicians (GS 7 and below) generally follow established methods and procedures which have been developed by supply specialists or management personnel while supply specialists (above GS 7) are responsible for developing the supply system, programs or services and for development, adaptation or interpretation of operating methods or procedures.

I have already discussed the fact that this individual must be able to operate independently but, in addition, and I quote from his job description, "Plans, directs and coordinates unit and organization supply policies, procedures and operations". We are discussing an individual who has the above responsibilities 40 hours a week with little or no supervision. This involves the planning in the fields of rations, ammunition and fuel for weekend training and annual 2 week training. This involves feeding 600 to 1000 individuals, sometimes at various locations, requisitioning ammuntion from small arms to Honest John rockets on a battalion basis. It involves fuel requirements for moving as many as 100 vehicles 500 miles with either gasoline and/or diesel, in addition to the day to day supply activities.

It also involves the formulation of contingency mobilization plans for air, rail and road movements or combination thereof plus similar plans for civil disturbances actions. Errors in the above costs the United States tax money. In addition he is to serve as property book custodian. In many instances this means he is also the property book officer with full pecuniary liability for 5 or 10 million dollars worth of equipment. Nowhere in any of the classification guides is any mention of this type of responsibility. Finally he is responsible to make periodic inspections and inventories, another item not mentioned under responsibilities of a GS 7 or less.

Next I would like to cover the aircraft mechanic (inclosure 3) who was downgraded from WG 12 to WG 10. In checking the job standards (inclosure 4) the following items are not listed in the job standards for WG 8 or WG 10 but are performed by these employees.

He is required to perform limited general support maintenance, this consists, in many cases, of major overhaul. He conducts inspections of aircraft, the range of Army inspections run from daily (after last flight of day), intermediate (every 25 flying hours) and periodic (every 100 flying hours). The CAA requires that a 100 hour inspection be conducted and certified by an FAA aircraft inspector. He is required to ground run engines and operate aircraft on the ground. He is required to participate in aerial flights, but receives no compensation for this even though pilots and crew members do receive additional compensation.

Lastly, he is required to certify that work performed meets standard of technical adequacy. Each time an inspection is performed, a component is repaired or replaced or an adjustment is made the mechanic must certify the work as technically adequate by signing his name on required Army maintenance forms and accept the liability of this procedure even though the standards state that the supervisor insures that overall work meets accepted trade standards.

Next I would like to cover the general mechanic who had been downgraded from a WG 10 to a WG 8. I mentioned before that we had to settle for the job standard of an automotive mechanic because I could not obtain one for the general mechanic. It is interesting to note that even though this standard (inclosure 6) pertains to both WG 8 and 10 it specifically states that the following jobs are not covered by this standard: maintenance and repair of diesel powered vehicles (for example, trucks, buses, truck-tractors), gasoline powered or diesel powered heavy duty equipment (for example, graders, bulldozers, power shovels, cranes or locomotives. In addition, jobs involving upholstering or the maintenance and repair of bodies, fenders or radiators are not covered by this standard.

Now I would like to read parts of the job description of the General Mechanic, Wage grade (inclosure 5). "Performs maintenance and repair on tactical and automotive vehicles and diesel and gasoline powered equipment." "Performs maintenance and repair on engineer equipment, such as graders, conveyors, bulldozers, power shovels and cranes." "In addition to one or more of the above duties the incumbent is required to make minor body and fender or metal case repairs using peening hammers, dinging bars and dollies, welding equipment and paint spray equipment."

Neither a WG 8 nor WG 10 automotive mechanic is required to do any of the above but a WG 8 general mechanic is required to do all of the above. In addition, he must be able to repair small arms, artillery weapons, tanks, armored or scout cars, track mounted cranes, half-tracks, high speed tractors, other combat vehicles as well as electronic and communications equipment. In checking the army school catalog it would take an individual 55 weeks to attain the skills I have just outlined in the four fields of maintenance that he is involved. We now expect to hire these people for $8700 in the New York City wage scale area, one of the highest in the nation.

Truck drivers and heavy equipment operators, jobs these technicians qualify for, make 10 or 15 thousand dollars in this area. I would also like to point out that their work is supposed to be under the supervision of a shop foreman or higher grade mechanic who issues written orders and spot checks and makes final inspections. There are no higher type mechanics authorized in these shops. The shop foreman cannot possibly accomplish all of the above requirements in a shop which contains six or more employees and a clerk who he works with.

Most of these shops cover more than one location, which means that the contact teams

sent out to these armories have no supervision, but must evaluate the job and make the repairs on their own. This is necessary to preclude bringing the equipment back and forth to perform repairs, thus saving considerable tax money. It is standard procedure in the track vehicle area for these WG 8s to remove an engine, send it to support maintenance and reinstall the engine when it is returned, yet the job standards say this is to be done by WG 10s. Where are we going to get them if these men are down graded. The saving in this is obvious in that the support maintenance people do not have to send a crew to install the engine and one driver is used to transport the power pack back and forth.

Finally, these individuals have as requirements on their job, small arms repair, artillery repair, communications equipment repair and welding. Each of these fields is classified as wage grade 10. If this downgrading goes through we will have to hire gas pumpers instead of mechanics and more and more of the jobs that are now being done in the field will end up in support maintenance. We will then have to hire more technicians at the support maintenance shops in higher paying jobs than are in the field and due to the time lost evacuating equipment, it will be out of service for longer periods. It will be another case of penny wise and pound foolish in this program.

To conclude, I would like to cover the caste type classification system that prevents all guard technicians from attaining the highest type job their qualifications will permit. On inclosures 1, 3 and 5, job descriptions, you will see in item 4, boxes for officers, warrant officers, enlisted men and non-guard. The first three denote military grade and even though a technician may have all of the required qualifications, and more, if he does not have the correct military grade, they will accept an individual with less or, in some cases, no qualifications in order to meet this criteria.

In the non-guard area, which effects women, this prohibits their progression since they cannot hold any jobs that require military grade. In the USP&FO we have women on the job for 15 or more years who break in their supervisors, who are brought in from the field to work at these higher type jobs.

I would like to relate two situations to illustrate this point. The staff administrative assistant is the supervisor in a national guard battalion type operation. He must be an officer. When a vacancy occurs they have two choices. They can take the staff training assistant, who has, at most 4 years of experience since that is when it was authorized at battalion level or they take a national guard officer from the outside, regardless of qualifications to meet the criteria. Overlooked completely would be the 8 to 12 technicians who work full time in the battalion, with military grades of warrant or enlisted man.

In most instances at least half will have 10 years of experience and one or two will have more time on the job than the departing staff administrative assistant. As far as their civilian education background, normally all will have completed high school and no more and as far as military education the officer will complete branch training, mostly in a combat branch, while the other technicians schooling will have been to enhance their civilian job.

Another idiosyncrasy of this program provides that the same job that could be filled by an officer only, may be filled by that same officer reverting to a warrant due to the attritive provisions of the Reserve Officers Personnel Act of 1954. A warrant officer cannot apply for the job but an officer who reverts to warrant can hold the job. This is covered in paragraph 3-14j of NGR 690.2.

This also effects us in the converse, in that, because of the check marks in those boxes, it prevents technicians from progressing militarily. In my own battalion a general mechanic with 16 years of maintenance experience in an organizational maintenance shop was approached to become a maintenance warrant officer in a company serviced by the shop. He agreed and his papers were submitted. They were approved by the intermediate headquarters, by 42d Division Headquarters but when they reached Headquarters New York Army National Guard they were returned because the technician job prevented him from becoming a warrant officer. No check mark in the right box. They will accept an individual with less qualifications to keep the caste system working.

I wanted to fight this under the equal opportunity laws but I was told the individual did not qualify. I think that the National Guard bureau is creating a new minority group, the National Guard technician. This program is a bureaucratic debacle and we are looking for leadership to straighten it out. The adjutant generals and the bureau are out to perpetuate this system so we now look to the Congress to carry our banner.

I would like to thank you again for hearing our story and I will answer any questions you may have.

TECHNICIAN POSITION DESCRIPTION

1. Component: ARNG.
2. Number IA's: 431.
3. Job number: 213 04 90.
4. Appointment Requirements: Excepted; competitive; Off; WO; Enl.
6. Date: 17 Feb 72.
7. Official title: General Supply Assistant.
8. Pay plan: GS.
9. OCC Code: 2001.
10. Grade: 07.
11. Organization and location: Various States.

OCCUPATIONAL REQUIREMENTS

I. Incumbent is subject to uncommon tours of duty, rotational shift assignments and overtime duty, for which compensatory time off will be granted. May be required to fly in military or commercial aircraft for TDY purposes.

II. The following duties, responsibilities, and qualification requirements constitute minimum requirements for support of this job.

III. SUPERVISORY CONTROLS

Receives operational supervision from the Commander or S-4 who outlines duties and responsibilities upon position assumption and who provides subsequent guidance and assistance. Receives staff supervision from the Staff Administrative Assistant. Work is reviewed in terms of adequacy, effectiveness, and compliance with previously expressed decisions and policies.

IV. DUTIES AND RESPONSIBILITIES

a. Serves as Staff Supply Assistant for an Army National Guard battalion or squadron. Plans, directs, and coordinates unit and organization supply policies, procedures, and operations.

b. Serves as property book custodian for an Army National Guard battalion or squadron. Maintains organizational and installation property books and supporting transaction files. Maintains a library of supply publications, such as Technical Bulletins, pricing guides, and supply catalogs.

c. Ascertains authorizations by examining authorization documents and consults appropriate supply publications to determine correct nomenclature, stock number, price, etc. Prepares and submits to USPFO requisitions for required items of supply. Receives incoming supplies and checks them for serviceability and to insure that the correct amounts and types of items have been received. Determines to which units supplies are to be distributed, arranges for supplies to be delivered, and obtains receipts for all items. Withdraws from units and turns in to USPFO excess and unserviceable supplies.

d. Schedules, and conducts, as necessary, periodic inspections and inventories to ascertain that supplies are serviceable and are properly stored, maintained, and accounted for, and takes appropriate corrective action when discrepancies are noted. Investigates and prepares reports of survey to determine accountability and responsibility in case of loss or damage.

e. Instructs ARNG supply personnel within the organization in supply policies and procedures, and plans and conducts on-the-job military occupational speciality training. Assigns trainees to a variety of tasks designed to increase their knowledge and proficiency in all phases of organizational supply management.

f. Communicates with higher headquarters and other agencies on supply matters. Represents commander at meetings and conferences.

g. Performs other related duties as assigned or required.

V. QUALIFICATIONS REQUIRED

Must have thorough knowledge of the Army supply system and applicable supply policies and procedures. Must have knowledge of recognized methods of storage, care, and distribution of materiel and supplies.

VI. MILITARY ASSIGNMENT AND TRAINING

a. *Area of Assignment:* Incumbent must occupy a TOE position comparable to his technician assignment.

b. *Qualification:* Incumbent is required to qualify as Supply Staff Officer, MOS Code 4010, Unit Supply Technician, MOS Code 716A, or Senior Supply Sergeant, MOS Code 76K.

c. *Required Training:* Incumbent is required to attend an appropriate MOS course or complete equivalent Army extension courses, and, if commissioned, to complete a Branch Basic level officer course of instruction.

This series includes positions involving (1) a combination of technical work covered by two or more series in the Supply Group when no other series is appropriate for the paramount knowledges and abilities required for the position; (2) a combination of one or more kinds of technical supply work, plus one or more technical activities related to supply but classifiable in other occupational groups (such as contract and procurement, quality control, property disposal, etc.) when one kind of work is not sufficiently paramount to be series controlling; or (3) other technical or administrative supply work not specifically covered by another series.

Excluded from this series are positions involving (1) a combination of duties when one type of work is sufficiently predominant to be series controlling, or when the combination is specifically included in another series; (2) technical supply work combined with other work requiring unrelated or distinctly different knowledges and abilities (e.g., personnel, budget, etc.) when the combination is specifically classifiable in another series, or when the technical supply work is not sufficiently paramount to be series controlling; (3) the management of a supply program, or analysis, procedural, advisory, or other staff activities which cut across the supply area, where "program management," rather than technical supply knowledges are the paramount qualification requirements; or (4) clerical or other subordinate work in support of technical or administrative supply activities.

The GS-2001-0 Series is designed as a "catchall" for positions involving a combination of two or more technical functions related to a supply program which are not appropriately classifiable to some other series. One objective of this change in series definition is to avoid the use of the GS-301-0 Series for positions which are concerned fundamentally with supply in its broadest

sense, but which incorporate work which crosses group lines.

On the other hand, every possible effort should be made to classify jobs to a more specific series than GS–2001–0. When a position includes a combination of supply activities (such as inventory management and contract and procurement work) typically one will be paramount in terms of the highest skill. Under such circumstances, by all means, classify the position in the series covering the highest skill requirement.

In deciding whether any combination of work is classifiable in the GS–2001–0 Series, it should be kept in mind that technical supply or related activities have some threads of similarity. Thus, a position with *primary* duties in one series, but which *occasionally* includes work classifiable in another series, may require the incumbent to possess essentially only the body of knowledges or qualifications requirements applicable to the primary duties. Such a position should *not* be classified in the GS–2001–0 Series.

Positions in the GS–2001–0 Series, therefore, are those characterized by knowledge and skill requirements typical of two or more series involving technical supply or related activities, each to such a degree of intensity that it is not reasonable to identify the qualifications requirements with those of a more specific series.

Suggested titles

General Supply Assistant (for GS–5 and GS–7 positions)

General Supply Specialist (for positions above GS–7)

Supervisory General Supply Specialist (for supervisory positions)

General Supply Officer (for managerial positions)

a. Supply technicians generally follow established methods and procedures which have been developed by supply specialists or management personnel. We are primarily concerned with the application of these guidelines to specific supply problems or situations. *Occasionally, they may* develop individual work plans or procedures, but these typically are limited to the individual situations with which they work (such as determining reasons for computer rejections).

b. *Supply technicians* perform assignments (1) requiring less explosive knowledge of programs, operations, or organizations serviced (e.g., they relate to functions that are stable or standardized, to more routine portions of more complex programs, to local needs, or to individual case problems or supply actions; and/or (2) requiring a limited knowledge of item characteristics or technical uses of items of supply or equipment. Decisions are made by applying established guidelines, methods or techniques, by drawing on a knowledge of appropriate precedents; or obtaining guidance and instructions from a supply specialist.

Supply specialists (such as supply program analysts, inventory management specialists, supply catalogers, etc.) are responsible for planning and developing the supply system, programs, or services; and for development, adaptation, or interpretation of operating methods or procedures.

Supply specialists perform assignments requiring a deeper knowledge and understanding of programs and the needs and operations of the organizations serviced. For example, the supply specialist (1) must apply a knowledge of present and proposed programs, program changes, work operations, work sequences and schedules; and/or (2) must have a greater knowledge of the technical characteristics or properties of supply items. These knowledges are required, e.g., to plan and forecast invariably needs under changing technological or program requirements; to efficiently distribute or phase material support to accomplish mission requirements; to effectively manage and utilize Government-owned property under changing program requirements; or to clearly identify and describe difficult technical items within a cataloging system. Decisions require considerable judgment in analyzing needs that go beyond the application of guidelines to resolve specific supply problems. . . .

EFFECT OF AUTOMATION (ADP SYSTEMS) ON SUPPLY CLERK AND TECHNICIAN POSITIONS

In an automated supply system, supply clerks and technicians must have sufficient knowledge of the mechanized program to apply the coding structures for specific supply actions; and, in some situations, to know when and how to introduce information or supply actions into the computer. Supply clerks and technicians are not generally required to know how to operate the computer equipment, nor do they typically have any responsibility for programing or for adjusting the equipment when errors due to malfunction are discovered.

Routine supply actions, uncomplicated by errors, are machine processed and impose no additional burden on the supply technician. Many supply clerks and technicians, however, are concerned almost entirely with actions of high priority; or actions which were rejected by the computer for various reasons. These include, for example, errors of coding, unit of issue, or quantity, inadequate identification, nonavailability, shipment of wrong items, etc. Such errors may occur during the input stage, or at any point in the supply cycle; they may be card punch or data processing errors, or failures that developed within the data processing element. The supply clerk or technician must determine the cause and correct the errors, and must choose the appropriate method by which the computer will restart the proper flow of information.

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DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU

TECHNICAL POSITION DESCRIPTION

1. Date: 1 Jul 70.
2. Component: ARNG.
3. Job number: 848 67 13.
4. Appointment requirements: excepted service; 2 enl.
5. Number of jobs covered by position description: 630.
6. Official title: Aircraft mechanic.
7. Pay plan: WG.
8. OCC code: 8852.
9. Grade: 10.
10. Working title: Aircraft and Engine Mechanic (Fixed and Rotary Wing).

I. OCCUPATIONAL REQUIREMENTS

Incumbent is subject to uncommon tours of duty, rotational shift assignments and overtime duty, for which compensatory time off will be granted. May be required to fly in military or commercial aircraft for TDY purposes.

II. The following duties, responsibilities, and qualification requirements constitute minimum requirements for support of this job:

III. SUPERVISORY CONTROLS

Work is performed under general supervision. Assignments are given in the form of work orders, inspection reports, or verbal instructions. Incumbent is expected to plan work sequences, select tools and repair parts, and otherwise carry assignments through to completion, referring only unusual and difficult problems to supervisor. Work is subject to check in process and upon completion for acceptability and adherence to instructions and established standards. Published guidance includes technical manuals, manufacturer's specifications, factory engineering bulletins and standard operating procedures.

IV. DUTIES AND RESPONSIBILITIES

a. Performs full range of direct support and limited general support level maintenance, disassembly, repair, and modification of all classes, models, and series of Army fixed and rotary wing aircraft, their major assemblies, components and related systems in an Army Aviation Support Facility (AASF) or Army Aviation Flight Activity (AAFA).

b. Conducts inspections, diagnoses malfunctions and troubleshoots to determine cause. Makes operational checks of systems, using external power sources, powered ground equipment or functional test. Removes, disassembles, inspects, repairs, adjusts, modifies, reassembles and installs or replaces turbine and piston engines, and major assemblies, sub-assemblies, components and systems such as cylinder assemblies, oil, fuel, vacuum and hydraulic pump assemblies, main and tail rotor assemblies, clutches, driveshafts, transmissions, gear boxes, and other power train units, trim cab motors, cooling fan assemblies, control valves, shrouds, carburetors, etc. Installs, connects and adjusts fuel, electrical and hydraulic systems. Installs fuselage and airframe parts. Builds up, balances, aligns and installs main tail rotor assemblies. Rigs complete flight control systems.

c. In correcting malfunctions, makes necessary adjustment to all controls, mechanical linkages, and actuating mechanisms. Replaces parts, components, and assemblies. Visually examines the entire aircraft in conjunction with operational checks to locate discrepancies such as leaks and loose or missing parts. Removes and replaces parts, components, and assemblies, control surfaces, and wings. Accomplishes modification work order changes. Adjusts engine controls, cockpit and control surface controls, rigging, linkages and stops.

d. Occasionally may be required to start and operate aircraft engine through various speed ranges, viewing instrument readings to determine whether operation is within allowable limits. Determines cause of faulty engine operation and makes corrective adjustments and repairs. Checks and adjusts propeller for proper operation. Pre-oils newly installed engines according to specified technical procedures and makes initial start.

e. Repairs, adjusts, and replaces airframe components such as doors, canopies, windshields, hatches, seats, armament mounts, and structural members. Exercises judgment in determining whether to repair or to replace and in making adjustments to fit aircraft configuration.

f. Uses a variety of hand tools, power tools, work stands, external power sources, jigs, fixtures, templates, powered ground equipment, test stands, and precision gages and measuring devices in accomplishing troubleshooting and repair tasks.

g. As required by current maintenance policy, inspects own work upon completion and certifies that work meets standards of technical adequacy. Performs post flight inspection. Participates in aerial flights as required.

h. Performs other duties as assigned.

V. WORKING CONDITIONS

Work is done inside and outside. Inside areas are drafty and noisy, and fumes are usually present. The incumbent may be required to make some repairs outside in bad weather. Dirt, dust, grease, are almost always present. Aircraft fluids, such as oil and hydraulic fluids, may irritate the eyes or skin. There is frequent exposure to the possibility of cuts, burns, shocks, stains, and broken bones.

VI. QUALIFICATIONS

a. Must be technically qualified to make any type of repair on all fixed and rotary wing aircraft assigned to the State.

b. Is required to qualify as an aircraft mechanic in one of the enlisted military occupational specialities in the Aircraft Maintenance, MOS Code 67, group.

COVERAGE OF STANDARD

This standard is used to grade all nonsupervisory jobs involved in the maintenance and repair of fixed and rotary wing aircraft systems, airframes, components, and assemblies. Aircraft worked on include a variety of models, are single and multiengine types, and have reciprocating and jet engines.

JOBS NOT COVERED BY THIS STANDARD

Jobs involved in the maintenance and repair of single aircraft systems (for example, electrical, electronic), or doing specialized aircraft work (for example, propeller overhaul, engine rebuilding) are not graded by this standard.

TITLES

Jobs covered by this standard below the WG–10 level are to be titled *Aircraft Worker.*

Jobs covered by this standard at the WG–10 level and above are to be titled *Aircraft Mechanic.*

GRADE LEVELS

This standard does not describe all possible levels at which jobs might be established. If jobs differ substantially from the skill, knowledge, and other work requirements described in the grade levels of the standard, they may warrant grading either above or below those grades.

HELPER AND INTERMEDIATE JOBS

Jobs that are part of a planned program of training and development for advancement to a higher grade are graded by the U.S. Civil Service Commission job grading standards for Trades Helper and Intermediate Jobs. (WG–10 in this standard is to be used as the "journeyman grade" in applying the Intermediate Job Grading Table.)

General: The work at this grade involves making repairs to a variety of systems, assemblies, and surfaces such as hydraulic, oil, fuel, and pressurization systems, landing gear assemblies, ailerons, and flaps.

The WG–10 mechanic uses test stands and cockpit gauges, instruments, and controls as well as visual checks to troubleshoot (trace and locate) defects and determine the type and extent of repair needed. He installs, alines, and adjusts whole new systems, assemblies, and surfaces (like those described above) as needed, or repairs them by installing and adjusting all defective components and parts such as complete cable riggings, rudder pedals, pumps, and controls. He connects up related systems, such as the hydraulic and cable systems, to the newly-installed or repaired units, and makes adjustments to the units and their related mechanisms that assure their proper operation.

In comparison with WG–8, the mechanic at WG–10 must have a greater knowledge of how the various systems, assemblies, and surfaces fit and work together, knowledge of a wide variety of test procedures, and skill in tracing hard-to-locate defects or problems. The WG–10 mechanic determines the repairs needed and does the work with little or no advice. The supervisor checks his work only to see that it meets accepted trade standards.

Skill and Knowledge: At this grade, the mechanic must have knowledge of the makeup, operation, and installation of a variety of systems, assemblies, and surfaces such as fuel and hydraulic systems, landing gear assemblies, and elevator. Because of the complicated ways in which assemblies, systems, and surfaces are installed, fit, and work together the WG–10 mechanic must have more ability than the WG–8 aircraft worker to determine when new surfaces, assemblies, and systems should be installed, when systems, assemblies, and surfaces can be repaired through replacement of new parts and components, and the types and extent of adjustment and alinement required. The mechanic must have skill in the removal, replacement, and adjustment of various systems, assemblies, and surfaces or any of their components and parts. He must also have skill in connecting, meshing, alining, and adjusting the surfaces, assemblies, and systems with one another, for example, meshing the propeller assembly with the engine, hooking up and adjusting fuel and oil systems for proper flow, injection, and pressure, and setting engine timing. The mechanic must have skill in the use of jigs, fixtures, templates, precision dial and feeler gauges, and common handtools. He must also have skill in the use and read-out of powered ground equipment, test stands, and cockpit instruments and gauges.

Responsibility: The supervisor assigns work orally or through work orders. The mechanic determines the type and extent of repair needed, and completes repairs with little or no check during their progress or upon completion. He makes installations, alinements, and adjustments of the various systems, assemblies, and surfaces according to specifications in repair and manufacturer manuals. For example, he installs rudders and elevators on fixed tail surfaces, hooks up related control systems such as cable rigging and pulley systems, and makes adjustments to controls, pedals, systems, and surfaces according to required operating specifications. The WG–10 mechanic makes more difficult installations, alinements, and adjustments than the WG–8 aircraft worker in that he must be able to install and make all necessary hookups and connections between a wide variety of systems, assemblies, and surfaces as well as to any of the individual parts and components involved. The supervisor insures that overall work meets accepted trade standards.

Physical Effort: Physical effort required at this grade is the same as that described at WG–8.

Working Conditions: Working conditions at this grade are the same as those described at WG–8.

TECHNICIAN POSITION DESCRIPTION

1. Component: ARNC.
2. Number 1A's: 1000.
3. Job Number: 548–63–13.
4. Appointment Requirements: Excepted, ENL.
6. Date: 18 Feb. 72.
7. Official Title: General Mechanic.
8. Pay Plan: WG.
9. OCC Code: 5801.
10. Grade: 08.
11. Organization and Location: Various States.
12. If this position replaces another (*i.e. change of duties in an existing position*) identify position by title, allocation (*service, series, grade*), and position number, in lieu of 548–63–01 and 448–63–08.

OCCUPATONAL REQUIREMENTS

I. Incumbent is subject to uncommon tours of duty, rotational shift assignments and overtime duty, for which compensatory time off will be granted. May be required to fly in military or commercial aircraft for TDY purposes.

II. The following duties, responsibilities, and qualification requirements constitute minimum requirements for support of this job.

III. SUPERVISORY CONTROL

Work is performed under the supervision of Shop Foreman, or higher grade Mechanic who makes assignments through written job orders which identify the equipment to be worked on and the nature of the work to be accomplished. Work is subject to spot check during progress and to final inspection upon completion for compliance with instructions and adequacy of performance.

IV. DUTIES AND RESPONSIBILITIES

1. Performs one or more of the following organizational Maintenance duties. Posts repairs or services rendered to appropriate records:

a. Performs maintenance and repair on; tactical and automotive vehicles and diesel and gasoline powered equipment. Inspects and trouble shoots equipment, making repairs including removing and replacing new or rebuilt assemblies such as voltage regulators, generators, carburetors, fuel pumps, etc.; repairing or replacing brake cylinders; removing and cleaning or replacing fuel tanks, spark plugs, etc.; adjusting tappets; changing or adjusting distributor points; lubricating assemblies and chassis, and similar work.

b. Performs maintenance and repair on engineer equipment, such as graders, conveyors, bulldozers, power shovels and cranes. Inspects and trouble shoots equipment making repairs including removing and replacing new and rebuilt assemblies, etc.

c. Performs maintenance and repair on small arms and accessory equipment. Inspects, trouble shoots and repairs, rifles, pistols, machine guns, rocket launchers, motors, recoilless rifles and associated mounts and carriages and related hardware. Replaces worn or damaged parts.

d. Performs maintenance and repair on artillery weapons and associated mounts, turrets carriages including allied mechanical electrical and hydraulic systems. Repairs and adjusts towed self-propelled artillery. Repairs and adjusts traversing, elevating, recoil and electrical systems, tube and breech assemblies, hydraulic systems, etc.

e. Performs maintenance and repairs on tanks with radial and other type engines, armored and/or scout cars, track mounted cranes, half tracks, high speed tractors and other combat vehicles utilizing gasoline or diesel power.

f. Performs maintenance and repair on electronic and communication equipment including complete systems, replacing components and individual elements. Repairs, radar, radio, amplifiers, switchboards, transmitters, recorders, intercommunication equipment and similar signal oriented equipment including those used for testing and adjusting purposes. Installs and removes equipment from fixed and mobile facilities.

2. In addition to one or more of the above duties the incumbent is required to make minor body and fender or metal case repairs, using peening hammers, dinging bars and dollies, welding equipment and paint spray equipment. Makes minor repair to canvas and leather equipment using awls, canvas needles, thread, cement, metal grommets, riveting equipment and similar hand tools of the trade.

Performs other duties as assigned.

V. WORKING CONDITIONS

Works with heavy and frequently moving equipment in shop or unit equipment storage area. Often required to repair electronic gear involving high voltage circuits. Works on compressors and hydraulic systems which carry as much as 3000 PSI. Incumbent must be alert and safety conscious at all times due to frequently working alone or without supervision. May be required to work at unit training site up to 150 miles from shop. May be required to work out doors during inclement weather. Subject to cuts, bruises, strains, mashed fingers and other hazards not normally associated with the highly specialized mechanics working in civilian trade or post maintenance shops.

VI. QUALIFICATIONS REQUIRED

Must be thoroughly familiar with maintenance charts, directives and modification orders, and be able to read and interpret blue prints and wiring diagrams used in the repair of equipment.

Must occupy a TOE position appropriate for his technician assignment.

Must qualify as Field Radio Mechanic, MOS Code 31B, Small Arms Repairman, MOS Code 45B, Artillery Mechanic, MOS Code 45F, and/or General Vehicle Repairman, MOS Code 63C.

Must attend an appropriate MOS course or complete equivalent Army extension courses.

General: The work at this grade involves making repairs that can be accomplished by removing, cleaning, reinstalling, or replacing defective parts, accessories, and components such as worn gaskets, couplings, and fittings, bad actuators, accumulators, and gauges, sections of corroded fuel and oil lines, worn cable pulleys, frayed spark plug cables, and burned-out landing lights.

The WG–8 aircraft worker locates worn, dirty, or poorly adjusted parts, accessories, and components through visual check. He completes needed repairs like those described above, and makes adjustments and settings such as cable tension, and seat movement settings and adjustments.

Skill and Knowledge: At this grade, the aircraft worker must have a knowledge of where and how a variety of parts, accessories, and components, such as couplings, spark plug cables, seat tracks, and accumulators, are installed. He must have the ability to determine when parts and components should be cleaned and reinstalled, or replaced with standard parts and components. He must have the skill needed to remove and replace parts, accessories, and components, and to make adjustments and settings, such as cable tension and actuator travel, according to established specifications. The aircraft worker also requires skill in the use of common handtools, for example, pliers, wrenches, and screwdrivers.

Responsibility: A higher grade worker or supervisor assigns work orally or through work orders. The aircraft worker selects tools, decides on methods and techniques to use, and carries out assignments with little check during their progress. He obtains standard parts, such as fuel and oil line connections and fittings, cable linkages, and spark plug cables and harnesses, by looking up replacement information in parts manuals and by making comparisons with samples. He insures that adjustments and settings, such as takeup on connections, seat travel, and cable tension, meets established requirements by checking and following the specifications called for in repair and manufacturer manuals. A higher grade worker gives advice on unusual problems. For example, when normal installation and adjustment procedures and established specifications fail to give the expected result, a higher grade worker or supervisor suggests other repair procedures or adjustments that can be tried. The higher grade worker or supervisor also checks to see that completed work meets requirements.

Physical Effort: The aircraft worker makes repairs from work stands, and where parts worked on are in hard-to-reach places. This requires him to climb, stand, stoop, bend, stretch, and work in tiring and uncomfortable positions. The aircraft worker frequently lifts parts and equipment that weigh up to 20 pounds. Occasionally, he may lift and carry items that weigh about 50 pounds.

Working Conditions: The work at this grade is done inside and outside. Inside areas are drafty and noisy, and fumes are usually present. The aircraft worker may make some repairs outside in bad weather. Dirt, dust and grease, are almost always present. Aircraft fluids, such as oil and hydraulic fluids, may irritate the eyes or skin. There is frequent exposure to the possibility of cuts, burns, shocks, strains, and broken bones.

Physical Effort: The automotive worker makes repairs while the vehicle is overhead, and where the parts worked on are in hard-to-reach places. This requires him to stand, stoop, bend, stretch, and work in tiring and uncomfortable positions. The automotive worker frequently lifts parts and equipment that weigh up to 20 pounds. Occasionally, he may lift and carry items that weight about 50 pounds.

Working Conditions: Most work at this grade is done inside where it is drafty and noisy, and fumes from vehicles are usually present. The automotive worker must frequently stand on hard surfaces for long periods of time. There are times when he must crawl under vehicles and make repairs while on hard, usually damp, surfaces. The automotive worker is occasionally called upon to perform repairs outside, sometimes in bad weather. Dirt, dust, and grease are always present. Vehicle fluids, such as battery acid and hydraulic fluids, may cause burns or irritate the skin. There is frequently exposure to the possibility of cuts, bruises, shocks, burns, and strains.

General: The work at this grade involves making repairs to major components and assemblies, such as engines, transmissions, and differentials.

The WG–10 mechanic uses a wide variety of test equipment, for example, test panels, dynamometers, oscilloscopes, and exhaust analyzers, as well as visual and listening checks to trouble-shoot (trace and locate) defects and determine the type and extent of repair needed. He tears down and rebuilds components and assemblies (like those described above) by fitting and installing needed parts such as rings, pistons, bearings, and gears. He alines, meshes, and connects repaired units to related mechanisms, for example, the engine and related clutch mechanism. The mechanic also hooks up fuel, oil, hydraulic, and electrical systems to repaired units, and makes adjustments to assure proper operation of units.

In comparison with the Automotive Worker, WG–8, the mechanic at WG–10 must have a greater knowledge of how all the components, assemblies, and parts fit and work together, knowledge of a wide variety of test procedures, and skill in tracing hard-to-locate defects or problems. The WG–10 mechanic determines the repairs needed and does the work with little or no advice. The supervisor checks his work only to see that it meets accepted trade standards.

Skill and Knowledge: At this grade, the mechanic must have knowledge of the make-up, operation, and installation of all components, assemblies, and systems of vehicles such as engines, transmissions, front- and rear-end assemblies, power steering and braking mechanisms, and air-conditioning, electrical, and hydraulic systems. He must have the ability to determine when and how far major components should be torn down, what parts and mechanisms can be reworked and refitted or should be replaced with new parts, and the types and extent of adjustment and alinement required. The mechanic must have the skill needed to remove and tear down major components and assemblies, such as engines and transmissions, and to rebuild, adjust, reinstall, aline, and mesh such components and assemblies. The mechanic must have skill in the use of bench lathes, grinding and seating equipment, clutch pilot and gear puller tools, and common handtools. He must also have skill in the use of a wide variety of test equipment, for example, test stands, oscilloscopes, compression gauges, special feeler and dial gauges, exhaust analyzers, and engine and chassis dynamometers.

Responsibility: The supervisor assigns work orally or through work orders. The mechanic determines the type and extent of repair needed, and completes repairs with little or no check during their progress or upon completion. In rebuilding major components and assemblies, such as differentials, transmissions, and engines, the mechanic obtains and follows clearance and fitting specifications found in repair and manufacturer manuals. He also completes alinements and adjustments of the various components and assemblies according to specifications, for example, adjustments to timing gears in the engine and alinements between the transmission, transfer case, propeller shaft, and drive axles. The supervisor insures that overall work meets accepted trade standards.

Physical Effort: Physical effort required at this grade is the same as that described at WG–8.

Working Conditions: Working conditions at this grade are the same as those described at WG–8.

LEGALIZING MARIHUANA

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BOB WILSON. Mr. Speaker, the recently published report of the Commission on Marihuana and Drug Abuse created an immediate controversy over the pros and cons of legalizing marihuana. Before we plunge headlong into any major revision of the present legal status of marihuana, we need to rationally consider the full import of such a step. I was very impressed by a letter recently received from a longtime friend and leading California banker, Thomas W. Sefton, president of San Diego Trust and Savings Bank. I hope my colleagues will take the time to review his thoughtful commentary:

SAN DIEGO,
March 29, 1972.

Congressman BOB WILSON,
House of Representatives,
Washington, D.C.

DEAR BOB: The National Committee on Marijuana and Drug Abuse report is not an indictment or an endorsement of marijuana. This 194 page product of twelve months of intensive study is the most recent attempt to neatly package the drug problem in this country and to this end the report is not successful.

It sets out generalizations about use that are filled with contradictions:

"Marijuana causes no physical addiction. A psychological dependency can develop with daily use over a long period."

"There is no reliable evidence that marijuana causes birth defects but the Commission nonetheless cautioned women not to use it while pregnant."

"Marijuana does not of itself appear to lead to insanity. However, there are more examples of psychotic behavior by persons using heavy doses."

"Research indicates that smoking marijuana does not significantly hurt driving ability. However, the Commission said more research is needed and concluded that anyone driving under the influence of any mind-changing drug, including marijuana, is a serious threat to public safety."

And, then, in sort of a final salute to its justifications, the report states "Marijuana use is not such a great problem that individuals who smoke marijuana—should be subject to criminal procedures. On the other hand we have also rejected the legalizations scheme because it would institutionalize the availability of a drug which has uncertain long term effects and which may be of a transient social interest."

In view of the tremendous amount of uncertainty about the use of marijuana, doesn't

it seem premature to make specific recommendations that could not only mislead users into a sense of false security but lead legislators into some very short sighted legislation?

Sincerely,

THOMAS W. SEFTON.

ESSENTIALITY OF STEEL INDUSTRY TO OUR NATIONAL SECURITY

HON. JOHN H. DENT

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. DENT. Mr. Speaker, on Friday, April 7, 1972, I had the privilege and pleasure of presenting testimony and participating at a hearing of the Senate Armed Services Subcommittee chaired by the distinguished Senator from Virginia (Mr. BYRD) on the subject of the essentiality of the specialty steel industry to our national security. Also serving on the subcommittee is my good friend and Pennsylvania colleague, Senator SCHWEIKER.

Mr. Speaker, I appreciated having the opportunity to take part in those deliberations and believe it significant that the discussion took place within the context of our national security. Certainly, there is no domestic industry more essential to our national defense than the specialty steel industry. And there are few among our industries more adversely affected by the influx of foreign competition.

At this point in the RECORD, I include my presentation at that hearing:

STATEMENT OF THE HONORABLE JOHN H. DENT

Mr. Chairman, I appreciate the opportunity to appear before this august committee and present my views on the most important subject of the essentiality of the specialty steel industry to our national security. I congratulate the Chairman, the distinguished Senator from Virginia, and his Colleagues for opening up the dialogue and consideration of an issue so basic in the area of national concern.

In the way of background, I come here today after more than twenty years of study of our international trade policies. During the past twelve years, I have served as chairman of the House committee with jurisdiction in the subject matter of the impact of imports on U.S. employment. I think my statements in the past might qualify me as a witness friendly to the curtailment of excessive imports of any kind, and certainly so in the area of strategic production, such as specialty steel.

This type of essential production is necessarily one of low volume productivity as compared to basic steel. Basic steel is yet another problem area, and must be considered in a different setting.

We are concerned today with the future of specialty steels, its role in the past growth and struggles of our Nation in peace and war, and the present crisis as it affects our future ability to survive in a time of national emergency.

Specialty steels occupy a peculiar position in our military posture. Without these steels, our defensive and offensive capabilities would necessarily depend upon the crudest of weapons. Virtually all aspects are affected: the transportation of men and material, the cultivation and processing of full rations, and even the clothing and covers for modern mobile military units.

It has been said that in the beginning our Navy was made up of wooden ships and iron men. Today we have iron ships, but without tool steel we would soon return to wooden ships. Some might find this acceptable, but other nations would still have the iron ships.

No other nation has decreased its specialty steel capability. No other nation allows its defense posture to be so dependent upon imports and the friendship and good will of other nations. And I am speaking of other nations as those that were old when we were born. In spite of all the centuries of time they have somehow endured. Will our future hold the same promise?

The tool steel industry was in a reasonably healthy condition insofar as its share of the American market was concerned until 1967–68. What caused the turn around? The answer is easy: the Voluntary Steel Agreement between the United States steel producers and the foreign steel exporters.

This agreement, like all voluntary agreements ever made in international trade, has been honored by its breach. The smart exporters never honored the most vital part of the agreement, the maintenance of the product mix of types of steel by percentages of the base year shipments to the United States.

It does not require genius to realize that low priced basic steel displaced by high priced special steel will add greater value to a fixed volume of shipments. It does not take too much of a tonnage change in specialty steel to produce a depressed market since one steel sells by the pound while the other sells by the ton. The price of a ton of reinforcing rods for road building would only buy limited pounds of special alloy drill rods. Our competitors therefore shifted their product mix and our deterioration in jobs and production started immediately.

Mr. Chairman, the situation is grave for the near future.

Without this important segment of the steel industry in its healthiest condition, we will not have the training programs on the job to provide for the inevitable day when we are forced to produce our own arms and materials.

Our plants will be gone, or even worse, they will be warehouses for foreign made steels, with warehousemen instead of skilled technicians. This may sound like a gloom and doom statement; it is intended as such.

My committee has predicted the demise of certain facilities for a dozen years. I can show you an empty specialty steel plant in my district and the modern relics of bygone facilities in every nook and corner of my State.

If it is true in glass, tile, sporting goods, electronics, lamps, watches, automobiles, and hundreds of other products, what makes any of us think it can't happen in specialty steel.

Mr. Chairman, it is not only the direct shipments of these steels that threaten the future of this industry and our country, it is the billions of dollars worth of production imported in all the above listed items. I say this because not a single product in the entire world of trade can be produced without specialty steel in one form or another.

There is one single but irrefutable fact of life in the world of international trade. Trade anywhere, internally or externally, is a commercial venture. Its purpose in being is profit in one form or another; first, last, and always (this is only questionable when the trade policies of the U.S. in international markets is studied and judged).

To attribute any other purpose to trade in our modern world is to deal in theory, philosophy, and dreams. Dreams, I might add, that have turned to nightmares to harrassed company executives and millions of unemployed families in our Nation.

No nation can indulge in free trade without recognizing the fact that the high cost nation must necessarily suffer if it does not protect itself against well made, cheaper priced materials and products.

Time will not permit the relating of our sorry history in this field of endeavor since the day of the Armistice, November 11, 1918, until this date, April 7, 1972. Enough to say that contrary to free traders, the crash in 1929 did not come from high tariffs. From 1919 until 1930 we operated under the Fordny McComb Act—during these years (1919–1930—11 years) we imported $43 billion worth of foreign products mainly from our Allies—Great Britain, France, Holland, and Italy. The payment plan for these goods is another story.

Suffice it to say that the crash came in 1929, one year before the scape-goat Smoot-Hawley Tariff Act, which never got off the ground after President Roosevelt's election.

The $43 billion of imports incidentally actually displaced about $100 billion worth of U.S. production.

A study made in 1951 by Lloyd Lewis ("Tariffs A Case For Protection") shows an astonishing similarity between 1920, the highest year of imports in our history ($5,278,000,000 with an average tariff of 5.3% on all goods dutible and free), and 1948, the first year of the Geneva agreements, when we imported the highest volume of imports from the beginning of the Republic—a total of $7,124,000,000, with the average tariff being 5.6% of all goods.

The significant point is that 1920 had the highest import and the lowest tariff in history to that point. The average tariff from 1920 to 1940 was between 14–15% on all goods up to 1944, when the tariff again dropped to 5.6% and the imports reached their highest peak. There is no need to tell you the story of the steady growth of imports and the disastrous drop in tariff from 1944 on.

Let the record of this hearing show that we have had a balance of payments deficit from 1961 to 1972—with more than $9 billion in 1971 alone. In spite of free trade, or maybe because of it, the imports of high cost products (such as specialty steel) have created a balance of payments liability. And because of low cost product imports (such as textiles and footwear), our unemployment is greater than anytime since the great depression. (Some labor economists tend to prove this is the greatest unemployment in history.)

Mr. Chairman, I have tried to make the point that the specialty steel industry is essential to our safety and well being. To save the specialty steel industry alone, however, would be of no avail. Our Nation cannot survive with only a sound heart, while the rest of the body suffers from a spreading cancer.

The cancer in this case is "free trade". In his "The Breakdown of Money", Christopher Hollis neatly stacked the chips for counting when he detailed the premises of free trade and the resultant conclusions. The essence of his work was to the effect that free trade and its many manipulations caused debts to be created; debts that could be neither serviced nor paid.

How true! The international balance sheet shows that as of 1970, we owe our trading partners $63 billion, all but $3 billion to be paid on demand, and only about $11 billion in gold reserve left to our name. We do have a huge credit of many billions, none of which, however, is collectible on demand since it represents old war debts, soft loans, and plain and fancy giveaways under various titles.

While this committee is primarily interested in how imports of specialty steel affect our defense and military posture, it is imperative that we show cause why this industry cannot compete in a free trade world:

(1) We have high wages—from five to ten times as much as wages paid elsewhere;

(2) We have a high tax structure;

(3) We have organized labor with work rules;

(4) We have federal and state fair labor standards laws; and

(5) We have antitrust, antimonopoly, anticartel laws.

In most of our exporting industries, we also have fixed freight, utility, social security, pension, welfare, unemployment compensation, and workmen's compensation costs that no other nation has all of. These charges add more cost to our products than all foreign production costs—including labor, shipping, and profit. That is one reason we cannot compete.

The tool steel industry has no subsidies, and its foreign counterparts enjoy subsidies in one form or another. That is another reason it cannot compete. We have free labor as opposed to controlled labor, and that is another reason we cannot compete.

Our trade agreements are based on theory, while those of our competitors are based upon dollars and sense (spelled SENSE). That is another reason we cannot compete.

Because we pay a bonus by way of investment incentives, tax considerations, and import concessions, billions of dollars have been invested in foreign production to be sent to the U.S. for consumption. And because American corporations have therefore become international in character—dressed in striped pants and cutaway coats instead of business suits and coveralls—is another and the latest reason we cannot compete.

We finance development banks, world banks, and other loan and grants agencies. We encourage overseas production to further stifle our expansion and flood our markets. That is another reason we cannot compete.

Because money is the name of the game and the bankers control it, and because politics has gone beyond the traditional type of candidate, and big names plus big money control the purse strings of the political arena, and because foreign trade offers the most for the least—well, help is available for many causes, not excluding political aspirations. And maybe that is another reason we cannot compete.

Maybe the Congress has had its head in the sand. Maybe labor has closed its eyes to one true fact—there can be no free labor in a free trade world. Maybe the news media hasn't the time or inclination to inform our Nation of the impending crisis in imports. And, finally, maybe the President and the State Department should heed the advice of President Franklin Roosevelt when he said, *"Never tie our international trade to the will of the wisp of international diplomacy."*

Perhaps, Mr. Chairman, this is the real reason we cannot compete.

Mr. Chairman, I would like the following items to accompany my remarks for the record:

(1) correspondence regarding the closure of specialty metals activities at the Blairsville Westinghouse plant in my district;

(2) the most recent financial data of the Latrobe Steel Company, a specialty steel producer in my district;

(3) my letter to my Colleagues regarding the plight of the U.S. steel industry; and

(4) relevant excerpts from statements I made in the *Congressional Record*.

Mr. Chairman, I deeply appreciate your kindness in inviting me to appear today, and your patience in listening to what I have said. Please be assured of my sincerity in this matter and of my willingness to cooperate with you in every way.

WESTINGHOUSE ELECTRIC CORP.,
Blairsville, Pa., January 20, 1972.

Hon. JOHN H. DENT,
House of Representatives,
Washington, D.C.

DEAR MR. DENT: It is with profound regret that I advise you of the close-down of the Wrought Products Department of the Specialty Metals Division of Westinghouse Electric Corporation in Derry Township, Westmoreland County, Pennsylvania. Our Wrought Products Department was basically in the specialty steels business which has simply become impossible to continue due to intense foreign low-priced competition.

We are including with this letter three pieces of correspondence that will give you more information on this subject. This decision unfortunately affects approximately 250 of our 560 people employed at this plant.

As you are undoubtedly aware, the quota type system for limiting steel imports into the United States has dealt a severe blow to the specialty steel producers. It is only natural that a foreign producer would be more interested in filling his quota with high value specialty steels rather than with low cent per pound ordinary grades. We in the specialty steels business have found ourselves under even more attack and pressure than the rest of the steel industry.

I regret having to send you this communication but look forward to having the honor and pleasure of meeting you in the future.

Very truly yours,

L. A. MEIERKORD, JR.,
General Manager.

WESTINGHOUSE ELECTRIC CORP.,
Blairsville, Pa., January 20, 1972.

FELLOW EMPLOYE: As you all know, the market for our Wrought Products is severely depressed and for several years we have faced very fierce domestic and foreign competition. Since the middle of 1971 we have been studying the Wrought Products operation. In previous letters to you, I have discussed our efforts to find solutions to the problems faced by this Department. Our basic concern was how we might be able to successfully stay in the business and continue to provide jobs.

As we studied the problems, a number of possible solutions were explored in depth. I mentioned several of these to you in my letter of October 28, 1971. Reluctantly, we have come to the conclusion that there is no reasonable way we can stay in this business.

Today I have the unenviable task of announcing that our Wrought Products Department is to be phased out of operation. We are getting out of the business completely . . . selling, if possible, work in process, scrapping remaining raw materials and putting all machinery and equipment up for sale. Our customers—both inside and outside Westinghouse—will have to find other suppliers.

This decision will result in a reduction in force of approximately 250 of our present total employment, which is currently 560.

The first employees to be affected by the phase-out will probably receive reduction-in-force notices before the end of this month, and we anticipate being out of the Wrought Products business within a few months. I cannot give you any firm schedule because the final decision on this action was only made this week.

We are willing to sit down with union leaders to try to work out the best possible procedures under the circumstances, giving full consideration to the length of service of our employees.

You can be certain that the Division and the Company will make every effort to find new jobs for all those who are up for disposition as a result of us phasing-out our Wrought Products Department.

For example,

We are going to run advertisements in the local newspapers and the Pittsburgh newspapers to advise potential employers of the skills and availability of Blairsville employes.

We are going to invite potential employers to interview available employes right here in our plant.

I am asking local community leaders to let me know if they know of the availability of any jobs in the immediate area.

We will try to get the State Employment Service representatives to come to the plant, if practical.

All employes affected will get full and complete information on available benefits, including such things as Layoff Income and Vacation Eligibility.

You may ask what is going to happen to the manufacturing space now occupied by Wrought Products. Although details are incomplete, we plan to renovate this manufacturing space. Hopefully, this renovation will begin soon and eventually lead to new or expanded manufacturing operations related to the growing market for our tubular products.

Making this announcement is an extremely difficult task for me. I find little consolation in the hard, cold fact that the Division and the Company can no longer stay in the Wrought Products business.

This Division faces an extremely difficult time in the weeks and months ahead. However, I am counting on the cooperation of every employe to assure the success of the operations that will continue here at Blairsville.

Very truly yours,

L. A. MEIERKORD, JR.,
General Manager.

WESTINGHOUSE ELECTRIC CORP.,
Blairsville, Pa., January 21, 1972.

To our Friends in the communities surrounding Blairsville:

I am sorry to announce that the Westinghouse Specialty Metals Division is phasing out our Wrought Products Department. As you can see by the attached copy of the letter I have sent to all employes, we cannot reasonably stay in the wrought products business in face of the depressed economic condition of our markets and the intense competition we have faced from foreign suppliers of similar products.

One of the biggest concerns I have about the decision we have been forced to make is the economic impact this decision will have on the communities where affected employes live. However, we had to face up to facts and make a decision based on those facts. We explored every possible alternative and came up with nothing except the fact that we could no longer stay in this business.

Our tubular products operation will continue at our Blairsville plant, and the outlook for this end of our business is reasonably good. In fact, we are planning to renovate the manufacturing space now occupied by our Wrought Products Department and devote this space to increased production of tubular products and related activities.

As I said originally, I am sorry to have to give you this information. We are going to make every effort we can to find jobs for any of our employes who may be affected by this decision. If you know of any jobs that might be available for any of our employes I would appreciate hearing from you, or if you have any questions about what we are doing I would be glad to have you call me.

Very truly yours,

L. A. MEIERKORD, JR.,
General Manager.

PRESS RELEASE

DERRY TOWNSHIP, PA., January 20.—It was announced today that the Wrought Products Department of the Westinghouse Specialty Metals Division located near Blairsville will be phased out of operation within a few months.

In making the announcement, L. A. Meierkord, Jr., Division General Manager, cited a severely depressed market situation as well as intense domestic and foreign competition as key reasons for the decision.

Mr. Meierkord added that, "Since the middle of 1971 we have been studying the Division's Wrought Products operation. Our basic concern was how we might stay in this business and continue to provide jobs. A

number of possible alternatives were explored in depth. Reluctantly we came to the conclusion that there is no reasonable way we can stay in this business."

Somewhere in the neighborhood of 250 employees out of a total of 560 will be affected by the Wrought Products Department phaseout. The first reduction-in-force notices will probably be given to employes by the end of this month, and the Department expects to be out of the Wrought Products business within a few months.

In his letter to all employes, Mr. Meierkord pointed out that management is willing to sit down with union leaders to try to work out the best possible disposition procedures under the circumstances, giving full consideration to the length of service of our employes.

Mr. Meierkord also stressed that the Division and the Company will make every effort to find new jobs for those employes affected by the decision.

"For example," Mr. Meierkord told all employes, "the Division is going to invite other potential employers into the plant for interviews with employes who become available; we are going to run advertisements in the local newspapers and the Pittsburgh newspapers to advise potential employers of the availability of Blairsville employes; we are asking community leaders to let us know if they know of the availability of any jobs in the immediate area; we will try to get the State Employment Service representatives to come to the plant, if practical.

CONGRESS OF THE UNITED STATES,
Washington, D.C., February 9, 1972.

Mr. L. A. MEIERKORD,
Specialty Metals Division,
Blairsville, Pa.

MY DEAR MR. MEIERKORD: I hesitated to answer your letter of the 20th dealing with the closing down of the specialty metals division of your Derry plant. I have known the problems of specialty metals and specialty steel industries since I started to look into the impact of imports on American industries back in 1959. At that time we could almost pin-point the individual companies and products that were going to be selected as targets by the import crowd. However, today they do not bother to take sight and aim at a specific target, but instead they use a scatter gun approach and are successfully shooting down any and all of our production facilities in almost every line of product.

It does not do any good to say "I told you so", nor does it do any good to make any one or any group, or any business entity a "whipping boy".

It is a collective calamity and one that may not have enough time remaining, for a final gasp of breath, to make a turn around the whole policy, philosophy and practices in our foreign trade legislation.

Just recently I received information that while the voluntary steel agreements had expired formally that informally the Japanese and other nations said they would restrict their exports to the United States by the terms of the voluntary agreement. Just like everything else, our trading partners tell us, it was just "words"; and, as usual the promise was not kept. The agreement allowed 14 million tons of imports (giving up 84,000 steel jobs, plus 252,000 supporting jobs). We imported 18 million tons in 1971. Our unemployment was 24,000 direct and 72,000 indirect higher than the year before.

The real cancer that is destroying this nation and its peoples is the expanded power of the State Department, over the very life and death of the economic body of this country.

In my 12 or 13 years of observation and investigation, hearings and in-depth studies of our international trade I have watched how thoroughly the export-import groups have manipulated Congress, the Administration, labor leaders, businessmen, public and semi-public associations and groups, industries and above all the news media into a dilemma which apparently has no solution.

We find one group of labor supporting free trade since it just so happens that they are making a product using machine tools or war goods and food stuffs. Then there is another group who feels the pinch of imported products and knows that the imports are destroying our job opportunities. In the same predicament or even worse, in some cases, we find industry. Some corporations will have certain divisions that are in the import business and others that are being strangled out of existence because of imports. Incidently, Westinghouse has this dilemma. It is an impossible and unbelievable situation. Corporate paychecks are going to two, three, or more different sets of public relations men, and every one is being paid by the same paymaster but each public relations man is negating the work of the others.

The answer to trade is simple, in fact it is so simple that no one believes it's the answer! The answer is to de-escalate imports over the same amount of time that they escalated. In doing so, our economy would start to pick up and since the de-escalation would take place over a period of time the other countries that trade with us would have ample time to produce products for which they have a market or to make markets for their products in their own country by raising purchasing power in direct ratio to the required purchasing power needed to buy their production.

Legislation has been ready and is ready now for introduction that follows the lines I have mentioned. I will be very happy to meet with you and representatives from any other group that is interested in this type of legislation. Any time you are ready just let me know.

With kindest personal regards, I am

Sincerely yours,

JOHN H. DENT,
Member of Congress.

P.S. There are only two outs for this Nation: either we de-escalate foreign products or we freeze them by boycotting at the consumer level. We will fall, harder and farther than the Roman Empire, in our generation, if we do not.

INFORMATION FROM LATROBE STEEL CO.

LATROBE, PA., February 3.—Latrobe Steel Company today announced results for the year ending December 31, 1971. M. Schober, president of the specialty steel firm, reported that sales for 1971 totaled $41,578,000, a decline from $44,928,000 for 1970. This resulted in a net loss for 1971 of $2,273,000 or $1.89 per share as compared with a restated loss of $460,000 or $.38 per share for 1970. Both 1971 and 1970 results include extraordinary income from the sale of assets, equivalent to $.17 per share and $.15 per share respectively. In 1971 the Company changed to the equity method of accounting for common stock investments where ownership exceeded 20%. As a result of the change, revenues increased by $.13 per share and $.16 per share in 1971 and 1970 respectively.

Mr. Schober referred to the results as obviously unsatisfactory. He cited generally depressed markets for specialty steels, severe pressure from imports, and rising labor and material costs as the primary factors affecting 1971 operations.

Mr. Schober also stated that although some improvement has been experienced in the sales level, further market improvements, as well as productivity gains, will be necessary to achieve a satisfactory performance.

CONGRESS OF THE UNITED STATES,
Washington, D.C.

DEAR COLLEAGUE: I recently addressed the House on World Trade and U.S. problems as evidenced by the impact of imports. During my presentation I discussed the problems facing the Special Steel Industry as well as the Steel Industry in general.

I informed the House that the U.S. is the world's largest steel consumer but that we were no longer the world's leader in steel production. If we had produced the steel we imported, we could still be the world leader.

The Soviet Union has elevated its position to number one in production of steel and the U.S. is now number two with Japan a very close third. For more than a decade I have said that the import problem is the cancer attached to the economic and political life of our Country. I still believe this to be the case, although, few of you have ever believed me.

Cordell Hull once said "A lie will get halfway around the world before the truth can get its pants on." I see where another industry has finally gotten its pants on.

I suggest that you read the attached editorial recently published by the steel industry (*33 Magazine*). Hopefully, you will become a believer.

It has been said that "a stitch in time saves nine." You had better hurry—eight stitches in our trade agreements are gone and only one remains. Let's use it.

Sincerely yours,

JOHN H. DENT,
Member of Congress.

WHAT IS NEW? THE UNITED STATES IS NO. 2

Shock waves are still reverberating throughout the American steel industry, the nation, and probably even the world. For today the world steel industry has a new production leader. For the first time ever, the U.S. is not at the summit in world steel production. Russia, with 133 million tons in 1971, easily surpassed the 120 million tons produced by the American steel industry.

By now the analysts are scurrying about with ouija boards tightly tucked under their arms trying to answer the question, "Why?" They'll come up with some incisive reasons, such as the winding down of the Vietnam conflict, the strike talk of the summer of 1971, the sluggish economy, and a host of others. But when you cut through it all, there's just one real reason: imports.

Imports have a stranglehold on the American steel industry. In 1971, imports soared to a new record—an amazing 18.3 million tons. However, the so-called voluntary quota limit was supposed to be 15.4 million tons. In fact, the U.S. imports more than the total output of steel produced by Canada, almost 100 percent more than Japan imports, and over five times the amount imported by Russia.

Yet, as a nation we don't have to rely on imports. U.S. raw steelmaking capacity is in the neighborhood of 190 million tons. We're not importing to satisfy consumption demands. We're not importing to save the economy of some impoverished country. We're not importing because we can't make it. In fact, with all this importation, we're really exporting dollars and jobs, about 110,000 jobs at last count.

Now that we're number two and still flushed with the first pangs of panic maybe we'll get some action on imports and import policy. First off, the U.S. government should create and establish its own import policy. And it should be based on our needs, not anyone else's. We should import what we need, in the quantities needed, and maintain strict control of what comes in.

The voluntary quota is just that—voluntary. That became obvious with the 1971 statistics. When the world market turns sour, the U.S. becomes fair game. Well, it's time to stop this now, not next year, or five years hence. At that time we may not be able to stem the tide—we may be number three.

UNEMPLOYMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. DENT) is recognized for 62 minutes.

Mr. DENT. Mr. Speaker, I take the floor today to discuss, in a very limited time, what I think is the most serious problem facing this country and the world.

My first observation is to note again for the record, that another group of Americans have lost their jobs; and according to their employers, the jobs have been exported to foreign countries. At this time I will read into the record correspondence from the Westinghouse Corp., noting the Westinghouse Corp.'s announcement of the closing down of one of its facilities in my area.

WESTINGHOUSE ELECTRIC CORP.,
Blairsville, Pa., January 20, 1972.

The Honorable JOHN H. DENT,
House of Representatives,
Washington, D.C.

DEAR MR. DENT: It is with profound regret that I advise you of the close-down of the Wrought Products Department of the Specialty Metals Division of Westinghouse Electric Corporation in Derry Township, Westmoreland County, Pennsylvania. Our Wrought Products Department was basically in the specialty steels business which has simply become impossible to continue due to intense foreign low priced competition.

We are including with this letter three pieces of correspondence that will give you more information on this subject. This decision unfortunately affects approximately 250 of our 560 people employed at this plant.

As you are undoubtedly aware, the quota type system for limiting steel imports into the United States has dealt a severe blow to the specialty steel producers. It is only natural that a foreign producer would be more interested in filling his quota with high value specialty steels rather than with low cent per pound ordinary grades. We in the specialty steel business have found ourselves under even more attack and pressure than the rest of the steel industry.

I regret having to send you this communication but look forward to having the honor and pleasure of meeting you in the future.

Very truly yours,
L. A. MEIERKORD, Jr.
General Manager.

WESTINGHOUSE ELECTRIC CORP.,
Blairsville, Pa., January 20, 1972.

FELLOW EMPLOYE: As you all know, the market for our Wrought Products is severely depressed and for several years we have faced very fierce domestic and foreign competition. Since the middle of 1971 we have been studying the Wrought Products operation. In previous letters to you, I have discussed our efforts to find solutions to the problems faced by this Department. Our basic concern was how we might be able to successfully stay in the business and continue to provide jobs.

As we studied the problems, a number of possible solutions were explored in depth. I mentioned several of these to you in my letter of October 28, 1971. Reluctantly, we have come to the conclusion that there is no reasonable way we can stay in this business.

Today I have the unenviable task of announcing that our Wrought Products Department is to be phased out of operation. We are getting out of the business completely . . . selling, if possible, work in process, scrapping remaining raw materials and putting all machinery and equipment up for sale. Our customers—both inside and outside Westinghouse—will have to find other suppliers.

This decision will result in a reduction in force of approximately 250 of our present total employment, which is currently 560.

The first employes to be affected by the phase-out will probably receive reduction-in-force notices before the end of this month, and we anticipate being out of the Wrought Products business within a few months. I cannot give you any firm schedule because the final decision on this action was only made this week.

We are willing to sit down with union leaders to try to work out the best possible procedures under the circumstances, giving full consideration to the length of service of our employes.

You can be certain that the Division and the Company will make every effort to find new jobs for all those who are up for disposition as a result of us phasing-out our Wrought Products Department.

For example, we are going to run advertisements in the local newspapers and the Pittsburgh newspapers to advise potential employers of the skills and availability of Blairsville employes.

We are going to invite potential employers to interview available employes right here in our plant.

I am asking local community leaders to let met know if they know of the availability of any jobs in the immediate area.

We will try to get the State Employment Service representatives to come to the plant, if practical.

All employes affected will get full and complete information on available benefits, including such things as Layoff Income and Vacation Eligibility.

You may ask what is going to happen to the manufacturing space now occupied by Wrought Products. Although details are incomplete, we plan to renovate this manufacturing space. Hopefully, this renovation will begin soon and eventually lead to new or expanded manufacturing operations related to the growing market for our tubular products.

Making this announcement is an extremely difficult task for me. I find little consolation in the hard, cold fact that the Division and the Company can no longer stay in the Wrought Products business.

This Division faces an extremely difficult time in the weeks and months ahead. However, I am counting on the cooperation of every employe to assure the success of the operations that will continue here at Blairsville.

Very truly yours,
L. A. MEIERKORD, Jr.,
General Manager.

WESTINGHOUSE ELECTRIC CORP.,
SPECIALTY METALS DIVISION,
Blairsville, Pa., January 21, 1972.

TO OUR FRIENDS IN THE COMMUNITIES SURROUNDING BLAIRSVILLE: I am sorry to announce that the Westinghouse Specialty Metals Division is phasing out our Wrought Products Department. As you can see by the attached copy of the letter I have sent to all employes, we cannot reasonably stay in the wrought products business in face of the depressed economic condition of our markets and the intense competition we have faced from foreign suppliers of similar products.

One of the biggest concerns I have about the decision we have been forced to make is the economic impact this decision will have on the communities where affected employes live. However, we had to face up to facts and make a decision based on those facts. We explored every possible alternative and came up with nothing except the fact that we could no longer stay in this business.

Our tubular products operation will continue at our Blairsville plant, and the outlook for this end of our business is reasonably good. In fact, we are planning to renovate the manufacturing space now occupied by our Wrought Products Department and devote this space to increased production of tubular products and related activities.

As I said originally, I am sorry to have to give you this information. We are going to make every effort we can to find jobs for any of our employes who may be affected by this decision. If you know of any jobs that might be available for any of our employes I would appreciate hearing from you, or if you have any questions about what we are doing I would be glad to have you call me.

Very truly yours,
L. A. MEIERKORD, Jr.,
General Manager.

My reply to Mr. Meierkord follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 9, 1972.

Mr. L. A. MEIERKORD,
Specialty Metals Division,
Blairsville, Pa.

MY DEAR MR. MEIERKORD: I hesitated to answer your letter of the 20th dealing with the closing down of the specialty metals division of your Derry plant. I have known the problems of specialty metals and specialty steel industries since I started to look into the impact of imports on American industries back in 1959. At that time we could almost pin-point the individual companies and products that were going to be selected as targets by the import crowd. However, today they do not bother to take sight and aim at a specific target, but instead they use a scatter gun approach and are successfully shooting down any and all of our production facilities in almost every line of product.

It does not do any good to say "I told you so", nor does it do any good to make any one or any group, or any business entity a "whipping boy".

It is a collective calamity and one that may not have enough time remaining, for a final gasp of breath, to make a turn around the whole policy, philosophy and practices in our foreign trade legislation.

Just recently I received information that while the voluntary steel agreements had expired formally that informally the Japanese and other nations said they would restrict their exports to the United States by the terms of the voluntary agreement. Just like everything else, our trading partners tell us, it was just "words"; and, as usual the promise was not kept. The agreement allowed 14 million tons of imports (giving up 84,000 steel jobs, plus 252,000 supporting jobs). We imported 18 million tons in 1971. Our unemployment was 24,000 direct and 72,000 indirect higher than the year before.

The real cancer that is destroying this nation and its peoples is the expanded power of the State Department, over the very life and death of the economic body of this country.

In my 12 or 13 years of observation and investigation, hearings and in-depth studies of our international trade I have watched how thoroughly the export-import groups have manipulated Congress, the Administration, labor leaders, businessmen, public and semi-public associations and groups, industries and above all the news media into a dilemma which apparently has no solution.

We find one group of labor supporting free trade since it just so happens that they are making a product using machine tools or war goods and food stuffs. Then there is another group who feels the pinch of imported products and knows that the imports are destroying our job opportunities. In the same predicament or even worse, in some cases, we find industry. Some corporations will have certain divisions that are in the import business and others that are being strangled out of existence because of imports. Incidently, Westinghouse has this dilemma. It is an impossible and unbelievable situation. Corporate paychecks are going to two, three, or more different sets of public relations men, and every one is being paid by the same paymaster but each public relations man is negating the work of the others.

The answer to trade is simple, in fact it is

so simple that no one believes it's the answer! The answer is to de-escalate imports over the same amount of time that they escalated. In doing so, our economy would start to pick up and since the de-escalation would take place over a period of time the other countries that trade with us would have ample time to produce products for which they have a market or to make markets for their products in their own country by raising purchasing power in direct ratio to the required purchasing power needed to buy their production.

Legislation has been ready and is ready now for introduction that follows the lines I have mentioned. I will be very happy to meet with you and representatives from any other group that is interested in this type of legislation. Any time you are ready just let me know.

With kindest personal regards, I am

Sincerely yours,

JOHN H. DENT,
Member of Congress.

P.S.—There are only two outs for this Nation: either we de-escalate foreign products or we freeze them by boycotting at the consumer level. We will fall, harder and further than the Roman Empire, in our generation, if we do not.

This is not an isolated incident, it has happened all too often; and most recently when the glass plant in Arnold closed down completely, the aluminum plant in New Kensington is being phased out, Braeburn Steel in the last month closed its doors and Latrobe Steel, one of the great specialty steelmakers in the country is gasping for breath. Some of us, with our ears tuned to the welfare of our districts, can hear the death rattle of other production facilities, too.

The answer, of course, is in the hands and consciences of the Congress. At this point, Mr. Speaker, allow me to introduce a letter from the American Chamber of Commerce in Thailand.

THE AMERICAN CHAMBER OF COMMERCE IN THAILAND,
Bangkok, Thailand, January 24, 1972.

Hon. JOHN H. DENT,
House of Representatives,
Washington, D.C.

DEAR MR. DENT: For more than a quarter century, the United States has advocated free trade. Now—because our government's burdens abroad are domestically unpopular and because we have been slow to demand that other developed nations pursue equally free trade policies—American labor leaders cry for protection against the "export of jobs" and uncompetitive manufacturers beg for import quotas and higher tariffs. Instead of acting to cure basic problems, you are moving to treat the symptoms.

As President of the American Chamber of Commerce in Thailand and on behalf of its 200 U.S. businessmen members, I write to protest both the content and the philosophy of Senate Bill 2592, the "Foreign Trade and Investment Act of 1972."

In commerce, finance and industry here in Thailand, we Americans find it increasingly difficult to compete with Japanese businessmen, who come here armed with every advantage their government can provide—personal and corporate tax incentives, long term subsidized financing, preferential shipping rates, technical assistance and support grants etc. Unencumbered by antitrust legislation, Japanese firms collaborate among themselves to set prices and divide markets, quite effectively excluding competitors from America. Thus the Japanese have captured much of the market America once enjoyed here for consumer goods, autos and trucks, steel products, marine motors and pumps, construction services, office equipment, chemicals, synthetic fibers and many more products, projects and services.

With only 37 million people, the majority of them poor, Thailand's market is not vital to American exporters. But the competition here is typical of what other American businessmen face all around the world. Until we can match it and recapture for the U.S. a reasonable share of the total market, our trade imbalances will continue. The Japanese will continue to undersell us until our own technology advances and our own efforts to modernize production facilities and to control other key cost factors, including wages and benefits to workers, make it possible for us to match them. Your proposed S. 2592 will retard progress in these directions should it pass.

Nor can our trade imbalance be resolved by limiting imports and precluding exports of U.S. technology. It best can be resolved by more effective competition in international markets, which cannot be achieved through protective policies.

Observing the American scene from abroad, we expatriate U.S. businessmen note the inordinate power of organized labor. The long dock strikes have further undermined the confidence of foreign buyers in our ability to deliver the U.S. goods we offer for sale. Labor leaders' demands for ever-higher wages and benefits, totally unrelated to increased productivity of labor, have forced American producers to increase prices, thus causing government to increase either its taxes or its deficits. Since goods are overpriced, sales decrease at home and abroad, and foreign goods at reasonable prices flow in to capture markets, domestic and foreign. This causes unemployment and makes prices rise even higher because of the smaller quantities over which fixed costs can be spread.

On September 28, Senator Hartke said of S. 2592, "In this bill the key word is production." Certainly more U.S. production is needed—but at lower, not higher, cost. Behind the quota and tariff barriers he proposes to erect, U.S. prices will climb still further. He also said the bill can end the "giveaway" of American jobs, and that technology transfers by U.S. firms would cease. We deny that American jobs have been exported; they have been forfeited due to U.S. labor leaders' demands for more compensation than workers have earned. Technology transfers might be legally frozen by your bill, but this would only encourage our foreign competitors to greater research efforts of their own. It also could cause a reverse "brain drain" should U.S. scientists choose to work where their efforts would be better subsidized and rewarded than at home. Unless you are prepared to deny to certain Americans the right to live and work where they choose, you cannot erect a wall to lock U.S. technology in. You probably will only create a barrier to preclude rapidly-advancing foreign technology from coming to the aid of hard-pressed American production facilities.

Senator Hartke's remarks prefacing his bill in the Congressional Record of September 28 effectively tell late developing countries such as Thailand to look to Japan or Germany for aid, technology, engineering services, atomic power plants, etc.—all of which they require in growing quantities in years just ahead. By co-sponsoring this bill, you are saying that close and friendly relations with the United States and with U.S. business no longer are important to us. You are inviting leaders of such nations to reciprocate directly against American firms and investors already located within their control. Such investments, in the last few years, have begun contributing significantly to the favorable side of the U.S. trade and payments ledgers, but they easily can be "held to ransom" by foreign governments if America now abdicates its long-standing and progressive trade policies.

Few Americans working abroad will disagree that the U.S. must continue to produce a wide variety of goods within its own borders in order to remain industrially self sufficient. But control of the inordinate demands of labor's leaders, further modernization of production facilities, greater investments in basic and applied research, new progress in marketing and transportation methods would provide a more effective route to self sufficiency than will denial of principles America has advocated in world trade. Once given arbitrary authority to establish quotas on now unregulated imports, the new government agency you propose could act, upon request from any manufacturer or labor leader, to erect import barriers against almost anything, to support uncompetitive U.S. producers and shelter unproductive American workers. Such a risk seems more dangerous than the presumed benefits warrant.

Consider, please, the thousands of Americans serving overseas for the multinational corporations you propose to regulate. How many will lose jobs or find themselves working for the same firms under different flags once these corporations are driven by your policies to flee America? Tighter regulation imposed unilaterally by the U.S. will not solve the problems you attribute to multinational corporations. Rather, it will increase the strength in world markets of similar firms based elsewhere. America's balance of trade and payments will become worse, not better, and her chances of exporting goods and services will be further reduced. The proposed bill obviously is self-defeating.

We of the American Chamber of Commerce in Thailand, in concert with fellow U.S. businessmen throughout the Asian Pacific region, will watch closely the actions taken by you and your colleagues on the S. 592 proposals, whether as a package or piecemeal. We are alerting our home offices, our friends and others in America to the dangers we see in the proposals. We will do all we can to muster the American electorate—including the more sensible members of the organized labor movement—to react at the polls at the earliest opportunity against members of Congress who support any of the reactionary trade legislation you are co-sponsoring.

Sincerely yours,

J. M. AHRENS, *President.*

I will only comment on the last paragraph of the chamber's letter, which is without a doubt, the boldest expression of selfish interest that I nave read in a long time. The audacity of a foreign-based American to threaten Members of Congress, who in good conscience believe their duty is to the American people, should give all of us a moment of pause to reflect upon what manner of beast is this, that is so foreign to the problems and the needs of our people here at home that he would attempt to destroy the body politic that allows him to enjoy the benefits of a citizen without the obligations of a citizen. The primary obligation I speak of is namely, to pay his share for the unemployment that is slowly, but surely, destroying the source of his own welfare. So, Mr. Speaker, I put aside the personal threat, and the threat to my colleagues because the matter of our election to this body is of little note; and, the only important thing is the survival of our Nation and the welfare of our people.

My answer to Mr. Ahrens follows:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 9, 1972.

Mr. J. M. AHRENS,
President, the American Chamber of Commerce in Thailand, Bangkok, Thailand.

MY DEAR MR. AHRENS: I appreciate your long letter and explanation of your views on free trade. Incidentally, these same arguments could be made for the American economy.

Your arguments are those of exporting nations in the main. You complain about my own sponsorship and others for legis-

lation which is aimed at limiting importation of some products into this nation, or raising the tariffs on those goods coming into the country. It has probably never struck you or any other American ex-patriate that the mighty might of this nation was not created by free trade, but through job opportunity. The so-called "free trade" concept now in vogue is contrary to the needs of our country. What no one seems to realize is that when our industries are impacted by imports and our workers lose their jobs there is no market for American goods or, in fact, any goods. Without jobs there are no wages and with wages there is no buying power for anyone's goods. We cannot forever borrow money to buy our products and certainly not Foreign products.

In your letter, among other opinions and views, is a political threat, and I quote back to you what you have said, "We will do all we can to muster the American electorate—including the more sensible members of the organized labor movement—to react at the polls at the earliest opportunity against Members of Congress who support any of the reactionary trade legislation you are cosponsoring". Now in order that you and I understand each other let me just send you a copy of a letter from the Westinghouse Electric Corporation, which is similar to hundreds already in my files on the impact of imports.

Also, you might be interested in the latest editorial of the Christian Science Monitor dealing with foreign cars. The brand new Chrysler plant in my District has just announced that they will have no operational money this year, therefore there will be no cars produced from that plant. No cars, no work; no work, no wages; no wages, no buying power for anyone's goods. The editorial shows why this new plant will not have any operational money.

I am, also, enclosing two more letters from industries in my district who are suffering from excessive imports. The first is part of a letter from Braeburn Steel (and my reply to them); the second, is from Bethlehem Steel Corporation. I have had Braeburn Steel in my district for as long as I can remember but now they have finally absorbed all they could from imports.

The Alcoa Wearever plant, in my younger days, employed thousands of workers. They manufactured household utensils and thrived even though our population was only about ¼ of today's consuming population. Now, however, they cannot compete and have been forced to close down. They could not compete with low-waged countries who pay their employees only a fraction of what they had to pay theirs. Their employees paychecks are eaten up by taxes of 50–60% of their gross incomes. These taxes, direct or indirect, were used to make it possible for you and other ex-patriates to establish businesses and enterprises overseas. You as representatives of that great group, who are go-betweens for the export of American jobs by the importation of foreign products, have had a great deal to do with the downfall of the American economy and the need for compulsory tariff barriers and import limitations.

You cannot gain my sympathy for your loss of business because of Japanese competition, because the United States has had this problem for years and not just with Japan. We have had foreign competition from other Asiatic and other low-waged nations who do not want to compete on a fair basis. Slowly, but surely, we are being strangled economically and the lifeblood of the American economic well-being is being drained.

If you represented a district, as I do, that has lost three steel plants in the last two years, has between 30–60% unemployment in the remaining specialty steel plants, lost the Alcoa plant, the Braeburn plant, watched the largest glass plant under one roof (in Jeannette) practically close, saw our handmade glass plants close down (leaving only 2 in existence), watched the coal mines go out of business because of imported oil (and now they can't reopen because they became flooded and it is not economical to reactivate them), saw the tennis ball industry go out the window because of imports, and watched as the Pennsylvania mushroom industry, the largest in the United States, fell off 40–50%; and, not to be forgotten, is the large BOF plant, Pittsburgh Steel, which had to turn out its fires not long ago, and the tool steel industry, that never missed paying a dividend until last year, has found its stocks, originally valued at about $40, down to as low as $6.50. You watch all this happen and then see if you could criticize me for being a "protectionist". Would you then blame me for trying to help my people keep their jobs?

I came to Congress an adamant free trader until I was assigned a select subcommittee to study the impact of imports on American employment, in the late 1950's. I gained an education from these studies and became a protectionist. You may have a copy of the damaging testimony, which is now in short supply. Many Americans are now realizing that we have a major unemployment problem in the United States because of excessive trade caused by foreign aid, unemployment, war, welfare and related expenditures. If you wish a copy let me know and I will try to obtain one for you.

At the time of my committee investigation many plants and industries warned of the danger from imports and American overseas production facilities, that shipped their product back to the United States. The public did not believe it until now, when plants are closing and businesses are going bankrupt daily.

I need not tell you, since you are a businessman, that every time an American worker losses his job, two or three service and supporting employees lose their jobs. The unemployed can only buy less goods, ours and yours.

Last Christmas I bought my staff and a few friends radios labeled "Westinghouse". They were very small but good radios with a battery recharger, flashlight, cigarette lighter and cost about $20.00 each. It wasn't until I opened the case to replace a bad battery that I found the product came from Thailand. There was no indication that Thailand was the country of origin except inside the case.

I know that by your standards, it is a rather selfish concept to fight for American jobs and to believe that lowering tariffs will create unemployment and adversely affect our economy, but from what I have seen over these many years I cannot help believing we are in serious trouble.

When you can prove to me that lowering tariffs and encouraging more imports will create prosperity and jobs, I will re-consider my position. If lowering tariffs and lifting trade barriers would help economy, then why don't Thailand and other trading nations do the same thing, and why are all of you so "eager" to help our economy and not your own?

When trading countries pay our wage base and live by our social structure and have basically the same tax structure, then and only then will I consent to "free trade". (We also have a $90 billion defense budget which no other country has.)

If you can assure the Congress of the United States that once we get into this free trade position there will be no more Vietnams, Koreas, or Middle East crises, and that we will have a long and prosperous peace, I assure you I will change sides on this issue. Also, Congress should receive assurance that there will be no more welfare, and unemployment, treasury aid for industries who have suffered from imports. Congress should be assured of these conditions before allowing free trade, because as Members of Congress their number one duty is to the people of the United States.

I now believe we understand each other.

Sincerely yours,

JOHN H. DENT,
Member of Congress.

P.S.—I have spent 40 years of my life as an elected official in public service, and if you can defeat me go ahead—I am ready for retirement anyway.

Incidentally, I found in my travels abroad that ex-patriate Americans don't usually vote and seldom pay taxes in the United States.

Lots of luck.

I have just received, Mr. Speaker, the latest piece of literature driving for free trade from a Japanese-financed organization here in Washington, D.C. It deals with so-called $2 billion Japanese agricultural products imports to the United States. Mr. Speaker, are we so naive to believe that this Nation can survive as an exporter of subsidized agricultural products? Why do we not recognize that the only reason that we can sell agricultural exports is because they are subsidized. Every pound of wheat and every pound of cotton is partially paid for out of the taxes charged to the American people.

Export-oriented subsidies only widen the gap between the U.S. production costs and foreign imports.

The President and diehard, mistaken free traders will finally have to come to the inevitable conclusion that the United States cannot compete as a free enterprise economy in world trade with modern international cost inequities.

Fearful of the truth, the proposal to subsidize U.S. export industries creates another step in the direction of industrial oblivion.

Subsidies cost money, money comes from taxes, taxes come from wages and incomes and profits. The more subsidies, the higher the taxes; the higher the costs of production, the less we can sell in our own markets in competition with cheap imports; the more unemployment, the higher the taxes to pay for relief and the more industries will have to be subsidized. Finally, the more and more we lie to ourselves about the import crisis, the worse it will get.

No nation can have subsidized production of competitive products without import restrictions for these products. The history of subsidized sugar, wheat, cotton and other farm products proves this point and shows the fallacy of competitive equality through subsidy alone.

Every farm subsidized product enjoys import restrictions up to and including virtual embargoes. We cannot meet world prices without subsidy unless we put barriers against imports. The cotton story is a graphic example. We subsidize cotton to sell in the world market at worldwide prices arrived at by international agreements which operate in a form of a selling price cartel.

However, when we subsidize exports, we put a higher burden on our own textile manufacturers who must pay a domestic price much higher than their world price competitors. To relieve the pressure on our manufacturers and to try to stem the unemployment in the textile industry, we pass legislation giving our textile manufacturers an allowance on each bale of cotton equal to the subsidy paid the farmer for world cotton. This means higher taxes on American wages, incomes, and manufacturers profits to pay the subsidies.

Higher taxes increase the cost of living, which in turn trigger higher wages and higher prices for U.S. goods, again widening the gap between imports and exports.

The history of textiles ought to convince Congress, the administration and above all, the American people that it is like a dog chasing its tail. It runs in a circle and if it

catches its tail and tries to hold on to it, it has to run in a permanent circle. If it lets go, it has lost the race to catch up. Chasing foreign trade is just as fruitless.

The unemployment in textiles has been caused by even greater imports, despite international cotton agreements. Subsidies to farmers and manufacturers will be an even greater source of unemployment, many of our textile mills are making more agreements to have textiles produced in Japan, Hong Kong, Taiwan and other countries for sale under the U.S. trade names here in the U.S. markets.

With the wage levels paid in the United States, there is no excuse for U.S. consumers demanding cheaper foreign goods which contribute nothing; instead they take from every American citizen and community funds needed for our own welfare and sound economy.

The 10-percent surcharge was in reality a horrible example of Government doubletalk. It was only a stalking horse to get foreign exporting nations to help us save our floundering dollar. In fact, the import duty on foreign cars dropped from 3½ to 3 percent after the surcharge fiasco.

Anybody can raise millions of dollars for campaigns from foreign exporters—they are the persons who have the cash for the barrelhead.

Time does not allow me to cover the whole field of trade problems. When I think over the years of the exploitation of the American people by the Congress, which must take the full blame, for the benefit of foreign countries I cannot help but worry about the future of our country.

The President is leaving tomorrow for a trip to China. Already the promise has been made that we will enter into agreements with China and will call upon the American people to open our, already ravished, consumer market to Chinese products; and, with the aid of American dollars and know-how we will build the Chinese industries. With their labor cost they will not only destroy more of the American market for us, but this will also create serious conditions in the countries that export to the United States, who have a higher wage standard and production cost than the Chinese. If this was the end of the exploitation of the American economy we could probably survive if we lived another 100 years, but think of the many countries around the world, such as Asia and Africa, that we will have to build up after we are through with the Chinese.

Trade domestically and internationally is a commercial venture. Its only reason for being is profit. The inexact science of diplomacy blended with the exact science of commercial trade can only result in chaos and destruction of our way of life.

For the record, Mr. Speaker, allow me to now present to the House the figures from the Department of Commerce, from 1960–1971, of our so-called trade balance and balance of payments:

	Trade balance on census basis	Balance of payments
1960	$4,579,000,000	$4,906,000,000
1961	5,467,000,000	5,588,000,000
1962	4,533,000,000	4,561,000,000
1963	5,262,000,000	5,241,000,000
1964	7,082,000,000	6,831,000,000
1965	5,222,000,000	4,942,000,000
1966	3,872,000,000	3,927,000,000
1967	4,141,000,000	3,859,000,000
1968	837,000,000	624,000,000
1969	1,289,000,000	660,000,000
1970	2,699,000,000	2,110,000,000
1971	[1] 2,047,000,000	[1] 2,906,000,000
1971 [2]		

[1] Deficit.
[2] Only deficit figure.

And, now let me just read to you the figures I gave to the Congress for 1960–63, which are somewhat lower than the figures contained in a recent book entitled "America, Inc." I said the deficit for 1960–62 was approximately $7 billion, and the author of the book says that from 1960–63 the deficit in trade and the balance of payments was $10,600,000,000. I have been told, not more than 2 months ago, by the President's spokesman, Mr. Peterson, that at that point we were still in the black and that we were selling far more than what we were buying. In addition to that, he said that more jobs were created by exports coming into the United States than we lost domestically. That was a few weeks before the President made a liar out of Mr. Peterson and announced his great so-called surcharge on imports because we were in a deficit trade position.

The figures from the Department of Commerce are false and I have told the Congress for 11 years that they were false. The figures are a deliberate lie and if anyone in America would keep their business books in the same way the Department of Commerce does they would be put in jail.

Mr. Speaker, if we were, indeed, in a favorable trade balance for the last 10 years—prior to 1971—why do we owe foreign nations $63 billion as of the middle of this past January? Of the $63 billion $60 billion is collectable on demand. Foreign countries owe us $27 billion and not 1 cent is collectable on demand, or can it be used as an offset against our own trade balance. That is why, Mr. Speaker, for the first time in my life I voted against authorizations for foreign aid, foreign development, and import-export legislation.

Somehow, or another, I am convinced that there must be a secret alcove somewhere where somebody sits and draws plans for the demise of our democracy, because no one or no one group could make the mistakes we are making without a blueprint.

I hope you will allow me, Mr. Speaker, to expand upon this import subject in the weeks to come.

Unemployment and Joblessness

The Speaker pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. Dent) is recognized for 60 minutes.

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. Dent. Mr. Speaker and Members of Congress, I just noticed something in today's paper and yesterday's paper that changed the whole course of the remarks I was going to make.

It is related to the subject matter that I took up with the House 10 days ago when I read a report from the chairman of the board of the Committee of 100 headed by the Corn Products Corp., Inc., International. This Committee of 100 went over to Russia to talk to Chairman Kosygin and Russian officials about a trade deal with the United States.

As we know, we are living in an era of commercialization and mercantilism and trade that supersedes all other considerations of the human actions and behavior of our times.

I read the complete report that was given by this committee, and to say the least about it, it scared me since it deals with the subject matter that I believe to be the most important subject matter before the American people today—unemployment and joblessness, caused by our illogical and outmoded international trade posture.

Mr. Kosygin laid down two specific terms before he would discuss any trade agreements.

First. He said that the Soviet Union must be considered as a favored nation under our trade agreements.

This means that all concessions that we have given over the some 30 years of the reciprocal trade agreements between the United States and friendly nations would have to be given to the Soviet Union in one fell swoop.

The second provision that he would expect is that all avenues of credit now open to all our trading partners would be open to the Soviet Union, including the Import-Export Bank financing.

He went on further to say that since the United States was so far ahead of Russia in its production of sophisticated computers, that he was having difficulty buying computers from the United States because, he said, they would not be used for military purposes.

At least he was honest enough to qualify that particular statement by saying that at least these computers we would buy now would not be used for military purposes.

Then he went on to say, to put the clincher on what I think would be a most devastating blow to U.S. industrial productivity and employment capacities—he said that he would want and expects American enterprise concerns to build plants and to send the equipped and trained persons to teach them the know-how to produce many industrial goods that they do not have proficiency in today.

Further, he would expect and demand that the plants would be paid for my selling to the United States the production of those plants.

Further, he said that this meant also preagreement arrangements for the plants would include an agreement to buy the same amount of goods from those plants annually for the next 20 years.

He further went on to say that any products that the United States would sell to Russia would have to be part of a quid pro quo in which the Russian products would have to be bought by America, and that all products bought from America would have to be paid for in a barter type trade arrangement on products from Russia because "We will not pay for products from any hard currency country other than in products from our country to take their place in a barter deal."

Now, Mr. Speaker and Members of Congress, the article I refer to was just disclosed not more than 10 minutes before I advised this Congress of the kind of secret arrangement which happens to be the diplomatic policy of this administration—secret arrangements and secret deals that are brought out in the open after they have been accomplished and leaving Congress in a bind where it can do nothing else but ratify the arrangements that were made.

Arrangements were made, and we are now providing $3,100,000,000 worth of equipment, machinery, know-how, technical staffs, and all of the background knowledge that we have paid for with billions of dollars and the sweat of many thousands of American workmen, to build a plant for the construction of trucks.

However, in that agreement—and he has already petitioned for the financing of the total amount from the Export-Import Bank and other agencies of credit that are within control of the United States—but he also goes further and says that they would produce under the first group of vehicles that they make 150,000 trucks plus 100,000 motors which will be sold to the United States in payment yearly for the plant until the $3 billion is paid off.

I defy anybody to go broke under that kind of an arrangement. I would be glad to start a group tomorrow to construct a plant in my district and make motor trucks if the U.S. Government would give me the money and buy back enough of the product to pay for the plant.

I am afraid, Mr. Chairman, that this is the kind of agreement we have made all over the world, and that is why we cannot do anything about the import invasion of the United States. We cannot, because secret agreements have been made whereby we have

spent billions of dollars of American money constructing production facilities all over the world and have agreed to buy back the products in order to pay the debts for the construction of those plants.

This country grew big because it had a brain to create productivity. It grew big because it had a dedicated labor force and a business enterprise system which allowed the smallest man within it to become the largest man within the whole country. It was built big because we designed and knew how to make things, and we kept that design to ourselves and sold the product of that design.

Now we give the design away and buy the product from those to whom we have given it.

To those of you who have not yet felt the seriousness of the unemployment in the United States, I pray that you do not wake up, because you are sleeping in a dream world of unreality. We are on a very dangerous precipice, and one little shove can push us down into oblivion. I do not want to comment on the President's visit to China. Anything that is done in the interest of humanity I applaud and support. But I say that the prompting factor in the decision to go to China is the commercialism and the mercantilism of international trade.

You will see just as surely as you are alive that within a very short time we will be importing from the Chinese mainland products that just a few years ago would subject you to jail sentences and fines if you were caught bringing them into the country.

This ban has been lifted already, because the Hecht Co. just announced this morning that all of the District stores will, in 2 weeks, open up with China shops called "The Oriental Express," in which they will have available for sale soups, glass, and certain articles that are already made in Red China.

We cannot be the marketplace for the whole world, but they think we are. At this point, 32.7 percent of all the shoes purchased in America come from foreign countries. It so happens that in last week's issue of Toronto's Financial Post, an article stated that the Canadians are very seriously disturbed because of the imports of shoes into Canada.

But what do Members think their solution is? Do the Members think their solution is to do something about protectionism and to do something to guarantee that the workers in their areas are not put out of work by workers making shoes for one-quarter or one-fifth or one-tenth of our wages? No. They are holding a meeting this week, and the tone of the meeting is this: that now, because of the pressure of shoes coming in from France and Italy and Brazil and Japan and Taiwan, they think the thing they have to do is expand their sales into the United States.

We have become the biggest boobs on the face of the earth. We have failed to realize that without jobs there is no economy. Without men working there is no market here for our goods nor will there be a market for foreign goods.

There will be no foreign goods market simply because the income of the American is being taken from him now. The income which would be used to feed and clothe and house and medically care for a great portion of our American people is being taken now.

There are approximately 200 million people living in this country. Yet, there are 52 million of that number who do not work at any productive or service type of work. We have 26 million who draw social security; they do not produce goods. The money that pays for social security comes out of the marketplace. Some of that money goes back in, but mostly it is for food and rent and a few necessities, no luxuries.

We have something like 13½ million Americans who are drawing welfare. This money comes out of the earnings of those who work, and that does not buy in the marketplace the kind of products that create employment in this country. Then we have about 13 million in the service of the different governments in the United States. This money comes out of the wages of those who are employed in productive and service industries. All of this money comes in and then goes back out to take care of Americans who are out of productive work.

Right now, every automobile company in America is buying foreign steel. Let us take a look at automobile production. This year, a nation that 10 years ago was not producing 100,000 automobiles—Japan—is producing by their own calculations 6,700,000 automobiles, over 2 million of which they expect to sell in the United States. For every 200,000 automobiles that are sold in the United States, 25,000 workers are required, starting from the digging of the coal, the mining of the ore, and on through the blast furnaces and steel-making processes, the making of springs and seats, tires and tubes, and the glass and the electronic equipment that goes into the automobile.

So, if we take 2 million imported cars—and we must not forget that we do not sell 2,500 automobiles to Japan in the whole year, most of which are bought by American expatriates or the Diplomatic Corps in Japan—when we couple that with the above facts and multiply 10 times 200,000, or 250,000, we will find there are 2 million Americans in some walk of life, in some form of production, who will lose their jobs this year because of imports of cars alone.

In the steel industry this past year we imported 18 million tons of steel, and we exported less than 2 million tons, a difference of 16 million tons of exports. Every million tons of steel that is made requires 6,000 workers per year in all of the types of the coal and the drilling of the oil on through all the parts that go into the production of steel.

So we find ourselves with 16 million tons and 6,000 workers, or 96,000 workers no longer employed in steel.

Come to Pittsburgh. Go to Birmingham, Ala. Go out to Detroit. Go anywhere in this country where men make their living making steel, where men make their living making automobiles, where men make their living making tires. Do you know that last year we imported 21 million automobile tires, not counting the five tires that come on every imported car into the United States?

Then they say that labor has caused inflation. They are against my little minimum wage bill that is going to pay $1.80 to some workers and $2 an hour to some other workers. It is too much money, they have said, and it causes inflation. I do not know anybody who is working 40 hours a week, making even $2 an hour, the minimum we have in our bill, who can buy anything with that that would cause inflation. In my book, I believe he will be hard put to buy the barest necessities for himself and his family. But that is going to cause inflation.

Do you know what causes inflation? When there are goods on the shelves of the marketplaces and money in the pockets of Americans, and those people are buying goods on the market shelves that were not put there by American workers. When the goods on the market shelves are made elsewhere, every time Americans buy those products the money goes elsewhere to pay the worker who made it in a foreign country. He pays his shoemaker, and he pays his electric bills and he pays his grocery bills. You and I and the rest of us who are fortunate enough to be working pay for all the costs for the boys thrown out of work because that foreign workers has his job.

There is absolutely no living person, in spite of his philosophy, in spite of whatever ideology he may have, who can stand up in open debate and defend a system that destroys the capability of this country in peace and makes us an open target in case of war.

We have difficulty and have had difficulty in prosecuting the so-called brush fire in Vietnam. Why? It is because we had let our merchant marine go down, and we did not have the bottoms to send over the seas to ship not only the men required but also the equipment and materiel for them. And, we had to pay exorbitant prices to foreign flagships, owned by Americans. It cost you and every other American, who bought or built a home since that war began thousands of dollars extra, because we had used these ships to bring our lumber to the east coast, to the central United States and to the South from the northwestern part of our country. We had to pay three or four times as much per board foot because we did not have ships to bring it around to the coastal ports so that you and I could get it at reasonable rates.

We are living in a day and age today where to be sound and sane, according to some people, one must be unreal in his philosophy and unreal in your love for this country and in regard for your fellow worker.

There is not anything any country can give the United States that can give back to a working man who has lost his job the dignity of working for himself and his family or can give them an opportunity to live on an equal basis with anybody who happens to have a job.

That is the ideal my father came to when he was an immigrant from little Italy. He came over with the idea that this was the place which recognized the need for dignity for human beings. He worked—and he worked for 80 cents a day—and he did not cry or complain. It was a lot more than he could make over there, and he had an opportunity to educate his children. That opportunity is now going to be taken from their grandchildren because the Government of the United States cannot pay for all of the education or for all of the needs of human beings who are not working.

I do not care what anybody tells you about figures. To me every able-bodied person who is not working today is unemployed. I do not believe now and I never will believe that the American citizen would rather be on relief than work. I do not believe that argument, because every time I have had an opportunity to find a job for anyone I have never had any trouble finding somebody to fill it. To those critics who moan and groan and say that we have to cut back on welfare I say there is only one way to do it, which is give them an opportunity to work. Give them a job, the job that we are transporting across the oceans without regard to what it means to the welfare and well-being of our American people and to our country itself.

Mr. GAYDOS. Will the gentleman yield?

Mr. DENT. I am happy to yield to the gentleman.

Mr. GAYDOS. We all know in our district and in this House that the gentleman in the well has been fighting against unreasonable imports for the last 15 years or more.

I would like to ask the gentleman if he would explain and clarify the situation regarding specialty steels as it affects his district, my district, and the Nation, particularly since the voluntary quota arrangement with Japan and the European steel producers has expired.

Mr. DENT. When you stand on the floor of the House and say to the House, as I have on about 11 occasions in the last few years, that they have just closed down the Graybar Steel Co.—and this is a plant that has been there for over 300 years—does not cause a ripple. When I tell them that the Latrobe Steel Co. is down 30 percent, that does not cause a ripple. When I tell them the American Pane Glass Co. shut down permanently, it having been the largest in the world, and that its last employment was down from 11,000 a few

years ago to about 5,500, it does not make any difference to the House Members and the Secretary of State who negotiated the trade deals that we are in. It does not make any difference when I come here and cry and plead with the Members to try to do something about the Aluminum Co. of America which is closing down its plant. When I was a little younger man they had 15,000 employees. They will all be thrown out of work. It does not seem to mean anything to anyone any more than it did in the 1920's when we lost the production of coal in our area because of the importation of oil. It does not seem to matter to any of you that today there is not an American who is working and earning $7,500 a year or more who is not paying 50 cents out of every dollar that he earns into Federal, State, local and county taxes in the form of hidden taxes as well as public and open taxes. That is the distribution that the gentleman talks about.

You must understand that the mere loss of a job in a steel plant is not the extent of the injury; it is not the extent of the damage that is being done to the economy, because before that steel man can make steel someone has to provide a ton and a half of coal in order to make three-quarters of a ton of coke that goes into that steel mill in order to make the steel. Somebody has to provide the coal for the energy needed to drive the powerplants which make the necessary electricity. Somebody else has to mine the ore and somebody else has to transport it and somebody has to be working to unload and then to load and unload it again. Someone has to do these jobs all along the line, making tools and the necessary equipment and machines in order to make a ton of steel. That is where you get this work distribution.

It means that when they shut down plants and mills 100,000 workers are put out onto the street when the distribution is stopped at that particular plant. Maybe some of those who distribute the goods, the truckdrivers and railroad workers, will still work, but they will be distributing foreign steel.

At the same time so many Americans think that there is no damage whatsoever done to the economy of this country in going in and buying a Volkswagen or a Datsun or a Honda or a Yamaha or a Suzuki. They think nothing of it. But every time they do it these young people are cutting down their own chances of having a job. It is cutting down the opportunity for the parents to support them if not old enough to get a job; it is cutting down the opportunity for their future for work. This is proven by the fact that in June of this year we will have 65,000 of all the college graduates in America out of work. Unless the men working in the mines have jobs in the production field, there are no jobs for the parasites. They will have no opportunity to go into the production work.

I am one of the parasitic group. I do not produce anything any more. However, at one time I worked in the mills, in the actual production field, and thereby I was providing the salaries for government officials and for others in service industries, but the minute the production job dies, all of the other jobs die. If you do not believe me, take a walk with me out into Pennsylvania and Appalachia and you will see whole towns abandoned.

Mr. Speaker, I was born on the banks of Allegheny River. It was a big town at that time for a coal town. It was a town of 700 families and that is a big town in a coal community. I lived there and worked there and everyone dealt with the two stores located there. We had a squire or a justice of the peace, we had a constable, we had two churches, we had two barbers, we had a shoe repairman to repair our shoes, but what happened? When the coal mines shut down, within 9 months there was not a living soul in that community. It is still there on the banks of the Allegheny. Some of the coal is still there. But, why could not the shoemaker stay? He was earning a living. Why could not the doctor stay? Why did they have to move? Because there was not that amount of money that came from production.

For every production worker producing a product to sell in the marketplace, three more were earning a living. The production worker took the money and paid a part of it to this person, he paid a part of it to that person, he paid a part of it to this person and they, in turn, paid a part of their wages back to the person that supplies the services they need and thereby we have what made this economy—the free movement within our own States, the free movement within the territory, that made this Nation great, the free movement of people, the free movement of goods, the same price for money, the same banking loans and the same rules of behavior, and minimum wage laws. But, when we go out into the jungle of foreign trade, do we have any kind of law that guarantees that my coworker in Italy or Japan is going to have as much to spend from his wages to buy the production he makes, as I will have to buy the production I make? We do not have any equality in the value of our money. They juggle their money up and down. They do anything they want to do with it. Most of their unions are company operated and in most instances they are nationally operated. They get subsidies to see to it that they can dump their goods on the American market.

I am not saying that only the Nixon administration is at fault, because it goes back to the Johnson administration, to the Kennedy administration, to the Eisenhower administration, to the Truman administration, and all the way back to the most inconceivable conception of 1933 that this had to be a free trade world.

Mr. Speaker, there is no such thing as free trade. We do not have it in the United States. We were great when we had free trade. No man had to pay a bounty to go across the State line from Pennsylvania over into Ohio, but now if you go across a State line up in New Jersey or New York and many other States and take a little bottle of whiskey you will be stopped and they will confiscate your car.

Oh, no, you will be stopped, and they will confiscate your car. In some States you cannot bring in a carton of cigarettes from another State. If you happen to be traveling in one State you cannot bring cigarettes into Pennsylvania. Also if you buy a car somewhere else because it is cheaper, if you go into a State like Pennsylvania where they have a 6 percent sale tax, then you cannot run that car in Pennsylvania unless you pay another tax in Pennsylvania, no matter where you buy the car.

This is not true with foreign goods. When foreign products come into this country, no one says they have to pay an equalizing tax on it by the residents of the United States, and that is true of any product that comes into the United States; it comes in without taxation. But we have to pay an equalizing tax when you travel from one State to another.

What we are doing is removing all the barriers against trade with foreign countries, and at the same time we are erecting barriers on trade within the United States.

Oh, I know that it will not be too long until people like myself will not be heard on this floor because I believe we are all becoming mesmerized into the belief that if we get world trade it means peace. Well, within about 2 weeks I will be 64 years of age, and, do you know, I just cannot remember peace during all these years—and my uncle GEORGE MILLER from California just said that I am just a kid—but I just want to say that even in his memory at no period in our entire history of the 200 years, come 1976, at no period of time has there been more war and devastation, unrest and unfriendliness in the world than in the last 40 years. We have never been without war. I have never seen a war that has been settled yet. Every time we end one we work out a solution that starts another.

And trade is nothing but a commercial venture, its whole purpose is being as profit. We have compounded it to the real injury of this economy by creating multinational corporations that are no more interested in the integrity of any land within which they operate, including our own, than the man in the moon. They are interested in only one thing, and that is profit; they are profiteering beyond any amount, beyond any measure in our economy before. I have seen things sold to importers for as low as $3, and sold to Americans for as high as $50.

As an example, I visited in my investigation of Export-Import, a shoe plant in Florence, in fact three or four of them, and the highest priced shoe being sold to the United States from the highest priced shoe plant in Italy was $6.75 to the American importer—and you ask any American woman if she can buy a pair of Italian shoes for that—and I remember the name of the shoe, I just cannot think of it right now, but it is the highest-priced shoe in America, and it sells for $67.

Do you think that we are being honest and true to the concept and principle that we adhere to, or believe that we adhere to in this country when we allow them to pay their workers over there 63 cents an hour, and the same American workers get $5.40 or $5.50 an hour? That is slavery in a certain way. The slaves worked for nothing, they got their food and they got their board, but now we are paying them, but they still have to come to the government and get food and board, because they are not paid enough. As I say, in the old days we had physical slavery all over the world, but you know what you have now? You have political-economic slavery. And just as Chile, Cuba, and Peru, and just as Brazil and the rest of them, you will see the day when the workers in this country make our luxuries for us and they will not be able to buy these same luxuries themselves. That is the form of slavery that will destroy this economy unless we wake up. Unless the people wake up, it will happen. And the way to wake up is to just go into the stores and not buy foreign-made products.

I went into the biggest store in our area. I wanted to buy a couple of white shirts. I know that today everybody is wearing colored shirts, but I wanted to go back to white again just to see what I would look like. And I went into the store and out of all the shirts—and they must have at least 12 or 14 counters of men's shirts and this is one of the largest chains in this country, only one counter had American-made shirts on it. All the rest were from Malaya, and they do not even wear shirts in Malaya. Malaya, the Philippines, Hong Kong, Taiwan, Singapore, and pretty soon I guess they will go to the Congo because I understand they only pay 4 cents an hour in the Congo. They do not care where they make a product—they bring it to the market that has the highest buying power. There is not a single worker—now get this straight—there is not a single worker outside of the sophisticated workers in West Germany, France and certain common market countries and Japan—the ordinary worker and tradesman in all those countries does not get paid as much as we pay for the welfare of our families who are on public assistance.

Mr. GAYDOS. Mr. Speaker, will the gentleman yield?

Mr. DENT. I yield to the gentleman and I will yield him 30 minutes if he wishes.

Mr. GAYDOS. Will the gentleman be good enough to explain how a shirt manufactured

in Rumania, behind the Iron Curtain, passes through Germany or Scandinavia and comes to this country labeled as an American-made product?

Mr. DENT. We are investigating welfare pension systems to try to improve the pension systems in the United States for those Americans who have to depend solely on social security. We were trying to work out a system whereby a collateral program would allow them to live without going on welfare once they were provided with social security and a private pension.

So, of course, we know that Denmark is way ahead of many countries. Sweden is way ahead of many countries. So we decided to go up to the Nordic countries that have had pension systems in existence for a long time.

One evening a Member of Congress, the gentleman from New Jersey (Mr. Daniels), was with us on the committee and we went out to have some dinner. There was an American sitting at the next table, and surprising to say—he was drinking and he was talking a little loud. We caught on that he was some kind of a textile man. So later he came over and he said:

"I heard you boys talking—you are Americans. Won't you have a drink?"

And we said:

"Sure."

Then this man told us that he is operating out of Finland, behind the Red Curtain, and they were making textiles, Finnish products—dresses, shirts, and things like that for men, and women, boys, and girls.

I said to him:

"How do you get them into the United States?"

He said:

"Well, we have a corporation in two or three countries that have trade agreements with the United States. So we ship them to our corporations in those free nations and then they pack them and label them with their country label and send them to the United States."

All these years, if you want to know where they got the money for sputnik and you want to know where they got the money for many of the things—some of it came out of your pockets and my pockets when we go in and buy foreign-made products.

Mr. GAYDOS. Before the gentleman concludes, I wonder if he would give us the benefit of his expert knowledge with respect to the effect foreign imports have on our domestic specialty steel and tool steel industries.

Would the gentleman tell us what we can expect if this insidious encroachment in these areas continues as far as the national defense of this country is concerned.

Mr. DENT. Over 3 years ago we made a so-called voluntary agreement with Japan. At the time special steel in the United States was producing 99 percent of most of the specialty steels and 97 percent of the special steel coming into—I mean being sold in the United States.

After this voluntary agreement was signed, the Japanese changed their product mix from the high carbon steel and low carbon steel and ordinary steel, structural steel and so on and went into the special steel business, which is the high cost, high employment steel.

To make a million tons of ordinary steel, it takes 6,000 workers a year. To make a million tons of special steel, it takes 15,000 workers a year.

So now up as high as 72 percent of all the special steel sold in the United States is being imported and so our special steel industry is flat on its back. Unless we in the Congress have the courage to do something about it, the specialty steel industry will not survive another 3 years.

Let me say something to you about what specialty steel is. Everything that you see, everything that you touch, everything processed by man has to have the use of specialty steel to be able to make it or to produce it. Specialty steel is the steel that cuts the molds. It is the steel that makes it possible to build production machinery. Without it you cannot do anything. You would never have gotten off the ground in trying to go to the moon without specialty steel. You would not get from here out the door of the Capitol of the United States without specialty steel having been used.

Everything you see that has been created by modern man, since he first learned how to make steel in its crudest form, has been formed into something useful for the human hand to use through specialty steel.

You cannot survive in peace without specialty steel and without the productivity to meet the demands of peacetime, and in war you have no more hope of surviving than a man in the moon. Germany ran out of pep because her specialty steels were not sufficient to meet the demands for the production of the war machine that had been devastated by the allies. Japan went down the drain for the same reason. If it were not for North Vietnam getting its requirements and needs from Soviet Russia and Red China, they would have been down a long time ago.

The whole basis of human endeavor as we know it in our country and as the world knows it stems from the use of specialty steel.

We, my dear friend from Allegheny County, are in a very dangerous position, and apparently the Congress has lost either its knowledge of the subject, its respect for this Nation's needs, or its regard for the human beings that make up this great country of ours.

I yield whatever time is remaining to the gentleman from Allegheny County.

Mr. GAYDOS. Mr. Speaker, I wish to thank my good friend for yielding to me at this time. JOHN DENT has been fighting the unfair and unreasonable foreign import problem for the last 15 years. As he carries on the almost single-handed battle, he has never hesitated to appear anywhere inside or outside this country to save American jobs and American industry. If someone were to say to me that I could do half as good a job as he, I would consider it an extreme personal compliment. I hope the gentleman is with us for a long time. Regardless of how young he is, we expect him to be here for the next three or four terms, because we do not have many people here who have the knowledge that he has on this very complicated subject.

I can stand here and tell you about the voluntary trade arrangements, the agreements we have had in effect for the last 3 years and how they have been violated, and I can tell you what we are trying to do and what has not been done by the State Department. Many things can be said but only men like JOHN DENT have the expertise and intimate knowledge of our foreign-trade problems and the ability to present them so clearly.

Mr. Speaker, there was a time when the expression "as American as apple pie" carried a most significant meaning. Whether applied to man or machine, it was a declaration to the world that that person or product was American and, therefore, something solid, dependable, something to be trusted.

Regrettably, that no longer applies today. At least not in the business world. Products once made in America by Americans and sold under names that were "as American as apple pie" now are made practically anywhere on the face of the earth. However, because their name still is "American" the product is sold in the United States under the label our people have come to respect and trust.

For instance, Ford Motor Co., a firm whose name occupies a special spot in American history, has parts of its cars made in Canada and England but sold here under the Ford name. Plymouth has a model made in England with parts supplied by Germany. It is not sold as an English Plymouth or a German Plymouth. It is sold simply as a Plymouth, a good solid American name. Dodge, another well-known American auto manufacturer, has a model built in Japan by the Mitsubishi Corp.

Please do not get the idea I am singling out the automakers of America as the only practitioners of this type of sales pitch. The list of "American" products made overseas is a long one. It includes, television models—Monroe, for example; typewriters—Royal; movie cameras—Bell & Howell; radios—RCA; washing machines—General Electric; calculators—NCR, Burroughs and Dictaphone. Even baseball, the all-American game, has gone abroad, Spalding Co., a firm synonomous with baseball, has its "mitts" made overseas.

Some people will say you should not criticize a company for going international, for expanding and increasing its sales. After all, they point out, a firm which is beholden to its stockholders has an obligation to return as high a dividend as possible. The cheap labor markets overseas gives them that opportunity.

I do not stand here to criticize the marketing policy of any company. It is not my intention to tell them how to run their business. But I firmly believe that the American consumer is entitled to know whether the product which carries an "American" name is in fact American made.

Of course, it can be said that many companies do stamp their product with the point of manufacture, telling the consumer the article was made here or there. But too often, far too often, that stamp is not prominently displayed. Granted, the fact the stamp is there at all might meet legal requirements but there is a question whether moral ones are met.

Is it really right to expect a potential auto buyer to crawl under the hood of a new car, search his way through the twisted mass of wiring, dig in through all the nuts and bolts just to find out what parts are made where? Must a customer take apart his radio, TV, or washing machine to find out whether the components parts were made in America or somewhere else?

I will insert into the RECORD at the close of my remarks a copy of a news article which deals with the subject of "American" products manufactured abroad. It was researched by a reporter for United Press International in New York and points out that each year American consumers spend billions of dollars for Japanese-made products which carry American names. The writer notes, too, that many people are not aware of this because labels and plates denoting the point of manufacture often are placed in obscure areas of the product.

That same article, which appeared in the February 14 issue of the Pittsburgh Press, attributes the loss of 275,000 jobs to the flight of American companies overseas where labor is a cheap commodity. That combination of cheap labor, good technology, and a well-known name product is part of the reason that last year 90 percent of the home radios in America were imported, 51 percent of the black and white TV sets came in from other countries, so did 42 percent of our shoes, 96 percent of our motorcycles, and 68 percent of our sweaters.

You can add to that list the more than 18 million tons of our steel. This is the area which particularly concerns me and the more than 50,000 men and women in the Mon-Yough Valley of the 20th Congressional District of Pennsylvania which depend on steel and steel products for a living.

These are the people who are still waiting to see what will come from our State Department's attempt to gain a new, and I certainly hope, a meaningful voluntary restraint arrangement with the major foreign steel-

makers. I say "meaningful" arrangement because the 1968 one was disastrous. Less than 2 weeks ago, I stood on the floor of this House and told you I was assured of a preliminary report on the negotiations with a more detailed one to follow when the talks were completed. I did not have that report then; I do not have it now.

What I do have is a report from Stewart S. Cort, chairman of Bethlehem Steel Corp. The report is not a cheerful one. Mr. Cort frankly admits the American steel industry is not snapping back from last year's import deluge. Furthermore, the reason he is quoted as giving for the slow recovery is due to continued heavy imports.

Despite the west coast dock strike, imports of steel last month probably equaled the 1.3 million tons shipped into the country during December of 1971. In addition, Bethlehem Steel, despite a pickup in orders from the automotive and construction industries, does not expect to see much of a business increase until next month, according to Mr. Cort.

Mr. Cort's comments are contained in a news article in the Pittsburgh Press of February 16, and I will include a copy of that article in the RECORD today. In the same issue, in fact on the same page, is another story which I think will interest you. Written by Robert Dietsch, a Scripps-Howard staff writer, it is primarily concerned with our country's $30 billion deficit in the balance of payments last year. However, it does touch on our lopsided trade balance, which was a factor in the overall deficit. Mr. Dietsch points out that in 1 year this Nation did a complete flip-flop in the import-export area. In 1970, he reports our exports topped our imports by $2.1 billion. But last year the situation was reversed with imports topping our exports by almost $3 billion. He adds a rather gloomy footnote, noting that our exports still are not booming and that we cannot soon expect to see a return to the trade surpluses of a decade ago.

Industry Week magazine did nothing to brighten the outlook in a report it carried in its February 14 issue. The "Valentine" it sent to the steel industry was an announcement that General Motors Corps, planned to double its purchase of Japanese steel this year. According to Industry Week, GM will buy 154,332 net tons from Japan in 1972.

The magazine further warned that:

Coming on top of an absence of new quota agreements with European and Japanese steel producers, renewed interest in overseas sources raises the threat of another big year for steel import.

Nineteen seventy-one, you recall, was the year of the big love affair between U.S. manufacturers and foreign steelmakers. The result was a record 18.3 million tons of steel, valued at $2.6 billion, another record, shipped into the country.

Industry Week, as does Mr. Cort, sees little to cheer about in the immediate future as far as steel is concerned. The magazine says foreign mills are expected to ship us about 8 million tons in the first half of this year. That is not too far behind last year when imports totaled 9.1 million tons in the same 6-month period.

Quite frankly, Mr. Speaker, I am frightened. The situation grows ever more critical. America, once the greatest exporter in the world, has become the greatest importer in the world. The trade deficit last year, the country's first since 1888, shocked a great many people and, I hope, brought the issue into sharp focus.

It did produce a reaction to "Buy American." I am glad to see that. But, if the present trend continues, that may be all that we produce.

The articles follow:

"MADE IN JAPAN" LABEL WIDESPREAD

NEW YORK.—You may think that the Dodge Colt compact car, Royal's "Apollo" typewriter and Bell & Howell's Super-8 movie camera have little in common.

But they do.

They're all made in Japan.

To the long list of "American" products made overseas can be added many models of television sets, some General Electric washing machines, RCA radios and even Spalding baseball gloves.

Each year Americans spend billions for Japanese products bearing American brand names. Many people aren't even aware of it because labels and plates denoting point of manufacture often are under or on the backs of the machines.

Hitachi makes some models of the RCA radio and G.E. washing machines. Mitsubishi Corp. makes the Colt compact.

NCR, Burroughs and Dictaphone place their names on calculators produced in Japan by Sharp, Sanyo and Nippon, respectively. Most Monroe television sets also are produced abroad.

This flight to cheaper labor markets has cost Americans about 275,000 jobs just in the radio-television and electronics area and the fields of leather footwear, steel, apparel and textiles, according to Bureau of Labor Statistics. Imports in these areas in 1970 contributed nearly $4 billion to the balance of paymens deficit.

It's been estimated that Americans in 1971 imported 90 percent of their home radios, 51 per cent of their black and white television sets, 42 per cent of their shoes, 16 per cent of their new cars, 96 percent of their motorcycles and 68 per cent of their sweaters.

Besides products made overseas and bearing American brand names, a vast quantity of goods are assembled here from components manufactured abroad.

IBM, the leading maker of computers, has a component manufacturing plant in Taiwan. That island also turns out television components and other electronic parts for Philco-Ford, Admiral and General Instruments Co.

Little by little, the drive toward cheaper labor, a major factor in productivity which ultimately determines profit margins, is chipping away at American industries.

Take the portable typewriter industry, for example. Major producers like Royal, Remington and Underwood, acquired by Olivetti, an Italian company, make their products overseas.

Allen business machines (formerly R. C. Allen), an American manufacturer of office typewriters, was forced out of business entirely.

Smith-Corona portables, made by SCM Corp., are the only portables still produced in this country. SCM manages this through automated manufacturing methods at its production complex in the Cortland, N.Y., area.

Despite the automation, Smith-Corona still hires 3,500 workers at these plants. But you can bet that these workers worry some as they feel the pressures of foreign labor closing in on them.

Corporations also feel that pressure. They're caught between the desire to make more profits through higher productivity and public resentment when they phase out plants * * * foreign labor.

IMPORTS STILL HURTING STEEL

Imports are taking the snap out of steel's comeback, according to Stewart S. Cort, chairman of Bethlehem Steel Corp.

Cort said that shipments, which remain well below expected levels, are "inching up" but the reason they aren't more robust "quite frankly, is due to continued heavy imports."

The steel executive said that despite the dock strike on the West Coast, imports last month probably equalled the 1.3 million tons shipped into the U.S. in December.

Despite a pickup in orders from the automotive and construction industries, he said it would be March before Bethlehem would expect to see much of a hike in business.

He reiterated estimates made in the past that industry shipments in the first quarter will be only 21.5 million tons to 22 million tons and lag behind the 24.4 million tons shipped a year ago.

It is still possible, according to Cort, that total shipments this year will reach the 94-million-ton level he had been forecasting two months ago.

Cort added that this figure, which represents an 8 per cent hike from the 87 million tons shipped in 1971, is based on an expected drop in imports from last year's record 18.3 million to around 16 million tons.

Cort said as part of an intensive cost cutting program last year, Bethlehem weeded out unprofitable sales and partially, as a result, saw its shipments fall to 12.6 million tons from 13.8 million in 1970 and its share of the market slip to 14.5 per cent from 15.2.

He said Bethlehem is "going to try with every effort" to regain its market share this year, and he forecasts the company's shipments in 1972 at 14 million tons.

He declined to project earnings and laughed at estimates by some analysts that the company will earn $4 or more a share this year. "I like those figures," he said, adding that "We'll have to work hard to meet that."

Some analysts had increased their projections for Bethlehem from around $3.50 a share earlier this year when the company astounded the industry by reporting a 54.6 per cent surge in earnings to $139,239,000 or $3.14 a share on a 1 per cent gain in sale to $2.96 billion.

Cort said it's too early to tell if Bethlehem can match last year's first quarter net of $33,125,000 or 75 cents a share on sales of $768.4 million.

"We had a chance in a few early months last year—when customers were building inventory as a hedge against a strike that didn't materialize—to turn the motor on and really let things roll at optimum levels." But sluggish demand has kept operations below these levels so far this year.

PAYMENTS DEFICIT RECORD IN 1971

(By Robert Dietsch)

WASHINGTON.—The $29.6 billion deficit in the U.S. balance of payments last year set a record.

Administration officials and private bankers said today they foresee some improvement, but not much, for 1972.

The Commerce Department reported yesterday that the 1971 payments deficit was $19.8 billion more than the previous record set only a year earlier.

The figures reflect what economists call the "official reserve transactions balance" meaning that foreign central banks accumulated $29.6 billion more they sent to the United States.

By another method of measurement—one which reflects dollars accumulated by both foreign central banks and foreign private sources (individuals, private banks and corporations)—the 1971 balance of payments deficit was $21.2 billion.

This also was a record by far. The previous record deficit by this accounting was $3.8 billion set in 1970.

The deterioration of the payments account is reflected in the fact that in 1969 the official reserve payments account had a $2.7 billion surplus.

Main reason for the massive dollar exodus

last year was the loss of faith in the dollar last spring and summer.

Foreigners had piled up so many dollars they became apprehensive about the U.S. government's ability or intent to swap them for gold. They became convinced the dollar was overvalued in relation to other—major world currencies.

As a result, not only foreigners but U.S. businessmen and banks doing business overseas sold dollars to buy other currencies, especially the West German mark and the Japanese yen.

It was to stem such dollar hemorrhaging that President Nixon last Aug. 15 ended the policy of swapping dollars for gold and thus, in effect, devalued the dollar.

The official devaluation did not come until shortly before Christmas, when the dollar was cheapened in price in relation to other currencies and many other currencies were raised in price in relation to the dollar.

Another factor in the swelling of the 1971 payments deficit was a deteriorating U.S. trade balance. In 1970, U.S. exports topped imports by about $2.1 billion; but in 1971, imports topped exports by almost $3 billion. It was the country's first trade deficit since 1888.

The new alignment of currencies, which gives the dollar an edge in world merchandise and financial transactions, was designed to help the U.S. payments account. But most economists think it will be several years before any sizable improvement can be made.

U.S. exports still are not booming and the country cannot soon expect the hefty trade surpluses it enjoyed in the early 1960s.

And, despite the new currency alignment, there has been no massive flow of dollars back into the United States.

[From the Daily News, McKeesport, Pa., Feb. 14, 1972]

STEEL IMPORTS SET RECORD IN 1971

CLEVELAND, OHIO.—More foreign steel entered the United States last year than ever before, and U.S. manufacturers are looking to overseas steel mills again this year for price breaks, Industry Week magazine reports.

Steel users year built up a strike hedge with foreign steel at a cost of $2.6 billion. This year, customers are looking to the lower cost of imported steel in the face of hikes by U.S. steelmakers, the business weekly said.

General Motors Corp. said it will buy 154,322 net tons of Japanese steel this year—double the amount GM purchased last year, Industry Week said.

"Coming on top of an absence of new quota agreements with European and Japanese steel producers, renewed interest in overseas sources raises the threat of another big year for steel imports," the magazine said.

It noted a record 18.3 million net tons of foreign steel entered the U.S. last year.

Domestic steelmakers forecast imports for the first half of the year will be about 3.5 million net tons the first quarter and 4.5 million net tons the second quarter. Last year, 3.8 million net tons were imported the first period and 5.3 million net tons the second.

The magazine said, however, that "there is some indication . . . that overseas steel producers are eyeing price hikes of their own."

Imports may "hit a snag in the form of a strike of dock workers at the Great Lakes ports April 1," Industry Week said.

"Contracts with the International Longshoremen's Association expire on the Great Lakes March 31, and unless the federal Pay Board approves a 40 per cent increase like that won on the East, West and Gulf coasts, lake port stevedores will probably be asked to strike."

Industry Week estimated 2,378,000 net tons of raw steel were poured in the week ended Feb. 12, compared with 2,345,000 net tons for the week ended Feb. 5.

The price composite on No. 1 heavy melting steelmaking scrap held at $34.83 per gross ton for the second week the magazine said.

[From Industry Week, Feb. 14, 1972]

MORE STEEL CUSTOMERS GO SHOPPING OVERSEAS

U.S. manufacturers are again flirting with foreign steelmakers—and this could further hurt the domestic mills they jilted last year.

In 1971, steel users in this country had a record $2.6 billion affair with overseas suppliers as they built huge strikehedge stockpiles. This year, customers are looking for price breaks in the face of hikes by U.S. steelmakers.

Evidence of current interest in import steel is mounting:

The recent price increase on cold rolled steel sheet and strip apparently hasn't cost U.S. mills any business yet—but it is causing some customers to grumble and check foreign price lists.

Price shading on some other steel product lines is necessary to keep orders in this country, notes a Chicago area mill.

General Motors Corp. says it will buy 154,322 net tons of Japanese steel this year—double the amount it purchased last year.

A Southern pig iron facility has been closed because its customers were able to buy more cheaply overseas.

Import fears.—Coming on top of an absence of new quota agreements with European and Japanese steel producers, renewed interest in overseas sources raises the threat of another big year for steel imports. Last year, more foreign steel than ever before—18.3 million net tons—entered the U.S.

Indeed, domestic steelmakers are forecasting imports for the first two quarters at a relatively high level, although down from record 1971. Foreign mills are expected to ship about 3.5 million net tons of steel to this country in the first quarter and 4.5 million tons in the second. A year ago, they shipped 3.8 million and 5.3 million tons, respectively.

There is, however, some indication that overseas steel producers are eyeing price hikes of their own. Most are reported to be signing contracts of only three months.

HON. JAMES F. BYRNES

HON. GERALD R. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, April 10, 1972

Mr. GERALD R. FORD. Mr. Speaker, I join my colleagues in mourning the death of a truly outstanding American, the man Franklin D. Roosevelt dubbed "Assistant President."

James F. Byrnes had a most remarkable career, one that spanned nearly a half century, Jimmy Byrnes was successively a Congressman, a Senator, an Associate Justice of the U.S. Supreme Court, Director of Economic Stabilization, War Mobilizer, Secretary of State, and Governor of South Carolina.

The American people owed Jimmy Byrnes a debt for his many services to the Nation, particularly for his splendid 2-year stint as Director of War Mobilization during World War II. Then it was that F.D.R. nicknamed Jimmy Byrnes "Assistant President," because Byrnes at that time was, in effect, in charge of America's domestic affairs.

Mr. Speaker, I have a special fondness for Jimmy Byrnes—one reason being that he supported the Republican candidate for President in 1952, 1956, 1960, 1964, and 1968.

But, politics aside, the Nation has lost a great American.

My wife and I extend our condolences to Mrs. Byrnes in her time of grief.

COLLEGES NEGLECT THE ARTS

HON. JOHN BRADEMAS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BRADEMAS. Mr. Speaker, I insert in the RECORD a most interesting article, "Colleges Neglect the Arts," by Miss Nancy Hanks, chairman of the National Council on the Arts.

Miss Hanks' essay appears in the March 1972 issue of "Trustee," a publication of the Division of Higher Education, Board of Education, the United Methodist Church, sent to trustees of the church related institutions of higher learning.

I might note, Mr. Speaker, that Miss Hanks is herself a trustee of Duke University at Durham, N.C.

Miss Hanks' essay follows:

COLLEGES NEGLECT THE ARTS

(By Nancy Hanks)

The arts are sometimes expensive, and so are science laboratories; but, considering their centrality to the value of life, I do not understand why the arts have not become integral to most universities, or why they are the first to be cut in times of financial stringency. This is true not only in university budgets, but also in city budgets, in contributions from foundations and corporations, and in the entire structure of the support of the arts.

It is my belief that the reason the arts find themselves in what can only be viewed as a precarious position is that we are not yet listening enough to our young people. This is to say that we are foolishly neglecting our future.

How many people today in a university community—and by that I mean the faculty, the alumni, the parents, the administration, and the students—are asking the tough questions from a point of reference but with a need for change? We all agree, for instance, that our libraries are a great source, the bedrock of a university. The printed word brings us the history of the ages and explores the possibilities and promises of the future. But how many of us consider that painters and sculptors throughout time have portrayed the history of the ages and projected the seeds of the future? Their works of art are as important to a society as the work of a great writer. Yet, do we all agree that our university museums are as important as our libraries?

The same comment and questions could be made and asked about dance, theatre, music, and all the arts. Another example is film.

IMPORTANCE OF FILM

Film as an art is earning its place beside painting, music, poetry. At the moment there are three hundred colleges and universities offering film courses, sixty-eight of them offering a major in the art of film. In the last five years budget allotments for university film programs have increased 300 percent. There are more than three thousand students majoring in film on the undergraduate

level and more than twelve hundred pursuing graduate degrees in film. Nearly 80 percent of schools teaching film production emphasize documentary or experimental filmmaking, and one-third of the schools permit a student to complete a film project in lieu of submitting a written thesis.

All this is to the good. Now let us look at the other side.

You cannot teach or learn film without having access to our film heritage, any more than you can teach literature without libraries. Yet, at the Library of Congress archives alone, thirty thousand feet of film decompose annually. Losses are being suffered also at the National Archives, the Museum of Modern Art, and the George Eastman House.

In film research the need is great for properly organized research centers and the development of educational aids and trained personnel. Currently there is no research center to promote film scholarship. Some work is being done at the graduate level at universities and at the major archives, but little is being done to coordinate these efforts and focus on specific needs.

Apparently there is no definitive textbook on the history of the cinema that can be used at the university level. There, too, is no comprehensive, up-to-date bibliography listing reference works on film or published lists of the holdings of the major archives.

FINE ARTS AS CAREERS

A Louis Harris poll has documented that 18 percent of college seniors interviewed are interested in the arts—not as an avocation, not as a sometime part of an otherwise directed life-style, but as a full-time way of living. And the "Profile of This Year's Freshmen," compiled by the *Chronicle of Higher Education*, shows that 9.2 percent of the freshmen chose the fine arts as a probable major field of study, as compared to 16.2 percent who wanted to concentrate on business and 11.6 percent who were interested in education.

The fine arts ranked third in the listing of preferences, two notches ahead of the social sciences and engineering, which came in fourth and fifth. As a career preference, to be an artist was more interesting to the freshmen than to be a nurse, doctor, lawyer, or college teacher.

If we compare both surveys, we find that by the time freshmen become seniors their interest in the arts as professions has taken a giant step of 100 percent!

Throughout history what has helped societies and civilizations to meet their problems and to advance their values has been creativity and quality. Without creativity and quality the human being and the society in which he lies would be powerless to develop new ideas and from them methods to deal with new problems.

We are today, in glory and in grief, a technicized society. For the growing complexities consequent to mechanization, computerization, and advancing technologies we need an ever vital and growing addition of what the arts do for the human spirit. They are not merely embellishments, decorations, entertainments. They are necessary elements, vital to the continuance and enrichment of our individual lives and of our civilization.

FORMER GOV. BUFORD ELLINGTON

HON. ED JONES

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. JONES of Tennessee. Mr. Speaker, while the House was in its Easter recess recently, the State of Tennessee was saddened by the news of former Gov. Buford Ellington's death. The Governor and I were friends of long standing, and I was among the many who mourned his passing.

Buford Ellington and I first knew each other when he was a member of the State legislature and I was a member of Gov. Gordon Browning's cabinet. When Gov. Frank Clement took office, Buford succeeded me as commissioner of agriculture before serving two separate terms as Governor.

Governor Ellington had two sterling qualities which I shall long remember—his industriousness and his warmheartedness. He was an early riser who enjoyed getting to his office early and staying there often into the nighttime hours. He was readily accessible and those who talked with him felt that they had a true friend.

Through Buford Ellington's leadership, Tennessee accomplished much, and we of the Volunteer State are going to miss him deeply.

MY RESPONSIBILITY TO FREEDOM

HON. ORVAL HANSEN

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HANSEN of Idaho. Mr. Speaker, "My Responsibility to Freedom" was the theme this year of the Voice of Democracy contest sponsored by the Veterans of Foreign Wars of the United States and its ladies auxiliary. I want to commend the VFW for sponsoring this annual contest and for encouraging young citizens to speak out in this positive way showing their pride and faith in the principles upon which America was founded and still thrives.

David Housley, a senior at Pocatello High School in my district, was Idaho's winner this year in the Voice of Democracy contest. I am pleased to insert Mr. Housley's speech in the RECORD:

VOICE OF DEMOCRACY

There is no law, written or otherwise, that says a free people must fulfill their responsibility to freedom. If there were, that freedom would be a farce. Instead, a free society gives its citizens the right to react to freedom in their own individual ways. Whether their actions are responsible or irresponsible is entirely up to them.

A person can fulfill his responsibility to freedom by doing two things. First, acknowledging the obligation he has to himself and second, acknowledging his obligation to others.

An individual owes it to himself to become aware of his talents and to manifest them in the most constructive way possible. By doing this he contributes to his character and the character of his society.

Freedom is a catalyst to individual achievement. It gives the citizen an opportunity to work independent of political requirements or class demands. If a person fails to utilize his resources he is derelict in his responsibility to himself as well as to freedom.

Everyone has a moral responsibility to help anyone who is injured, hungry or even lonely. Those living in freedom have an added responsibility. They are obligated to protect each other's right to pursue happiness.

The best way to meet this responsibility is by perpetuating the government that allows for that right. In order for such a system to survive it must be protected and understood.

Protecting a free people's government involves more than an effective internal militia or national army. It involves the population's will to see the system prevail. Soldier or civilian, a person will fight harder if he loves what he is fighting for, and freedom must be understood before it can be thoroughly appreciated. It's the responsibility of all free men and women to seek and gain knowledge about their free system. This knowledge will aid them in discerning who is hurting and who is helping the government and in properly defending the freedom the government allows.

Thus far I have made no mention of the United States by name. What I have said has been simply stated, analytical, and even pseudo-scientific. It was done this way to establish freedom as a definite quality. Possessed with rules and requiring responsibilities. The people of the United States are subject to these rules and responsibilities. They must realize that freedom is perishable and needs more than faith to stay alive.

America didn't invent freedom, it merely, ambivalent as it may sound, captured it in a Democracy. Democracy needs responsible people just as freedom does. People who will work individually to improve their talents and collectively to insure each other's right to pursue their own particular future. But above all, people who will be their responsibility to freedom by learning about the government that keeps them free and protecting it because they know what it stands for.

TRIBUTE TO SALVATORE CAMELIO

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HARRINGTON. Mr. Speaker, I was on an inspection trip in South Vietnam and Thailand when the State of Massachusetts suffered a grievous loss in the death of Salvatore Camelio, long the president of the Massachusetts State Labor Council, AFL-CIO. Both as a member of the Massachusetts House of Representatives, and as a Member of Congress I had the privilege of working with him on legislation that was of importance to the men and women he so ably represented. No one who had that experience could have doubted for a minute the depth and integrity of his commitment to making a better life for working people. His concern for economic justice, his compassion for the less fortunate, and his insistence that labor be given, not simply its fair share of the national product, but a full say in the decisions that affected laboring people—whether in the workplace, or in the statehouse, or in the Capitol—set a high standard of leadership.

Especially at this time, when there are those who would unfairly try to make labor the scapegoat for the disastrous economic policies that have plagued this country for the past 3 years, Sal Camelio will be greatly missed. As we continue to work to improve conditions for all Americans—nationwide, and in Massachu-

setts, where we face the most severe unemployment crisis since the depths of the great depression—the memory of Sal Camelio and his work will be with us.

IS BREZHNEV'S PERSONALITY CULT DECLINING?

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HAMILTON. Mr. Speaker, a Radio Liberty dispatch from March 6, 1972, presents some very interesting facts on the declining mention of Party General Secretary Brezhnev in the editorials of Pravda, the party newspaper.

The concluding paragraph of the dispatch notes that—

Whether or not Brezhnev will ultimately succeed in imposing himself as the undisputed leader is still very much an open question. It is bound to be equally uncertain, therefore, whether the slump in the Brezhnev cult currently to be observed in the lead editorials of *Pravda* reflects no more than a temporary or partial setback in his ascent to the top . . . or whether we are actually witnessing the decline of a leader's cult after he has passed the apogee of his career.

I recommend the dispatch, which follows, to my colleagues:

IS BREZHNEV'S PERSONALITY CULT DECLINING?

(By Christian Duevel)

Following publication of an esoteric anti-Brezhnev editorial in *Pravda* of January 21, references to Brezhnev have sharply declined in the party organ's lead editorials. From January 22 until March 5 of this year, *Pravda's* lead editorials have mentioned Brezhnev only three times, as compared with a total of 13 references during the first part of January (January 1–21) 1972.

Pravda's lead editorial of January 21 was pegged, as usual, to the anniversary of Lenin's death, although it did not specifically mention the anniversary. In contrast with the past few years, when *Pravda* had stressed "faithfulness" toward Leninism in the headings of its editorials published on the occasion of this anniversary, it came out this year with the headline "The Creative Force of the Ideas of Leninism." In itself this was hardly very significant. Nor was it in any way out of order for *Pravda* to insert a quotation from Brezhnev's report to the 24th CPSU Congress to the effect that "the party sees its most important task in finding, on the basis of Lenin's thoughts and Lenin's methodology, a solution to the topical problems of communist construction." But then the editorial became implicitly more critical, pointing out the importance of the fact that "our scientific thought does not come late with an answer to the newly-arising urgent questions of the day." It did not elaborate on these "urgent questions of the day," but there must be at least some suspicion that it was meant to refer to President Nixon's visit to Communist China. Even more striking was *Pravda's* anonymous criticism on this occasion:

"Leninism does not tolerate a dogmatic attitude toward theory. V. I. Lenin mercilessly ridiculed those who on all occasions 'snatch at quotations from books' and feel lost in the face of new situations which are not described in the books. A favorable atmosphere has been created in our country for bold, creative searches. . . . Creatively to adopt and develop Lenin's ideas in the situation of the means unflinchingly to defend their purity. . . . Militant implacability toward distortion of revolutionary theory, and toward any alien views—that is the most important Leninist principle."

But what does it mean to defend the "purity" of Lenin's ideas in the present situation and in the context of a specific reference to Lenin's opposition to the frequent use of quotations? Could not the "purity" of these ideas be best defended by making frequent appeal to Lenin's quotations? Obviously, what the authors of the *Pravda* lead editorial were concerned about was not the quotation-mongering from Lenin's works, which has existed for a great many years, but the similar phenomenon that has been developing in the more recent past with regard to Brezhnev's "books."[1] It is in any case inconceivable that the editors of *Pravda* would have chosen the anniversary of Lenin's death for an insidious attack on the practice of all-too-frequent appeals to the words of Lenin, almost half a century after his death. What was involved was clearly a condemnation of the quotation-mongering that has developed around Brezhnev, apparently coupled with an esoteric attack against Brezhnev himself for "feeling lost in the face of new situations which are not described in the books." But the proof of the pudding is in its eating. And it is, therefore, only now that we can be absolutely sure that this esoteric lead editorial was aimed against Brezhnev. For now we can see the factual evidence of a sharp decline of references to Brezhnev since publication of this lead editorial in *Pravda*. The party organ's lead editorials have now returned to the rate of Brezhnev references that existed before April 1970 (*viz.*, 3 to 4 per month), when the great Brezhnev quotation boom began, at least as far as *Pravda* was concerned (see attached Appendix).

Particularly noteworthy is the fact that on three occasions since January 21, *Pravda* has featured lead editorials on foreign policy that failed to mention Brezhnev (*viz.*, on January 28, February 10 and March 2). Since Brezhnev assumed the key role in Soviet foreign policy in August 1971, all of *Pravda's* foreign policy editorials had referred to Brezhnev at least once, and occasionally as often as five or six times (*Pravda*, Sept. 27, Nov. 1 & 29, 1971). During the entire past year (March 5, 1971 until March 5, 1972) only five lead editorials of *Pravda* on foreign policy have failed to mention Brezhnev (apart from the three recent ones cited above, those of June 2 and July 27). Is the trust of the party's ruling elite in Brehznev's conduct of foreign policy waning, it may be asked, in the face of the wrecking of his China policy (epitomized by the U.S.-Chinese rapproachement) and the possible wrecking of his *Westpolitik* (if the steadily dwindling Bonn government majority in the Bundestag should fail to secure the ratification of the Moscow-Bonn and Warsaw-Bonn treaties?)

Intriguing inferences may be drawn from the curve of Brezhnev references in the *Pravda* lead editorials. Thus, the CPSU Central Committee plenum in early July 1970, when Brezhnev, apparently, for the first time attempted the takeover of the government, was preceded by three months of a rising personality cult, as reflected in the increasing number of references to Brezhnev in *Pravda's* lead editorials (see: Appendix). The three months which preceded the CPSU Central Committee plenum in late November of last year (September-November 1971), at which another such attempt was staged on the part of Brezhnev and his supporters, although apparently in a modified form,[2] were again marked by a fast-rising number of references to Brezhnev in *Pravda's* lead editorials. As a result, an all-time peak of 25 references to Brezhnev was achieved by the *Pravda* lead editorials published during November 1971. On both occasions—the July Plenum of 1970 and the November Plenum of 1971—the rate of Brezhnev references immediately dropped in the months that followed his abortive takeover bids (since the July 1970 plenum was held at the beginning of the month, it is only natural that this decline should have been reflected to a certain extent already in the July figure). It therefore looks as though the build-up of Brezhnev in *Pravda's* lead editorials represented, on both occasions, a deliberate effort to boost his position in anticipation of his takeover bid. In connection with the 24th CPSU Congress in early April 1971 the reverse phenomenon was to be observed. There was no prior buildup, but the number of Brezhnev references increased sharply with the beginning of the Congress and dropped off again in the following months. This was a plausible reflection of the heavy emphasis then placed in the Soviet press on rehashing the Congress decisions and especially Brezhnev's report to the Congress.

There is bound to arise the question of *Pravda's* motives in debunking the Brezhnev personality cult, if only esoterically, when it had so amply participated at times in propagating it. There are two possible explanations: either this debunking of the Brezhnev cult was decreed from above, *i.e.*, by the Politburo, and *Pravda* was merely executing the decision, or it reflected the ups and downs of infighting on *Pravda's* editorial board. Some evidence may be cited in favor of both hypotheses. *Pravda's* lead editorial of January 21 and its subsequent practical implementation may be seen as a follow-up measure of the Politburo decision not to let Brezhnev address the nation on New Year's Day (see: "A Small Step Back Toward Collectivity of Leadership,"[3] Jan. 4, 1972). There was evidence, at the same time, of a sort of power struggle between Zimyanin, the chief editor of *Pravda*, and his first deputy (and Brezhnev protege) V. G. Afanasyev, who was seen maneuvering before the Third All-Union Congress of the Union of Soviet Journalists in December 1971 for a top position in the union, but was defeated, as it appeared, through Zimyanin's exertions (see: "A Low-Keyed Congress of Soviet Journalists," *Radio Liberty Dispatch*, Dec. 21, 1971).

Afanasyev was not only not elected to a secretaryship in the union, to which he would have been entitled in accordance with precedents, but he was not even elected to membership to the Board of the Union, composed of 159 people, nor to the Union's Central Auditing Commission (see *Zhurnalist*, No. 1, Jan. 1972, pp. 30 & 32). This was tantamount to having been blackballed! Whatever the details of this story (the delegates to the Congress presumably resented the way Afanasyev had recommended himself in *Pravda*—during Zimyanin's absence—for a top job in the Union), it meant a serious setback for Brezhnev's protégé in the *Pravda* leadership. Afanasyev does not seem to have recovered yet from this setback. At any rate there has been a "blackout" on his activities recently and he has not written any significant press articles since he published one of the most important contributions to last year's esoteric campaign in favor of Brezhnev's take-

[1] A two-volume edition of Brehznev's speeches and articles was published in 1970 under the title "On a Leninist Course."

[2] See the following *Radio Liberty Dispatches* "Pravda Indirectly Attacks Kosygin," October 28, 1971; "Heavy Industry Lobby Beaten Off at Central Committee Plenum." November 23, 1971.

[3] *Radio Liberty Dispatch.*

over bid in *Voprosy Filosofi* (No. 11, November 1971, pp. 3–16).

Whether or not Brezhnev will ultimately succeed in imposing himself as the undisputed leader is still very much an open question. It is bound to be equally uncertain, therefore, whether the slump in the Brezhnev cult currently to be observed in the lead editorials of *Pravda* reflects no more than a temporary or partial setback in his ascent to the top—and will eventually be superseded by a new wave or quotation-mongering from his "works"—or whether we are actually witnessing the decline of a leader's cult after he has passed the apogee of his career.

APPENDIX

References to Brezhnev in Pravda lead editorials

(January 1970–March 1972)

	References
1970:	
January	4
February	4
March	3
April	13
May	16
June	17
July (July plenum CC/CPSU)	14
August	7
September	9
October	10
November	11
December	14
1971:	
January	9
February	7
March	8
April (24th CPSU Congress)	22
May	19
June	12
July	12
August	9
September	15
October	16
November (November plenum CC/CPSU)	25
December	16
1972:	
January (Jan. 1–21, 13; Jan. 22–31, nil)	13
February	3
Total for 1970	122
Total for 1971	170

Categories: Soviet Government, Law and Communist Party.

ADAM CLAYTON POWELL

HON. WAYNE N. ASPINALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 12, 1972

Mr. ASPINALL. Mr. Speaker, I wish to join with those of my colleagues who are taking this occasion to recognize the work of our former colleague, the late Adam Clayton Powell.

My direct association with Congressman Powell occurred in the House Committee on Interior and Insular Affairs where I now have the privilege to serve as chairman.

The legislative accomplishments of this dynamic individual have been recited and much attention is being given, deservedly, to the work of the House Education and Labor Committee where Adam Powell served as chairman. Lesser known, however, is the work that he performed as a member of the House Committee on Interior and Insular Affairs.

Adam Powell was a constructive member of my committee as he rose to the position of chairman of the Subcommittee on Mines and Mining. It was said in jest that his knowledge of mining was restricted to the subways of New York City, but I can advise you that he worked diligently and effectively in that position of responsibility.

He worked within the rules of the House Interior and Insular Affairs Committee, and he paid the committee the compliment of asking to take those rules as his guide when he left our committee to become the chairman of the House Education and Labor Committee.

Mr. Speaker, I join with my colleagues in extending sympathy to the family of Adam Clayton Powell.

THE REWARD FOR SELF SACRIFICE

HON. HENRY HELSTOSKI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. HELSTOSKI. Mr. Speaker, on October 17, 1971, Pope Paul VI, beatified Father Maximilian Maria Kolbe, a prisoner of the Nazi concentration camp at Auschwitz — Oswiecim — who sacrificed himself to save the life of another prisoner.

Father Kolbe arrived at Oswiecim, Auschwitz, early in 1941 with four other Monks. He had been seized at Niepokalanow for distributing anti-Nazi literature. Father Kolbe had been organizing help for Catholics and Jews who were being expelled from Polish lands annexed by the Germans.

One day, toward the end of July, a Polish prisoner named Klos escaped. He was the fourth to have done so and the punishment was the same in every case—10 prisoners were selected at random to be killed by starvation.

One of the 10 picked was Sgt. Franciszek Gajowniczek. Sergeant Gajowniczek screamed that he wanted to live to see his wife and children and called to God for help. The Father Kolbe who was in the same file, stepped forward.

He told the commandant in perfect German that he wanted to take the place of this man who called to God for help.

The commandant asked Father Kolbe who he was and Father Kolbe replied, "a Catholic priest." "All right take him" the commandant barked. Father Kolbe was led away while Sergeant Gajowniczek returned to the file.

The 10 men were put in a starvation cell. On August 14, 1941, Father Kolbe was killed with an injection of phenol. He was 47 years old.

The beatification of Father Maximilian Maria Kolbe was the official recognition of the fact that Christian Poles were among those brutally persecuted by the Nazis. During his "urbi et orbi" blessings, Pope Paul stated:

> This morning in the Basilica of St. Peter, we have performed the Ceremony of Beatification of Father Maximilian Maria Kolbe, a Franciscan Monk. He was a Pole. Poland, his country was invaded in the last war from the West and from the East. Gruesome prisons were multiplied, and in horrible concentration camps uncounted multitudes were put to death, among them Jews and Poles. . . . In one of these camps, at Auschwitz, Father Kolbe offered his life through total starvation in exchange for the life of a fellow prisoner—unknown to him—the father of several children. Yet that was not the only act of supreme self-sacrifice. The lot of Father Kolbe and his personal virtues, have made his sacrifice typical of the era. This Franciscan Monk has somehow united all the numerous and still unknown sacrifices that in fact occurred during the rebirth of barbarism.
>
> It will be well to know that among the thousands who partook in this beautiful beatification ceremony was the man whose life was spared.

Mr. Speaker, I would like to offer, at this time, a short history of the life of Father Kolbe. He was born on January 8, 1894, in Zdunska Wola, Poland, and after the usual ordinary schooling, he entered the Conventual Franciscan Seminary in 1907 and was sent to Rome in 1912 to study philosphy and theology.

On October 17, 1917—with six other fellow students, Father Kolbe founded the Militia of Mary Immaculate—now spread throughout Italy, Poland, Japan, the United States, Mexico, and other nations, counting approximately 3 million members. The date of the founding of this religious group coincides with the date of his beatification exactly 54 years later.

On April 28, 1918, he was ordained a priest. In 1919 he returned to Poland and in January of 1922 issued the first monthly publication—Rycerz Niepokalanej—the Knight of the Immaculate, which by 1938–39 reached a monthly printing of 1 million copies. In October of 1927 he founded in the convent city Niepokalanow, the largest Catholic printing office in the world. In 1930 he founded another convent city in Nagasaki, Japan, Mugenzaino Sono.

Mrs. Sono, a 40-year-old Tokyo housewife, spoke of the foundation established in 1930 in Nagasaki by Father Kolbe. She said that the faith brought to Japan by St. Frances Xavier was bolstered in this century by missionaries such as Father Kolbe. The Polish priest's foundation in Nagasaki, she said, is on a hill.

Said Mrs. Sono:

> Perhaps, because of this location his place was protected from the atomic bomb. But really we think that there was a special intervention from the heaven of Father Kolbe which saved his world.

Father Kolbe, recalled to Poland in 1936, was arrested by the Gestapo the first time in September of 1939, immediately after the Hitler's attack on his country, Poland. The second arrest came in February 1941. Sent to the concentration camp of Auschwitz as prisoner 16,670, he offered his life in place of Franciszek Gajowniczek and died on August 14, 1941—the vigil of the Feast of the Assumption—from an injection of phenol—carbolic acid.

Mr. Speaker, the Christian world now has another mortal whose actions brought him recognition and elevation to

the ranks of the blessed. This is Father Kolbe's reward for his supreme self-sacrifice to spare the life of a fellow human being.

This world would be far better off if the men of all nations would work toward just and lasting peace so that such events as that faced by Father Kolbe would not be repeated.

MISS JULIA C. THOMPSON

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. DULSKI. Mr. Speaker, the untimely passing of Miss Julia C. Thompson, long-time representative of the American Nurses Association, removes from the Washington scene a strong and effective voice in behalf of her profession.

A native of Wausau, Wis., Miss Thompson had served in nearly every role of the nursing profession, including hospital duty and supervision, teacher, and public health activity.

She had been active on State and national legislative committees before she turned her full-time attention to legislation as a member of the ANA staff in Washington in 1951.

Miss Thompson promptly became well known on Capitol Hill as she pounded the corridors in behalf of legislation of concern to the nursing profession.

She was a complete professional, not only as a registered nurse with wide-ranging experience, but also as a vigorous advocate on behalf of the needs of nurses within and without the Government.

Miss Thompson fought hard, and with considerable success, for improved classifications and better pay scales for some 30,000 nurses employed by the Government. I am quite familiar with her efforts because they brought her in close association with both committees of which I am a member, the Committee on Post Office and Civil Service and the Committee on Veterans' Affairs.

Mr. Speaker, as part of my remarks, I include the April 11 obituary from the Washington, D.C., Evening Star:

JULIA THOMPSON DIES; LOBBYIST FOR NURSES

Julia C. Thompson, 65, the first full-time lobbyist of the American Nurses Association and for 20 years director of the organization's Washington office, died Sunday in Washington Hospital Center after a long illness.

Since retiring in late February, Miss Thompson was a consultant for ANA.

As chief lobbyist and office director here, Miss Thompson worked to improve social security benefits for the disabled and retired and for health benefits in numerous laws.

She also worked for the enactment of Medicare legislation, a position supported by ANA, but opposed by many other health organizations. In 1965 she was among the party that traveled with President Lyndon B. Johnson to Independence, Mo., for the signing of the medicare bill in the Harry S. Truman Library.

Miss Thompson's lobbying efforts also helped bring about the promotion of the Army Nurse Corps chief to brigadier general status two years ago. The chief nurse of the Air Force has been nominated for the same rank.

Miss Thompson also worked for passage of federal support to nursing education and for the Nurse Training Acts of 1964 and 1971.

Sen. Gaylord Nelson, D-Wis., said in February that "nurses throughout the country have been well represented by Julia Thompson for these 20 years. . . . (She) has been a positive voice for improving health care throughout her career. . . ."

Miss Thompson was born in Wausau, Wis. She studied at Stevens Point, Wis., State Teachers College. She taught in public schools briefly before attending Cook County School of Nursing in Chicago. She received a B.S. degree in public health nursing at the University of Michigan.

A general duty nurse, head nurse, supervisor and instructor at Cook County School of Nursing, she later became a staff nurse for the Utah State Department of Health. Before joining the ANA staff in 1951, she was director of the nursing division of the city and county health department in Topeka, Kans.

She also served on many state and national legislative committees before moving here.

She leaves two brothers, Marvin and Arthur Thompson of Wausau, and two sisters, Mrs. Mary Beattie of Elkhorn, Wis., and Mrs. Anne Fulton of Green Bay, Wis.

A memorial service was held yesterday at the Lee Funeral Home here.

The family requests that expressions of sympathy be in the form of contributions to the American Nurses Foundation, 10 Columbus Circle, New York, N.Y.

TOUGH TONE SET FOR MAY SUMMIT

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. BOB WILSON. Mr. Speaker, the following editorial from the March 23 San Diego Union is a realistic, down-to-earth analysis of the problems the President will face on his forthcoming trip to Russia and I include the editorial in today's RECORD at this point:

TOUGH TONE SET FOR MAY SUMMIT

The rigid speech delivered this week by Communist Party Chairman Leonid Brezhnev to a national Soviet television audience indicates that President Nixon may expect a red rug at the airport when he arrives in Moscow in May, but that ice water may be the prime beverage at the conference table.

In an extraordinary straight-forward bill of particulars, Chairman Brezhnev made it clear at the outset of his speech that he knows the Soviet Union is a world power; that its dealings with the United States of America will be on a one-to-one basis.

He also made it plain that the Kremlin will not take a role in ending the war in Vietnam; that he does not take our word for anything that transpired during the President's visit to Communist China, and that the Soviet policy of arming the Arabs will continue.

It is not at all difficult to take Brezhnev at his word that the American-Soviet discussions in May will be "businesslike, realistic propositions," unlike the ceremonial, ice-breaking presidential visit to Red China.

Fortunately, President Nixon is an old hand at dealing with the Soviet Union. There is every evidence that he is preparing for his Russian visit with the same caution that he brought there as vice president in 1959.

After that occasion, Mr. Nixon wrote of his encounter with Chairman Khrushchev:

"First, Khrushchev demands something to which he is not entitled. Second, he threatens war if he does not get what he demands. Third, he charges that we will be endangering the peace unless we negotiate on his demands. And, fourth, the price of peace is giving him half or more of what he was not entitled to in the first place."

It is doubtful that the Soviet climate has changed much. Brezhnev will demand that we leave Vietnam without honor and that we abandon Israel. He will try to force us out of Europe one way or another. He will try to tap our superior technology through advantageous trade agreements. He also will try to assure Soviet strategic nuclear capability through a treaty, and insist that the Soviet Union has a right to impose its political-economic imperialism throughout the world.

Against these certitudes, it is difficult to accept Brezhnev's insistence that "an improvement of relations between the United States and the Soviet Union is possible, and, moreover, it is even desirable, but not at the expense of any third country . . . not to the detriment of . . . lawful rights."

President Nixon could drink a toast to all of that and mean it, but until Russia brings its troops home from all of her occupied and semi-occupied lands, Brezhnev's words will be hollow indeed.

STATEMENT OF THE HONORABLE BOB PRICE OF TEXAS IN THE U.S. HOUSE OF REPRESENTATIVES, APRIL 13, 1972

HON. ROBERT PRICE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. PRICE of Texas. Mr. Speaker, I am today introducing legislation to amend the Occupational Safety and Health Act of 1970, to relieve small business firms and farms from enforcement procedures and requirements which have caused small entrepreneurs unnecessary hardships.

My bill would provide for the exemption from this law of employers with fewer than 25 employees, both agricultural and nonagricultural. I should point out that the 25-employee limitation would be on a per plant or unit basis for those companies having more than one location or site, and that the total number of employees in the corporate business would not be the determining factor with regard to the application of this law.

My bill would also delay for 1 year the effectiveness of the act with regard to employers with more than 25 but fewer than 160 employees.

Additional features of my bill would be:

To require the Secretary of Labor to evaluate all of the regulations, distinguish the various facets of a given general form of business, and determine if the regulations should apply to each facet.

To require that the Secretary of Labor know the cost and feasibility of compliance; that this information be made available to the employer; and, to insure the employer that a device or procedure is available which will permit him to comply.

To require the Secretary of Labor to provide technical assistance and consultation to employers with fewer than 100 employees.

To compensate employers for the additional expense of having to comply, initially, with one rule, and then having to comply with a different one as a result of changes in administrative procedures.

To provide that if the usual administrative procedures for adoption were not followed, the failure to comply with the rule cannot be used as evidence of negligence or wrongdoing on the part of the employer.

To relieve employers from the absolute liability provisions of the act. To protect employers from the negligence of employees who do not abide by the regulations or use equipment provided.

To provide that no employer shall be responsible for fines or other penalties if he can prove that the requirement he is alleged to have violated would not have effectively constituted an improvement of the health and safety of his employees.

To permit the Secretary of Labor to make provisions for initial medical examinations for employees and followup examinations thereafter at periodic intervals.

To aid the provisions of the act by permitting the formation of employees safety committees to identify areas of concern at a particular business in an effort to work out solutions between employer and employees.

To assure the earliest possible compliance by making available to the Secretary of Labor the option of entering into an agreement with the employer in lieu of using the present provisions and imposing a penalty for having failed to comply.

Mr. Speaker, while we have a responsibility to be concerned about the health and safety of American workers and citizens in industry and business, nevertheless, we must not lose the forest for the trees. We cannot enact legislation so restrictive and burdensome in its enforcement such that the cure becomes worse than the ailment. To place the same demands upon a small businessman or farmer that are required of corporations employing thousands is both unrealistic and unreasonable. For this reason, I have introduced this bill to correct some of the glaring inequities of the Occupational Safety and Health Act of 1970, and I urge the Congress to take prompt action toward its enactment.

FOREIGN TRADE AND INVESTMENT, A TWO-WAY OCEAN

HON. DONALD M. FRASER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. FRASER. Mr. Speaker, recent news articles illustrate how a system of multilateral nondiscriminatory trade, and free-flowing capital can help restore a favorable balance of trade as well as bolster our faltering economy. Foreign commerce—both investment and trade—is a two-way ocean.

The following account in the Washington Post of February 5 indicates that Japan is considering a billion dollar investment in the United States for a uranium enrichment plant:

JAPAN WEIGHS BUILDING A-PLANT IN UNITED STATES

(By Thomas O'Toole)

Japan is considering the possibility of building a $1 billion uranium enrichment plant in the United States.

The plant would be financed largely by the Japanese electric power industry and partly by U.S. chemical companies, which would run the plant under close supervision of the Atomic Energy Commission. The AEC would also contribute the know-how that would allow the plant to be built.

"The talks with the Japanese on this issue are very informal and very preliminary," said George Quinn, an AEC assistant general manager, "but at the moment this is the direction in which they are headed."

Locating a Japanese uranium enrichment plant in the United States would remove several obstacles that now lie in the way of Japan owning its own source of fissionable uranium for nuclear power.

First, it solves the question of secrecy, keeping in the United States the technology of uranium enrichment through gas diffusion that led to development of the atomic bomb. It would also be more economical to locate such a plant in the United States, mostly because electric power to run a gas diffusion plant in Japan would be outrageously expensive. Electricity is more than half the total cost of operating a uranium enrichment plant.

Japan more than any other country in the world is committed to nuclear power. Its island ground has almost no coal, oil or gas to fuel its power plants.

Nuclear power experts figure that the Japanese atomic electric program would need as much as 70 per cent of the output of a $1 billion enrichment plant by 1985. Japan might need the entire production of the plant to keep its nuclear power plants in operation by 1990.

Just where a Japanese-owned enrichment plant would be located in the United States is uncertain, but it would probably be built in the west near a cheap source of power. Wyoming is one state mentioned, partly because it is close to West Coast ports and partly because it has large coal deposits that have not been tapped.

The United States is already Japan's sole source of enriched uranium for nuclear power plants. The United States now has long-term contracts to supply nine Japanese nuclear plants with enriched uranium, which it produces at Oak Ridge, Tenn.; Paducah, Ky. and Portsmouth, Ohio.

Some Southern States have successfully invited foreign investment. An account in last Thursday's Wall Street Journal follows:

Foreign investment is courted successfully by some Southern states.

Last summer, more than half the states in the region sent representatives to Munich to talk over investment possibilities with scores of European concerns. In the last seven years, South Carolina has attracted some $725 million in foreign plant spending on plants, particularly in textile related industries. It claims to be the fifth ranking state in dollar value of foreign investment and boasts it has more West German caiptal than any place in the world outside of West Germany itself. Spartanburg, S.C., alone has eight German-owned plants.

Virginia, which maintains an office in Brussels, pushes hard for foreign money and comes up with $110 million in investment from abroad in the past two years. Next week, a 24-man trade mission from the state departs on a trip to woo Japanese companies.

Not all efforts prove fruitful, however. Some South Carolinians still lament BASF's dropping of plans last year to build a $100 million petro-chemical complex in the state. The German concern's decision followed a stiff fight with conservationists.

On the other hand U.S. investment abroad brings direct benefits to those at home. American overseas investment is often of a defensive nature, designed to protect markets and to get behind tariffs and other trade barriers. In the case of Westinghouse, as the following news item from the April 6 Wall Street Journal shows, contracts to build five nuclear generating plants in Spain will mean more jobs in the United States. Here is a clear instance of production abroad supplementing, not replacing, production at home:

WESTINGHOUSE CHAIRMAN DEFENDS THE CONCEPT OF MULTINATIONAL FIRMS, ASSERTS THEY HELP CREATE JOBS IN THE UNITED STATES

PITTSBURGH.—Westinghouse Electric Corp.'s rapid rate of growth would be curbed if Congress passes the controversial Burke-Hartke bill, Donald C. Burnham, chairman, said.

Using the annual meeting as a forum to defend the concept of multinational corporations, Mr. Burnham said that a world-wide manufacturing base is vital to the "prosperity of our stockholders and employees." The Burke-Hartke bill, which has received considerable support from the AFL–CIO, would limit the ability of companies to expand abroad, and in the view of organized labor, would keep jobs at home.

"What many people fail to realize," Mr. Burnham said, "is that this method of operation not only increases our total sales and earnings, but it also creates jobs in this country as well as other countries."

For instance, he said Westinghouse had landed sizable contracts to build five nuclear generating plants for Spain largely because much of the work will be done in that country. However, he emphasized, a substantial portion of the work also will be performed in the U.S.

In 1971, Westinghouse had sales of about $670 million from its operations in 17 foreign countries and exported an additional $279 million in goods abroad. Altogether, foreign sales amounted to about 20% of Westinghouse's $4.63 billion in sales.

A flexible international monetary system is an integral part of a liberalized trade policy. The decline in imports of Japanese television sets since the recent dollar devaluation shows how self-adjusting trade mechanisms can operate. The following article appeared in the Wall Street Journal of April 6:

EXPORTS OF JAPANESE TV SETS TO U.S. FALL AFTER CURRENCY SHIFTS; THOSE TO EUROPE UP

(By Fowler W. Martin)

TOKYO.—Most television set makers in Japan say demand for their products is declining in the U.S. There are indications they are increasing their interest in Europe.

Their problems in the U.S. stem from higher Japanese export prices following last December's currency realignment and lower retail quotes for some U.S.-made television sets, especially color models, industry sources said.

An official at the Electronics Industry Association of Japan, a trade group, said exports to be sold under American brand names had been particularly hard-hit. Such shipments

account for 30% to 40% of Japanese television exports to the U.S., he added.

Nihon Keizai Shimbun, a Japanese economic newspaper, said exports of Japanese color TV sets to the U.S. were running 20% to 30% below the level prevailing before the yen was increased in value last December.

Figures released by the Ministry of International Trade and Industry showed, by contrast, that combined shipments of Japanese TV sets and tape recorders to Europe in March were 83.8% above those a year earlier.

LOWER PRICE FLOOR SOUGHT

The Electronics Industry Association official said sluggish U.S. demand had resulted in some cancellations of orders from American importers. This, in turn, has resulted in a move by some companies to seek lower minimum export prices. Since 1967, Japan has been setting minimum export prices for each size of monochrome and color TV sets to prevent excessive price competition in overseas markets.

Hitachi Ltd., one large producer, said it hoped for a lowering of these so-called check prices, but officials indicated a change wasn't likely. Hitachi said its shipments to the U.S. had been affected "to a certain extent" by the combination of higher export quotes and lower prices for U.S.-made sets.

Tokyo Shibaura Electric Co., which is known as Toshiba, has a substantial export business, and it said orders from the U.S. were currently about 20% below year-earlier levels.

Sharp Corp. said it was experiencing a decline in export demand but U.S. importers hadn't canceled orders.

But Sony Corp., which sells sets in the U.S. only under its own brand name, said its sales were still rising. An official said he thought recent price cuts by U.S. manufacturers were temporary and quotes will be raised again when new models are announced.

REASONS FOR CUTS IN UNITED STATES

Some American producers and retailers have recently been cutting quotes on a few color TV models to win a bigger share of the market and to perk up sluggish sales.

Mitsubishi Electric Corp. said it was still shipping sets under last year's contract to another Mitsubishi company responsible for placing them in the U.S. market. As a result, the company hasn't felt the impact of any drop in U.S. demand. However, an official said, new contract negotiations are about to begin, and Mitsubishi Electric is expecting some difficulties.

The Japanese manufacturers say they don't have anything dramatic planned to counter the new situation. Mitsubishi and Toshiba plan to export basically the same range of models to the U.S. this year as last, although some features will be different. Hitachi said it was upgrading both the size and the features of the sets it exports to the U.S., which will lead to higher prices for these products, a spokesman said.

Sharp, which recently announced a new picture tube that it says gives brighter colors and is easier to service, said it planned to add a 10-inch model to its export range. The company currently ships 12-inch to 19-inch sets to the U.S.

Separately Sony said it had developed a color television tube with a 114-degree deflection angle. The company's current models have a 110-degree deflection.

The higher deflection angle moves the electron gun closer to the screen, resulting in better color definition, the company said. It also reduces the depth of the television cabinet.

The company said it planned to market a 114-degree, 18-inch color receiver employing Sony's Trinitron single-electron-gun system in Japan, beginning April 21.

European companies have been encouraged by devaluation to invest more in America, emphasizing that in fact foreign commerce is a two-way ocean. A Wall Street Journal article of April 7 on this subject follows:

A TWO-WAY OCEAN—EUROPEAN COMPANIES, SPURRED BY DEVALUATION, INVEST MORE IN AMERICA—RISING WAGE SCALES ABROAD BRING FOREIGN FIRMS HERE; U.S. SEEKS TO LURE MORE

FIGHTING THE PAPER BARRIER

(By Neil Ulman)

Four years ago, Brown, Boveri & Co., a big Swiss electrical-equipment maker, ran a study on the possibility of building its big turbine electric generators in the U.S. Costs looked too high, and the decision was negative.

But now, say Brown-Boveri officials, "a new financial equation has been written." European wage rates are closing the gap with the U.S. And devaluation of the dollar has brought down the relative cost of capital investment in America.

Today, with over $10 million of investment in new servicing facilities under construction at Richmond, Va., Brown-Boveri is taking a new hard look at expanding into U.S. generator manufacture.

Other European companies have also shown new interest in the U.S., ranging from cautious probes to outright acquisitions. And American commercial attaches in Europe report a sharp rise since last summer in inquiries from European businessmen on U.S. investment opportunities, says a Brussels-based American diplomat who coordinates their efforts. The portent: a swelling tide of direct U.S. investment by European companies of all shapes and sizes.

A REVERSE INVASION

European business is poised to invade America just as American business flooded into Europe in the 1960s, believes Marcel J. De Meirleir, president of Brussels-based Plant Location International. "There's going to be a tremendous flow of investment to the States," he predicts. He expects plant location for European companies in America to rise to a third of his firm's activity within three years, up from 10% today and zero two years ago.

It's true that Brown-Boveri's Richmond servicing plant was in the works long before exchange rates were cast adrift last summer. And even before the latest round of monetary upheavals and European inflation, foreign direct investment in the U.S. was missing. Indeed the sheer size and the growth potential of the U.S. market plus the chance for firsthand experience with American technology have always been inviting. Now, however, the new financial equation is making such moves more practicable, Europeans say.

According to the latest U.S. Commerce Department reports, foreign direct investment in the U.S. rose to $13.2 billion at the end of 1970 from $11.8 billion a year earlier and from $10.8 billion in 1968.

LURING FOREIGN CAPITAL

Spurring the trend more recently have been stepped-up U.S. government efforts to attract foreign capital as part of the drive to turn around the American balance-of-payments deficit. The Commerce Department's Office of International Investment recently doubled its budget to about $500,000 a year, all aimed at attracting European capital, reports Charles Fagan, the department's newly installed salesman in Brussels. Along with a colleague in the Paris embassy, Mr. Fagan runs seminars for European businessmen, extolling the glories of the American market.

Most of this sales effort is aimed at smaller European companies on the theory that the bigger ones are already making their moves or can check out the U.S. market on their own.

Plant Location International's Dr. De Meirleir says that he has talked with "two of Europe's top five auto makers" and that they are interested in exploring a manufacturing setup in the U.S. "But from now on, we would expect most of our business to be with companies among the second hundred largest in each country rather than the top rank," Mr. De Meirleir says.

FIRST, ONE TOE IN THE WATER

Typically, the small company makes a cautious initial investment with an eye to expansion. For example, Balding Engineering, Norwich, England, started shipping some of its machine tools to the U.S. about seven years ago and now exports nearly half its $3 million in annual sales to America. Last August, Balding invested about $200,000 to establish a U.S. subsidiary in an old warehouse outside Newport News, Va. At first, the subsidiary will perform only servicing and minor assembly functions. "But we regard it as a long-term proposition" that will "very likely" lead to increasing assembly and could lead to full-scale manufacturing, says Anthony Baldwin, a director and heir apparent to the family-controlled firm.

A need to service exports was also a prime motive behind the $10 million turbine facility that Brown-Boveri is building in Richmond. The Swiss company stunned the American industry in December 1967 when it won an order from American Electric Power Co. for what the utility then called the largest single commitment for turbine generators. Now, competing head-on with General Electric and Westinghouse Electric, Brown-Boveri boasts a U.S. order backlog of 16 million kilowatts of generating capacity. The study on whether to plunge into U.S. manufacturing won't be furnished for about a year, says Albert F. Bertschmann, who is in charge of head-office liaison with the U.S.

However, Brown-Boveri's experience with production of its electric scrap-melting furnaces at North Brunswick, N.J., has already convinced the company that manufacturing in the U.S. can bring rewards. That business, too, grew out of a servicing facility and a need to be near export customers.

"In the first place, you can't just sell one of these furnaces and forget about it," says John C. Trackman, president of Brown-Boveri's U.S. subsidiary. "Customers expect you to be the expert, electrically, metallurgically and with all the engineering know-how on the spot. But it doesn't make any sense to keep the engineering talent in the U.S. without manufacturing, too."

Another factor is purely financial, Mr. Trackman explains. In products with a long delivery time like heavy electrical equipment, financing is a big cost factor. Brown-Boveri's turbine generators, for example, are built near Baden, trucked to the Rhine at Basel, floated on barges to Rotterdam and then shipped to the U.S. Manufacturing in the U.S. could considerably cut the cost of financing such a long delivery process, the official suggests.

Still another reason for manufacturing in the U.S., he says, is "to be in close touch with U.S. marketing trends. Because what's needed in the U.S. in terms of size of electrical machinery is likely to be needed in Europe five years later"

TECHNOLOGICAL FEEDBACK

Such technological feedback is also the major motive for a recent $9 million acquisition by a British air-tool maker, International Compressed Air Corp. (CompAir). It took over Kellogg-American, an Oakmont, Pa., maker of compressed-air tools. CompAir has made and sold its tools widely in Britain and the Commonwealth. But Peter F. Fyson, a director and secretary concedes that "American marketing and development tend to lead the game" and adds: "You can't absorb subtle shifts in marketing and technology by simply sending people over to America. You have to have your own Ameri-

can company with American management keyed into the industry."

Some companies also find that acquiring all or part of a going U.S. concern is a cheaper and safer way to establish a sales outlet than to start selling from scratch. Cie. St. Gobain-Pont a Mousson, the Paris-based conglomerate, figures that its new $3.3 million stake in Certain-teed Products Corp. of Valley Forge, Pa., will provide a good American outlet for its "Tel" fiber-glass insulation. "It's important to be in the American market to know what's happening," says Roger Fauroux, finance director of the parent company.

The company is painfully aware of the hazardous of starting from scratch, having suffered through one unsuccessful venture in the U.S.—American St. Gobain. The company's major investment in 1959 is a plate-glass plant at Kingsport, Tenn., was quickly neglected by a competitive process developed in Britain. After heavy losses, the parent company finally decided to sell its controlling interest in American St. Gobain in 1970. Now, St. Gobain-Pont a Mousson is moving cautiously through a ready-made sales outlet in Certain-teed.

Taking a similar ready-made route—but on a much larger scale—is Britain's big Imperial Chemical Industries, which last summer paid $164 million to acquire Atlas Chemical Industries of Wilmington, Del. Eric John Callard, Imperial Chemical's chairman, sees Atlas as "a good sales outlet" and adds, "Atlas had a long history of dealing with the U.S. Food and Drug Administration." And knowing how to move around Washington can be valuable for a foreigner, Mr. Callard suggests.

But knowing your way around the Food and Drug Administration apparently isn't the same thing as knowing your way around the Federal Trade Commission. Last February Imperial Chemical agreed to an FTC consent order requiring divestiture of Atlas's explosives and aerospace compounds. Thus, the British concern encountered the nightmare of almost every European company investing in the U.S.—an antitrust tangle.

ANTITRUST FEARS

"The fear of antitrust has been the biggest single reason holding back European companies from investing in the U.S.," reports Business International, S.A., the Geneva-based subsidiary of the U.S. management-consulting and publishing firm. Says an official of Imperial Chemical: "We still don't understand the FTC decision. But we don't believe we've been discriminated against."

Another, and often-related, complaint about investing in America is the sheer paperwork involved. For Britain's CompAir to close its acquisition of Kellogg-American, CompAir had to submit to "commercial practice obsessed by form and dominated by lawyers" who have "embroidered formality to the point of insanity," complains Mr. Fyson, the CompAir official and himself a lawyer. Just printing 200 copies of CompAir's financing agreement for the transaction cost $11,749. "That might have cost about $2,500 in London if you had printed it at all—which you wouldn't bother with over here." Mr. Fyson says.

RED CHINA: THE IDYLLIC PORTRAITS FLOW

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. CRANE. Mr. Speaker, a great deal of material is being published concerning conditions within Communist China and, unfortunately, much of it is less than objective.

It seems, for a variety of reasons, to be painting an idyllic picture which overlooks the fact that people living under the regime of Mao Tse-tung are without the fundamental human freedoms we hold dear. Not only do they not have the right to freedom of speech and religion, but they are not even able to travel within their own country, much less abroad. They are, in effect, prisoners of a regime which is clearly as totalitarian in nature as any we have observed in this century.

Recently, a volume was published by a group called the Committee Of Concerned Asian Scholars, entitled "China! Inside The People's Republic." The book identifies the "scholars" as a "broad antiwar group," and their stated goal is to "change the mind of America about Asia."

The book states that after the Communists came to power in China in 1949 "everyone had adequate housing and clothing and an abundance of food." It declared that "There was full employment and no national debt abroad or at home; the industrial rate was rising."

To explain the Cultural Revolution the Asian scholars asked themselves, "Where in all this was there room for discontent?" Their reply: "Every society contains the seeds of personal selfishness . . . and of the desire on the part of some to dominate and rise above others." Eliminating these unfortunate tendencies was the job of the Red Guard.

Discussing this book shortly after her own return from a trip to the Far East, Anne Crutcher, the distinguished woman's editor of the Washington Daily News, notes that—

For all its simplistic sugaring of the rigors of social change, this book tells much the same story as has come out of Russia and Cuba. In significant essentials, give or take a little torture, it's not out of line with what I heard from two young men who made the long swim to Hong Kong and are now in Taipei trying to start new lives for themselves.

Mrs. Crutcher describes the young men with whom she spoke. One came from a family of workers, with no "professional or bourgeois taint." This young man, however, got into trouble "by reacting wrongly to the Chinese classics in school. In political education classes, the books which gave old China her reputation as a great civilization were presented as examples of wrong thinking. To this boy, they sounded good. He was identified as politically unreliable and denied a chance at higher education. He made the swim in April because the coast is less closely guarded in cold weather."

Asked how he had kept from freezing, the young man replied that "he covered his body with grease and ate hot pepper and ginger just before taking the plunge."

Thus, at a time when young Chinese are risking their lives to be free, Americans who proclaim themselves to be "scholars" tell us that all is well in China.

I wish to share Mrs. Crutcher's article, which appeared in the Washington Daily News of April 3, 1972, with my colleagues, and insert it into the RECORD at this time:

RED CHINA FROM THE INSIDE

(By Anne Crutcher)

It is only natural that the people who went to Mainland China with the President should be the prestige commentators. At the same time, there are other American observers who have been there in the past year and who ought to be worth listening to.

The group I have in mind is the Committee of Concerned Asian Scholars, a group of 45 university students and teachers who spent a full month traveling in China last summer and who have recently published their findings under the title "China! Inside the People's Republic" (Bantam, $1.50). The book has come out in paperback only, as the Committee wants to promote the widest possible distribution.

The 45, all of whom are in their 20s, are people of substantial background in Far Eastern affairs. They've been to the schools with the most cachet—Harvard, Berkeley, Wisconsin, you name it—many of them have lived in various parts of the Orient, and many speak Mandarin, Catonese, and other important Chinese dialects.

They are also people with a mission. They are identified on the cover of their book as a "broad antiwar group," and it is clear from everything they say that they have a strongly leftist world view, even tho, like so many of today's anti-establishmentarians, they like to run down the Soviet Union as a tired bureaucracy. What they want to do is "to change the mind of America about Asia."

In an effort to appeal to as extensive an audience as possible, they have adopted a creditably simple, straight-forward writing style. They've also streamlined their accounts of the past to the point where it comes out a sort of ideological baby-talk.

For example, we learn that while Chiang Kaishek's Koumintang armies spent their time raping, looting, and despoiling the peasants, the Communist armies of Mao Tse-tung which eventually defeated Chiang's soldiers, were always kind and polite. After their victory, "the liberation," the change in Chinese life seemed "almost miraculous."

"Inflation had been halted and prices continued to fall; everyone had adequate housing and clothing and an abundance of food; rent cost only 3 to 5 per cent of average income and there was no income tax; education was the right of all and illiteracy was rapidly disappearing. There was full employment and no national debt abroad or at home; the industrial growth rate was rising . . ."

And then came the Cultural Revolution.

How was such a thing possible? The Communist found this a puzzler. "Where in all this was there room for discontent?" the book asks. But there is an answer. A rather cynical one, to be sure. "Every society contains the seeds of personal selfishness, of the bureaucratic mentality, and of the desire on the part of some to dominate and rise above others."

Getting rid of this trace of human frailty involved the formation of the Red Guards who were encouraged by Chairman Mao to "call into question all power-holders." The Red Guard were bands of adolescents who roamed the countryside correcting the attitudes of party officials. According to the committee, this involved a lot of "heckling" and sharp words, and once or twice actual violence broke out.

Finally, in 1968, Peking felt the situation was getting out of hand. 'Propaganda teams were dispatched to work with the students and in September, the extremist students were denounced as 'petty-bourgeois intellectuals.' By October, most of the dissident Red Guards had been sent to work in the factories or countryside to be 'reeducated' by the workers and peasants, and the revolutionary committees had been established by three-in-one alliances in almost every part of the country." Life could resume its sunny upward course.

The Committee is aware that some of this can be unfavorably interpreted. The book notes that the "sensationalist press" in Hong Kong tries to make it look as tho re-education centers in China are like slave labor camps in Russia. But, as the authors point out, this isn't brain-washing, it's "rectifying wrong ideas." Besides, many of those in the camps have their families with them. This, of course, would put them in a position of privilege above many Chinese whose ideas don't need correcting; elsewhere in the book it is admitted that work assignments often keep husbands and wives apart. They don't mind tho; work and the revolution come first.

That's the way it is all the way down the line. The authors, charmed by the brightness of the hair-ribbons on little girls going out to the firing range to learn to shoot, stress the point that having fourth graders making bus steps is not the same thing as child labor. The children have school as well as work; the authors report hearing sitting in on a lecture on imperialism with the same fourth-graders who were making the bus steps.

For all its simplistic sugaring of the rigors of social change, this book tells much the same story as has come out of Russia and Cuba. In significant essentials, give or take a little torture, it's not out of line with what I heard from two young men who made the long swim to Hong Kong and are now in Taipei trying to start new lives for themselves.

One of the refugees I interviewed is a doctor. A small, worried-looking 28-year-old, he is the son of a Christian clergyman who was executed as an American spy. He practices medicine in a community of tungsten miners.

Doctors were also given specially disagreeable after-hours work—cleaning latrines, and that sort of thing—as part of the Cultural Revolution. This was to keep them from giving themselves airs as educated people.

Finally, when the fate of his father came to the attention of the revolutionary committee, he was deprived of the right to practice medicine and put at hard labor. This is why he decided to try to escape.

He walked for four days with a group of five others, including one woman. One was caught, but the others survived the four-hour swim. Once in Hong Kong, he went to a church and thus found his way to the Free China Relief Association which helps such refugees get jobs and otherwise reestablish themselves.

The other young man I talked to had a simpler story. His family were workers—no professional or bourgeois taint—but he got in trouble by reacting wrongly to the Chinese-classics in school. In political education classes, the books which gave old China her reputation as a great civilization were presented as examples of wrong thinking. To this boy, they sounded good. He was identified as politically unreliable and denied a chance at higher education. He made the swim in April because the coast is less closely guarded in cold weather. "How did you keep from freezing?" I asked him.

He told me he covered his body with grease and ate hot pepper and ginger just before taking the plunge.

TESTIMONY OF DR. ERNEST J. STERNGLASS BEFORE THE JOINT COMMITTEE ON ATOMIC ENERGY

HON. JOHN G. DOW

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. DOW. Mr. Speaker, recently the Joint Committee on Atomic Energy held hearings on H.R. 13731 and H.R. 13732, dealing with the licensing of nuclear powerplants. At those hearings Dr. Ernest J. Sternglass, a physicist from the University of Pittsburgh testified before the committee and presented his views as to the safety of the operation of nuclear plants.

While I do not feel qualified to pass judgment on Dr. Sternglass' conclusions, I would like to point out that he has raised some critical questions which clearly merit investigation. Dr. Sternglass' studies of infant mortality in areas surrounding nuclear plants brings to issue the entire question of the safety of these plants. It is my feeling that Congress should make stringent efforts to see that the dangers posed by these plants are investigated beyond the degree which they have been thus far before the licensing procedures for these facilities are prescribed.

For the information of my colleagues, I submit the testimony of Dr. Sternglass to the RECORD:

STATEMENT OF DR. ERNEST J. STERNGLASS BEFORE THE JOINT COMMITTEE ON ATOMIC ENERGY, MARCH 17, 1972

I would like to address my remarks to the proposed changes in the licensing procedures of nuclear plants, which carry much more serious implications for the health and safety of the public than would appear on the surface.

Basically, the proposed new licensing procedures would eliminate hearings at the time a new plant is ready to go into operation, and they would restrict the depth and scope of the questions that could be raised by the public at the only remaining mandatory hearings prior to construction, greatly limiting the opportunity for the public and its legal and scientific advisers to raise issues and discover problems that may have escaped the scientists and engineers of the utility company, the manufacturers, and the AEC's licensing and regulatory staff.

Why is this such a potentially fateful and dangerous step to take? Are not the experts of the utilities, the nuclear industry, and the AEC, rather than a few laymen or outside scientists, in a much better position to know how best to design a plant so as to protect the health and safety of the public?

Why is it so vital that there should be the widest possible opportunity for specialists and scientists outside of the industry or the government to participate in the examination of the safety of nuclear reactors? Because time and again in the history of science the *unexpected and upsetting discoveries have often been made by outsiders*. We need only to remember the most recent case of mercury, where it was a scientist outside of the industry or the government who discovered that in the form of methyl mercury, and as a result of unanticipated biological concentration in the fish this element previously regarded as relatively harmless, was suddenly recognized to be thousands of times as toxic than in the original form in which it was discharged from the plants. This has its perfect parallel in the *unanticipated biological sensivity of the embryo to nuclear fallout*, where the complex indirect processes of the action of radiation, as in the case of the action of certain fission products such as Yttrium acting on the pituitary and the thyroid gland of the developing fetus, leading only to a *slight* retardation in the maturation process, nevertheless can apparently result in a major effect on the viability of the newborn's lungs, leading to the baby's death by asphyxiation.

Furthermore, the recognition of such unanticipated mechanisms often happen rapidly, and allowable releases of radioactivity and various safety features that seemed quite adequate, can and indeed have turned out to be thousands of times less safe within a year after construction has begun.

This was clearly not the fault of the engineers and physicists who had done their planning with the best available expert advice *at the time*. Nor was it the fault of the Commission, or the standard setting bodies, or of the leaders of the nuclear industry, the utilities or the government's scientific advisers. No one knew or ever dreamed that such things could happen. Even those of us who testified here before this same Committee in 1963 on the possibility of an increased sensitivity of the infant in the mother's womb to the development of leukemia from small amounts of radiation, could not and did not anticipate fully the seriousness of the biological consequences of low level radiation to the newborn. It was simply inconceivable that a well-studied phenomenon such as radiation should hold such a terrible surprise for mankind.

Yet within the last few years, and even the last few months, overwhelming evidence has accumulated that mankind faces a far greater hazard from small amounts of radioactivity in the air, the water and the food than anyone could ever have imagined when nuclear reactors were first designed.

We now know that in the county where the Dresden Reactor is located some 50 miles south-west of Chicago, Illinois, the rise and decline of radioactive gas discharges was not only accompanied by a corresponding rise and decline in infant deaths, but also a coincident rise and fall of premature birth known to be associated with a much greater likelihood of death from respiratory disease and infections.

And we now know that in ways no one anticipated, even relatively small accidental release of radioactivity, whether from a reactor or from an underground weapons test, can lead to serious unanticipated consequences. For example, in the case of the "Baneberry" test in Nevada in December of 1970, infant motality jumped as much as 30–50% in the nearby states of Idaho and Montana, in direct relation to the measured fallout in the air, on the ground and in the milk. Yet the amount of radiation released as a consequence of this test was only 1/10,000 to 1/1,000,000 (one ten-thousandth to one one-millionth) of what could be released in a major accident of a large nuclear reactor.

Clearly it is far better to hold in abeyance any possible benefit of nuclear energy than to risk its misuse by an inadequate examination of its full-effects on human health.

But no single instance presents a more urgent illustration of the rapidity with which our understanding of the biological hazards can change than the situation uncovered only within the last few months in the Pittsburgh area since the construction license was granted for the new Beaver Valley Power Station some 30 miles downstream along the Ohio near the Shippingport Power Station, the plant that began the peaceful utilization of the atom with so much promise back in 1957.

While examining the pattern of infant mortality in Beaver County where Shippingport is located, it became apparent that beginning in 1961, the steady decline of infant mortality in this county suddenly ended and reversed its trend completely. Yet the normal releases from the Shippingport Reactor, a prototype naval propulsion plant built to the most exacting specifications and therefore showing the lowest releases of gaseous radioactive wastes of any plant in the United States, were extremely low and showed no long-term correlation with the rises in infant mortality.

Only within the last few months did we begin to understand what had taken place. The principal upward changes in this county were closely correlated not with the releases from Shippingport, but with those from two nuclear facilities located some forty

and seventy miles upstream. The first large rise in 1961 followed by one year the accidental melt-down of a fuel element in the Waltz Mills Testing Reactor that took place on April 3, 1960, and the second rise followed release from the Bettis Atomic Laboratory near Pittsburgh, where the liquid radioactive waste rose sharply in early 1965, exceeding the maximum permissible concentration by fifty percent.

And when investigating this totally unexpected finding in detail, we found that infant mortality in the City of McKeesport some 20 miles downstream from Waltz Mills had suddenly jumped to double its normal rate between 1959 and 1961, declining back to its normal rate the following year. And not only had the same jump in mortality taken place for McKeesport and Beaver County, but it took place in every county along the Ohio for 160 miles downstream from the Waltz Mills reactor, declining in direct proportion with the distance downstream, in a manner to be expected for the decay-characteristic of fresh fission products.

And in the wards on the Southside of the City of Pittsburgh, all those wards that received their drinking water exclusively from the intake below McKeesport, where the contaminated water passed on its way into the Ohio, infant mortality rose sharply that same year, while the wards that received their drinking water from other sources showed no such rise.

Thus, despite the dilution that took place in the rapidly flowing rivers, the radioactivity apparently affected the newborn infants far more severely than anyone had anticipated, and the design goals for containment of the new Beaver Valley Plant, apparently adequate when the construction permit was granted unopposed, were suddenly totally unacceptable.

Neither the engineers who designed the plant nor those who had examined the license application could have known this, nor would it have been possible for any intervenor to raise the subject at the construction license stage since the facts were simply not known.

What then is the lesson that we must draw from this for the decisions that must now be made by this Committee and the Congress of the United States?

1. That scientific discoveries in the areas of biology, embryology and radiation effects on the critical bio-chemical processes of living systems can happen so rapidly and unexpectedly that there must be mechanisms for review of reactor technology by public hearings until the very moment the reactor is to be turned on. In the three to five years that can elapse between the construction license hearing and the time the reactor is completed, so much can happen in our understanding of biological hazards that what could have been regarded as adequate from the point of safety to the public when the reactor was built, is suddenly no longer acceptable for the protection of human life.

2. That often in the history of science, discoveries were made that were totally unexpected on the basis of everything known to the experts at the time, and that often, these discoveries were made not by the specialists in the field, but by outsiders who would never have been regarded as experts in that narrow speciality.

3. That only by the widest possible dissemination of facts to the entire public can such non-specialists even become aware of the existence of a problem, and that therefore any procedure that works to limit free access to any and all information dealing with the safety features of such a complex technology as exists in the nuclear field could be disastrous for society.

4. The very essence of the amazing progress of modern science and the technology based on it since its beginnings in the days of Galileo, Descartes and Newton three hundred years ago, has always been the continuous correction of errors and assumptions, made possible by the free publication of all data and even the most upsetting theories for anyone to see and criticize. Only through this often painful and slow process of continuous correction of past errors has science been able to advance, and only through such free access to data and knowledge has it been possible to utilize the collective wisdom to mankind's best minds for the benefit of society and to avoid or correct at least some of the inevitable mistakes.

5. But in the case of nuclear energy and the effects of nuclear radiation on animals and man the magnitude of the consequences of any errors are so vast and irreversible that above all in this field there must be nothing to limit the widest examination of all aspects, and the greatest possible opportunity to discover the unexpected, human mistake.

6. The proposed legislation should accordingly be changed so as to require mandatory public hearings also at the time the operating permit is to be granted, and that any matter relating to the public health and safety may be brought up at that time by those whose lives may be affected. Nothing should be done to weaken the basic spirit of the Atomic Energy Act of 1954 which clearly called for the greatest possible participation of the public and the protection of its health and safety.

The very vastness of the power man has released in the atom demands the utmost in caution, lest it destroy him and his seed forever. And it is now the heavy task of this committee to make the judgment as to how best to protect the health and lives of this nation's future children, whose vulnerability is now recognized to be a thousand times greater than when the nuclear age began.

RIGHT OF SELF-DETERMINATION FOR THE BALTIC STATES

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. ASHBROOK. Mr. Speaker, on June 21, 1965, the House passed House Concurrent Resolution 416, which requested the President to urge certain actions in behalf of the Baltic States, Lithuania, Estonia, and Latvia. The resolution read as follows:

CONCURRENT RESOLUTION

Whereas the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the promotion of world peace and cooperation; and

Whereas all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, cultural, and religious development; and

Whereas the Baltic peoples of Estonia, Latvia, and Lithuania have been forcibly deprived of these rights by the Government of the Soviet Union; and

Whereas the Government of the Soviet Union, through a program of deportations and resettlement of peoples, continues in its effort to change the ethnic character of the populations of the Baltic States; and

Whereas it has been the firm and consistent policy of the Government of the United States to support the aspirations of Baltic peoples for self-determination and national independence; and

Whereas there exist many historical, cultural, and family ties between the peoples of the Baltic States and the American people: Be it

Resolved by the House of Representatives (the Senate concurring), That the House of Representatives of the United States urge the President of the United States—

(a) to direct the attention of world opinion at the United Nations and at other appropriate international forums and by such means as he deems appropriate, to the denial of the rights of self-determination for the peoples of Estonia, Latvia, and Lithuania, and

(b) to bring the force of world opinion to bear on behalf of the restoration of these rights to the Baltic peoples.

On October 22, 1966, the Senate, also without a dissenting vote, passed the measure which had the support of the executive branch. The administration's position was set forth in a letter from the State Department which reads as follows:

EXECUTIVE POSITION

The position of the executive branch with respect to the concurrent resolution is outlined in the correspondence which follows:

DEPARTMENT OF STATE,
Washington, June 1, 1965.

Hon. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs, House of Representatives.

DEAR MR. CHAIRMAN: I am writing in reply to your letter of May 20, 1965, to the Secretary of State, requesting the Department's comments on House Concurrent Resolution 416, which has been approved unanimously by the Subcommittee on Europe and ordered favorably reported to the full Committee on Foreign Affairs. The resolution requests the President of the United States to urge certain actions in behalf of Estonia, Latvia, and Lithuania. The language of the resolution, as formulated, is not objected to by the Department of State.

The Department has been advised by the Bureau of the Budget that from the standpoint of the administration's program there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations (For the Secretary of State).

During the debate in the United Nations of the Third Committee of the General Assembly on November 15 and 16, 1971, the position of the U.S. Congress was reiterated by Congressman EDWARD DERWINSKI representing the United States in the U.N., when he reminded the U.N. delegates that our country has never recognized the incorporation of the Baltic States into the U.S.S.R. and that the United States, to this day, "accords diplomatic recognition to the representatives of the last legitimate governments of the three Baltic States." Excerpts from his statement follow these remarks.

While reminding the U.N. delegates that this Nation supports self-determination for the Baltic peoples is a source of hope for those enslaved, I believe it is high time that more positive action be taken to confront this issue concretely. The present case of Rhodesia and the U.S.-supported economic sanctions im-

posed upon it by the U.N. is an excellent example of how positive both the United States and the U.N. can be when so disposed. An AP dispatch with the heading "U.S. Prosecuting on Rhodesia Trade" was carried by the Washington Post today reporting on the action taken by the U.S. Attorney's office against American citizens for violating the U.N. sanctions. While I believe that our support of the U.N. resolution was a mistake from the very beginning, the point is that both the U.N. and the United States can act positively when they so desire.

To help the U.N. and the United States face up to the Baltic issue in a positive manner, I will introduce a concurrent resolution next week to request the President, through the U.S. Ambassador to the United Nations, to have the issue of self-determination for the Baltic States placed on the agenda of the U.N. for consideration at the next regular session. Using the findings of House Concurrent Resolution 416, the proposal will recommend:

Resolved by the House of Representatives (the Senate concurring), That the President of the United States is hereby authorized and requested to instruct the United States Ambassador to the United Nations to demand, at the earliest possible date, that (1) the United Nations enforce its charter provisions which guarantee self-determination to all peoples; and (2) the Soviet Union be made to abide by its United Nations membership obligations concerning aggression and colonialism by ordering the withdrawal of all Soviet agents, colonialists, and controls from the Baltic States and returning to their respective homelands all political prisoners and exiles now in slave labor and prison camps.

SEC. 2. The President of the United States is further authorized and requested to instruct the United States Ambassador to the United Nations to take steps to have placed on the agenda of the General Assembly at the next regular session any measure or measures which would guarantee internationally supervised free elections by secret ballot in the Baltic States and to press for early approval of such measures.

SEC. 3. The President of the United States is further authorized and requested to use all the diplomatic, treatymaking, and appointive powers vested in him by the Constitution to augment and support actions taken by the United States Ambassador to the United Nations in the interest of self-determination for the Baltic States.

When one considers the recent tragic spectacle of the brutal Red Chinese regime being admitted into the United Nations, the issue of Baltic self-determination should certainly be reviewed by the world body. In his remarks which follow, our representative to the U.N. stated in part:

The United States Delegation was responsible in large measure for those provisions of the United Nations Charter which uphold human dignity and freedom, viz., Articles 55, 73, and 74. We stand for freedom and self-determination today as we have throughout our history as a nation. We believe this is a universal principle, and not one to be applied selectively.

This proposal offers an opportunity to both the United Nations and the United States to take a positive step to implement the principles upon which both of these entities were founded. If this proposal is given serious consideration, it will be interesting to see how those nations that voted for the admission of Red China will react. As for the United States, I will seek to put our Nation on record by asking for a report from the executive branch on the merits of this issue.

At this point I insert the above-mentioned remarks by Congressman EDWARD DERWINSKI, along with the item in the Washington Post on Rhodesia.

The material follows:

FROM THE SPEECH OF THE REPRESENTATIVE OF THE UNITED STATES TO THE THIRD COMMITTEE OF THE UNITED NATIONS*

Madame Chairman, we are committed to the proposition that peoples can only fully determine their own destiny where there is freedom of expression and choice and the absence of arbitrary regimes or external interference. We believe that a free society with the right to choose leaders and policies from among alternative candidates through secret ballot is the best means by which the desires of peoples can be accurately reflected. We therefore deplore totalitarian or arbitrary systems where the only voice heard is that of the particular individuals in power. Freedom and self-determination entails legitimate lively dissent and testing at the ballot box with frequent regularity.

The United States Delegation was responsible in large measure for those provisions of the United Nations Charter which uphold human dignity and freedom, viz., Articles 55, 73, and 74. We stand for freedom and self-determination today as we have throughout our history as a nation. We believe this is a universal principle, and not one to be applied selectively.

We are highly gratified that fully 97 per cent of the people who were under colonial domination in 1940 have achieved self-determination and independence. Eighty-three countries since 1941 have attained independence and have assumed their rightful place in the international community of nations. And each year new states emerge and are welcomed into the United Nations.

We have made our position clear on the unfinished task of self-determination in southern Africa on numerous occasions most recently under the previous agenda item in this committee. We support the right of the peoples of Namibia, Southern Rhodesia, Angola, Mozambique, and Portuguese Guinea to self-determination.

We also believe that we should not overlook new forms of colonialism and denial of self-determination which have been manifested since the Second World War.

We must be ever mindful of those proud nations which have lost their freedom in this period as well as those brave peoples everywhere who are denied national dignity and the right of self-determination.

The Baltic States—Lithuania, Latvia, and Estonia—represent a special case in point. They have been physically annexed by the Soviet Union and forcibly incorporated into the cluster of its "Socialist Republics." So far as the communists are concerned, Lithuania, Latvia, and Estonia have ceased to exist as separate entities entitled to their own national identity and independence. These views are not shared by the United States, nor by numerous other countries. To this day, the United States accords diplomatic recognition to the representatives of the last legitimate governments of the three Baltic States.

Large numbers of Baltic peoples were transferred to the Soviet interior after 1940. There are indications that as many as 60,000 Estonians and 25,000 Latvians, and probably more Lithuanians, were deported or killed during the first Soviet occupation of the Baltic States in 1940–41. The largest deportation occurred on the eve of the German invasion. After the war several waves of deportations were conducted, particularly from Lithuania, and chiefly in connection with the collectivization drives in the Baltic States.

Comparison of Soviet data on peasants in Latvia for the period from early 1947 to May 1949 shows that some 36,000 families or about 150,000 individuals were eliminated from the rolls during the period. Making allowance for migration to cities, it appears that well over 100,000 Latvian peasants were deported to the interior. The figure for Lithuania may be assumed to be still higher. The Baltic peoples were evidently resettled in various regions of Siberia, as well as in the north.

We can judge whether a government reflects the will of the people by the extent to which it is confident enough to permit its citizens to emigrate freely. We have serious doubts as to whether self-determination exists in a country, for example, East Germany, where over 4,400 citizens have fled in 1971 alone by such means as swimming the Baltic to Denmark or Sweden, or scaling border fortifications. Or a country where citizens are refused permission to emigrate because they may create embarrassment for the regime

We are all too familiar with the grim events of Hungary in 1956 and Czechoslovakia in 1968 when brave peoples seeking merely the rights guaranteed by the Universal Declaration of Human Rights—to live in freedom and dignity—were ruthlessly suppressed by external force of arms. At this point I want to emphasize that the United States *unequivocally* rejects the doctrine of "limited sovereignty." It is a form of *imperialism and colonialism* that no free man can condone. The fact is that the Soviet Union is practicing classical imperialism.

Let me reiterate our unreserved support for the right of peoples to self-determination everywhere—for only then can they enjoy the fundamental human rights and freedoms enshrined in the Universal Declaration of Human Rights.

* Texts of the exchanges in the Third Committee of the General Assembly by courtesy of the United States Representative to the United Nations and Congressman, the Hon. Edward J. Derwinski.

[From the Washington Post, April 13, 1972]

UNITED STATES PROSECUTING ON RHODESIA TRADE

(By Ted Cronyn)

NEW YORK, April 12.—For the first time, the United States has charged American citizens with violating a U.N. resolution which the U.S. Attorney's office said had become part of the law of the land.

They were accused of circumventing a 1968 U.N. resolution imposing economic sanctions on the white-ruled African state of Rhodesia which was embodied in the United States by an executive order establishing export and import controls.

Last November, the U.S. Congress relaxed the restrictions to permit the import of Rhodesian chrome and other strategic materials if they were otherwise only available from a Communist country. Several shipments of chrome ore have been received, under special license, since then by such firms as Foot Metals and Union Carbide.

The United States had been dependent on Soviet chrome until these shipments arrived.

The four individuals and two corporations charged all pleaded guilty in U.S. District Court today to some parts of the 18-count indictment.

One of the men was Edward H. Bartlett, Vermont tax commissioner, charged in a separate information. He pleaded guilty to conspiring with others from 1968 to 1970 to form a corporation in Vaduz, Liechtenstein, to hide trading with Rhodesia; opening a bank account in Zurich to finance the deals; entering into a secret agreement with the government of Rhodesia and Sable Chemical Industries of Rhodesia to supply ammonia and funneling the payments through Switzerland and Liechtenstein to New York and Yazoo City, Miss.

Immediately after the court pleas were entered, a lawyer for Bartlett, in a news release, called the charges a tempest in a teapot and accused the government of unfair enforcement policies.

The lawyer, Paul R. Grand, said enforcement of the regulations threatened to deprive "Rhodesian farmers and inhabitants, black and white alike . . . of fertilizer necessary to grow food crops," as well as depriving plant employes of work—"again, black and white alike."

An issue in the charges was the building of a $50-million fertilizer plant in Que Que, Rhodesia.

Grand said, "The decision to enforce the sanctions by criminal prosecution rather than by administrative remedy can serve no purpose other than to provide publicity to the U.S. Attorney's office and unwarranted damage to the careers of those men . . ."

Grand stated that Vermont officials had been told of the proceeding, "a technical violation which occurred years ago." He added that it "has no bearing on whether he should continue as tax commissioner."

ENVIRONMENTAL IMPACT STATEMENTS

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. DINGELL. Mr. Speaker, I include the text of the Council on Environmental Quality's April 1972 issue of the 102 Monitor at this point in the CONGRESSIONAL RECORD:

ENVIRONMENTAL IMPACT STATEMENTS

CEQ CHAIRMAN INVITES DEBATE ON NATIONAL GROWTH

Chairman Russell E. Train's speech to the Los Angeles World Affairs Council, "Needed: A Debate on National Growth" has already attracted attention in the national press. In view of the importance of the questions raised the full text appears in this issue of the *102 Monitor*, beginning on page 2.

THE PRESIDENT'S 1972 ENVIRONMENTAL PROGRAM

For the convenience of individuals and organizations interested in the specifics of the President's 1972 environmental program, the Council has compiled the President's Message on the Environment, the bills transmitted to Congress, the letters of transmittal, Executive Orders, and analyses of proposed legislation. This document, *The President's 1972 Environmental Program*, is available in limited numbers from CEQ, and from the U.S. Government Printing Office for $1.75, stock number 4111–0009.

NEEDED: A DEBATE ON NATIONAL GROWTH

(Remarks by the Hon. Russell E. Train, Chairman, Council on Environmental Quality, before the Los Angeles World Affairs Council, Los Angeles, Calif.—Mar. 29, 1972)

I am delighted to have this opportunity to address the World Affairs Council. Environmental problems are increasingly engaging the attention of nations throughout the world, and environmental cooperation among nations is rapidly becoming a major factor in international affairs. Environmental issues are gut issues that go to the heart of mankind's ability to survive in a world worth living in. The problem is global.

In 1968, just before the Nixon Administration took office, I chaired a conference on the subject of "Ecology and International Development." In welcoming the participating scientists to the conference, I made an observation which I will repeat in another context today:

"I suspect that a major reason ecology is so often ignored is not so much lack of expertise as the fact that an ecological awareness leads to the questioning of goals—and this is something few wish to do. The time has come when questions must be asked about the validity of development goals here and abroad . . ."

Since 1968 we have asked a great many questions, and more than ever before, Americans have become ecologically aware. As the President has observed, we now recognize that—

"At the heart of concern for the environment lies our concern for the human condition: for the welfare of man himself, now and in the future. As we look ahead to the end of this new decade of heightened environmental awareness, therefore, we should set ourselves a higher goal than merely remedying the damage wrought in decades past. We should strive for an environment that not only sustains life but enriches life, harmonizing the works of man and nature for the good of all."

This, of course, is the goal we shall pursue at the United Nations Conference on the Human Environment in Stockholm. As you know, all U.N. member nations have been invited to be represented at the Stockholm Conference this June to take stock, for the first time in history, of our international environmental condition. The success of this conference may well lie less in the specific agreements we come to there—although we expect some significant ones—than in the process of international dialogue and concern that Stockholm has brought about.

Over the past two years an unprecedented, high-level attention has suddenly been focused on the environment in nations across the world. Big and small, rich and poor, countries everywhere have had to decide first immediate and mundane issues—who will represent us, how will we select our delegation to the numerous preparatory meetings and working groups? Then, in the course of preliminary meetings, larger issues have had to be addressed in various countries: What are our environmental problems? What are we doing to correct them? How are we organized to deal with them? How are other countries coping with their environmental problems?

During the past couple of years many countries have established a focal point of responsibility for the environment. Thus, in addition to the United States, significant reorganizations have taken place in Japan, Great Britain, Canada, France, Norway and Australia, among others. Cabinet-level exchanges on the environment have occurred between the United States and Japan, and the United States and Canada, and heads of State now routinely include the environment on their agenda at international meetings.

Thus, the Stockholm Conference has served as an action-forcing mechanism, as we hoped it would. As world interest in the environment has grown, our expectations have also grown, and we now look forward to concrete agreements in several areas. We hope for an international convention on the control of ocean dumping, an area in which the United States has provided strong leadership, most notably in the Administration's proposed legislation which would severely curtail ocean dumping, legislation which has passed both houses of the Congress and is now in conference. We are also hopeful that the President's proposal for a World Heritage Trust, to provide international identification and uniform high standards of protection for areas of outstanding natural or cultural value, will be supported. I expect that some agreement on the establishment of institutional arrangements to conduct world environmental monitoring will be reached in Stockholm, and that a permanent new unit will be created in the United Nations to provide policy guidance on environmental issues.

The United States has worked hard to make the Stockholm Conference, and the international environmental activity it symbolizes, a success. The President has proposed a fund of $100 million to support a five-year international environmental effort in several areas, and he has pledged the United States to contribute $40 million on a matching basis to that fund. In my travels and those of my fellow Council members, Mr. Cahn and Dr. MacDonald, we have tried to work out ways of overcoming the very real obstacles to success at Stockholm. One of these obstacles is the concern that exists in some countries about the extent to which environmental progress entails economic costs, and possible effects on growth.

The question whether we should continue to regard growth—of population, the economy and resource use—as the primary measure of our progress as a society is a very important one and one I want to raise with you today. This is an issue that is bigger than the Stockholm Conference, and bigger than any individual country. It is in many ways an issue for long-term consideration beyond Stockholm. There are some who say that it is an issue for affluent societies in their post-industrial and built the largest industrial machine in the history of the world. We have greatly increased our agricultural productivity, we have been responsible for technological miracles from computers to moon landings, and we have attained an unprecedented standard of living.

In a sense, we are driven by our own prosperity. Keynesian economics has shown us how to manipulate the economy to achieve maximum growth and employment. Most of us march to the tune "produce or perish" and this has helped make of Americans a nation of high achievers.

But with all of the benefits from continued economic growth, as a people we are beginning to question whether more is really better:

Communities from coast to coast are more and more willing to forego new industries to prevent pollution and impairment of the local environment. Public debate in States such as California, Colorado, Oregon, Florida and others has begun to question the desirability of growth. Delaware, a heavily industrialized eastern State, last year called a halt to heavy development of its coastal zone.

The President's Population Commission has recently reported that ". . . There is hardly any social problem confronting this Nation whose solution would be easier if our population were larger . . ." After two years

of research, the Population Commission concluded that "no substantial benefits would result from continued growth of the Nation's population."

The Club of Rome, an interational group of scientists and industrialists, has recently sponsored a project at MIT on *The Limits of Growth*. That study predicts that current population, resource use and other trends will end in disaster in the next century.

One need not accept the dire hypotheses and methods underlying some of the more extreme predictions to acknowledge the fundamental validity of the questions these various groups are asking. They are questions which touch upon public policy choices in several fields, and most particularly upon environmental policy.

First is the question of the size and distribution of our population. The President has refered to this issue as "one of the most serious challenges to human destiny in the last third of this century . . ." According to the Population Commission, in the year 2000 per capita income may be as much as 15 percent higher under the two-child per family, than under the three-child growth rate.

Moreover, the anticipated distribution of future population makes clear that under even the lower population growth projections we may have to make substantial sacrifices in the quality of our lives to accommodate large numbers of people in our urban regions. While about 70 percent of the U.S. population is now concentrated in metropolitan areas, 85 percent is expected to reside there in the year 2000. In that year, more than six out of every ten Americans will live in cities of one million or more compared to four out of ten who now live there, and 50 percent will live in the huge urban agglomeration along the East Coast and adjoining the Great Lakes. Another fifteen percent will live in the area reaching from about San Francisco to Los Angeles.

This distribution will demand that we change our lives, and perhaps our values, very significantly. We must learn to adjust to higher density living, learn to share our open spaces and public facilities with more and more people, increasingly forego use of the automobile in favor of public transportation, and give up some cherished habits of privacy and solitude.

These projected settlement patterns will have serious consequences for land use and pollution. Industrial activity, transportation, and the like will be highly concentrated in large metropolitan areas. Pollution control will be more difficult, and higher levels of abatement will be imperative. The encroachment of development on the countryside will make the preservation of areas of critical environmental concern, such as wetlands, flood plains and scenic areas, extremely difficult.

In the face of these inevitable adjustments, it is especially tragic to learn from the Population Commission that between the years 1966 and 1970, 15 percent of all births were unwanted and 44 percent were unplanned. Since 1967 the United States has contributed more than $260 million in support of a worldwide program of population control and family planning activities. Although our population problems here at home may be less severe than those of some other nations, we can do longer deny that we have them. And so I think it is time to call upon every American to consider the implications of the future population growth and distribution that has been predicted for us as it affects his own choices and values.

The second question on which we should begin to focus scientific and popular attention concerns the carrying capacity of the earth itself. We must begin to ask ourselves whether food production will continue to be adequate for population increasing at exponential rates? Whether we will in time deplete certain resources and thereby bring an end to increased industrial production? And whether we can depend on technology and the market structure to allocate resources and continue to meet high levels of productive endeavor?

One group recently addressed these questions in Great Britain and concluded that the British population is twice as large as it should be for sustained resource use. Another group, as I have already mentioned, has developed a mathematical model which purports to show that continued population growth, resource depletion and pollution would have catastrophic consequences in the century.

I offer no conclusive answers to this question. Since the time of Malthus few people have questioned the adequacy of resources to support growth and we should not be surprised if current efforts are somewhat primitive and unsophisticated. And above all, we should not allow cosmic issues to distract us from the societal housebreaking that modern man has so recently begun—the dirty job of cleansing the air and the waters of the wastes we have disposed in them.

Nevetheless, a thoughtful civilization would be foolish to dismiss lightly the grave considerations that are involved in the examination of the sufficiency of resources to support continued economic and population growth. And so I call for a national debate upon this question, and I suggest that we consider not only the adequacy of resources and the possible technological developments that may render productivity sustainable, but that we also inquire into the ability of our institutions to cope with change, to get food and goods to where people are, and to protect us from some of our own breakthroughs when, for example, a green revolution proves vulnerable to insects, or enhanced agricultural productivity causes farmers to inundate the cities in search of work.

The institutional questions are especially critical because we must look to government to anticipate change well before it occurs. For example, population tends to build on the previous generation, and increases can be built into the system. If all U.S. families henceforth had only two children, population would not level off for 70 years. Persistent pollutants even if stopped now would continue through the ecosystem for years. Hence, our traditional response to problems, generally when they become acute, is inadequate when we have to deal with long lag times.

A third and related issue concerns resource use and the ability of the market to allocate resources in the future. Most of the earth's resources are plentiful in total but their numbers are limited using current methods of extraction. As resources become scarce, their prices will go up and substitutes will be sought or new mining methods employed. Both of these will greatly increase the costs, and at some point in time, the question must be asked whether the devotion of significant amounts of money to this end will lessen the overall productive capacity of our economy. We must ask whether the market allocates long-term needs in an effective manner or whether prices only rise as a resource is close to depletion. Instead of dismissing these matters with an ideological reflex, we must apply careful analysis for it is by no means clear that the market place and technology will solve all of our problems in an even-handed manner.

A fourth issue on which I recommend national attention concerns technology. Can we rely upon technology to continue to increase at the same rate as population, and if we can, what will be the side effects of technological progress? Acceleration of growth demands that new technology developments increase at least as rapidly as population growth. Yet we may create new problems as technologies are introduced without proper testing and analysis of their implications. These questions underscore the great need for technology assessment. Technology assessment should deal not only with hardware items like new energy technology and transportation technology, but should also explore the implications of monocultural agricultural systems, information technology and its impacts on privacy, and the like.

The issue we face here is how to develop technology in such a way as to make use of its benefits while at the same time anticipating potentially harmful side effects and taking those actions which reduce the risk of developing technology. The problem is particularly severe in that the side effects are often second or third order, their anticipation difficult, and the development of adequate safeguards complex.

A fifth issue I would pose to you is somewhat out of my area of responsibility, but is undoubtedly implied in much that I have said. That is the question of income distribution. If a policy of restrained growth were to be pursued, it is unreasonable to expect the poor to stay back while the wealthy settle in. Here at home, as well as in foreign countries, the tensions that threaten to tear apart the social order would be considerably reduced if economic circumstances were more equitable.

On the one hand, a growing economy produces a larger pie for all to share. If the pie is not increased there may be more competition for the same sized pie.

On the other hand, as the Population Commission has pointed out, reduced population growth, while it will lead to a lower GNP will lead to greater per capita income for all.

Perhaps the most perplexing problem facing any growth strategy is how to continue to maintain a high quality of life and meaningful employment opportunities without the continued burgeoning of the production of goods. The challenge will obviously entail improvements in services, education, the arts and recreation, and probably with greater amounts of leisure time. It may well be possible actually to lower production and yet maintain the same level of goods satisfaction through production of longer lived goods.

All of these questions suggest that we must improve our analytical techniques to understand the future. This means not only better projections of future trends, but a more profound understanding of the interrelationship among a wide variety of factors such as population, food, industrial growth, resources and pollution. We must improve our ability to assess technology all the way from personal conveniences to agricultural production to new energy sources and to new chemical products.

We must begin to understand the policy options before us. For example, if we understand better the impact of resource depletion and marketplace allocations, we can examine alternatives such as earlier substitution and recycling. Understanding population distribution, we can better devise our land use policies to meet tomorrow's problems. Understanding pollution trends will help us know when to change certain materials and products and how to develop better abatement technologies.

Above all, we need a national debate on growth. States and communities should begin to plan and discuss their short- and long-term alternatives for land use, population growth, and industrialization. (The President's National Land Use Policy legislation now pending in Congress would encourage the States to undertake a far more vigorous role in controlling land use and in giving direction to growth.) Federal agencies working with State and local governments should give these matters more attention and should provide greater research funds. Our academic institutions should begin to provide analyses

and studies that give decision-makers a greater range of policy alternatives.

We can no longer escape our responsibilities. In the past we have acted as though our land, air, water and other resources were limitless. We have now learned from experience that this is not true. New analytical tools are beginning to give us a clue as to the potential for serious problems in the future if we do not develop policies and programs to deal with them now. If we do not think about the future, we have abdicated our most basic public and private responsibilities.

Personally, and as a father of teenage children, I should point out that I have been impressed by the way in which young people have challenged the smugness of our traditional assumptions about growth. Long before most of us, the young have identified the quality of life issue as separate and distinct from the quantity issue. Many young people have been saying in their concern for the under privileged, their openness to each other, their regard for nature and their disregard for accumulating goods, that another path towards happiness is possible. The question I wish to raise for national debate is whether it may not also be necessary.

We in the United States have a historic opportunity. The problems we face—poverty, pollution, the urban crisis—we share with all the world. Often, because we face them first, our solutions and our performance become the measure, mold the expectations, of what is possible.

It is the task of the national Administration to chart an orderly course through a confusing and disorderly time, to accommodate the need for institutional change as quickly as possible without wrecking what is essential and useful in our processes of government. We in this Administration are fully committed to the reappraisal of the goals of technology and its consequences that is implicit in the environmental awareness, and I believe that as a people we are ready to ask some of the hard questions.

As we begin to ask them we will require not only sophistication, but also conciliation, moderation, and respect for each other's deeply felt wishes and desires. A posture of disciplined application to the business at hand is difficult to maintain in an atmosphere charged with passion as the coming debate is sure to be. But it is the only approach capable in the long run of achieving the broad goals and the better quality of life we seek.

SOURCE FOR ENVIRONMENTAL IMPACT STATEMENTS

In order to receive more efficient and prompt service, requestors are urged to order draft and final impact statements from the Department of Commerce's National Technical Information Service (NTIS) rather than the preparing agency. Each statement will be assigned an order number that will appear in the *102 Monitor* (at the end of the summary of each statement) and also in the NTIS semi-monthly Announcement Series No. 68, "Environmental Pollution and Control." (An annual subscription costs $5.00 and can be ordered from the NTIS, U.S. Department of Commerce, Springfield, Virginia 22151.)

Final statements will be available in microfiche as well as paper copy. A paper copy of any statement can be obtained by writing NTIS at the above address and enclosing $3.00 and the order number. A microfiche costs $0.95. (Paper copies of documents that are over 300 pages are $6.00.)

NTIS is also offering a special "package" in which the subscriber receives all statements in microfiche for $0.35 per statement.

Statements will still be available for public scrutiny in the document rooms of the various agencies. However, only limited copies will be available for distribution.

Yet another possible source of statements is from the Environmental Law Institute, 1346 Connecticut Avenue, N.W., Washington, D.C. 20036. To order a document, please indicate the Department, date and ELR Order No. (given at the end of each summary). The Institute charges $0.10 per page, and as you will note the number of pages is also given at the end of the summaries. Please enclose the correct amount of money with your order and mark the envelope to the attention to the "Document Service."

SOURCE FOR BACK ISSUES OF THE 102 MONITOR

Because the supply of past issues of the 102 Monitor is not sufficient to meet all requests, a list is provided below indicating where the various issues of the 102 Monitor appeared in the *Congressional Record*. You may wish to order these *Congressional Records* from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ($.25 per copy).

Vol. 1, Nos. 1, 2, & 3: Congressional Record (page E 3607)—April 28, 1971.

Vol. 1, No. 4: Congressional Record (page E 5151)—May 27, 1971.

Vol. 1, No. 5: Congressional Record (page E 6023)—June 16, 1971.

Vol. 1, No. 6: Congressional Record (page E 8458)—July 28, 1971

Vol. 1, No. 7: Congressional Record (page E 9483)—September 13, 1971.

Vol. 1, No. 8: Congressional Record (page E 10002)—September 24, 1971.

Vol. 1, No. 9: Congressional Record (page E 11596)—November 1, 1971.

Vol. 1, No. 10: Congressional Record (page E 12213)—November 15, 1971.

Vol. 1, No. 11: Congressional Record (page E 13322)—December 11, 1971.

Vol. 1, No. 12: Congressional Record (page E 76)—January 18, 1972.

Vol. 2, No. 1: Congressional Record (page E 1886)—March 2, 1972.

Vol. 2, No. 2: Congressional Record (page E 2409)—March 13, 1972.

ENVIRONMENTAL IMPACT STATEMENTS

(On the following pages are envoironmental impact statements received by the Council from March 1 through March 31, 1972:)

(NOTE.—At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.)

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly, Office of the Secretary, Washington, D.C. 20250 (202) 388–7803.

Title, Description, and Date

Agricultural Research Service

Draft

Agricultural Research Center, Beltsville, *Maryland*. Approximately 1,200 tons of digested sewage sludge will be utilized on 4 acres of soil to evaluate its use as a soil amendment. (ELR Order 3050, 13 pages) (NTIS Order PB–207 544–D) 3/10.

Animal and Plant Health Service

Final

Imported Fire Ant Cooperative Federal-State Control and Regulatory Program. Proposed aerial treatment of 20 million acres in the South and Southwest with 1.7 grams of mirex per acre, in order to control the imported fire ant. The lasting effect of the pesticide are not fully known. It is slow to break down, and its residue is easily absorbed by biological organisms. Comments made by DOC, EPA, and HEW. (ELR Order 3051, 103 pages) (NTIS Order PB–205 344–F) 3/17.

Forest Service

Draft

Tonto Working Circle, Tonto National Forest, *Arizona*. A proposal to allow timber cutting on the Tonto Working Circle. Dust, smoke, and fire hazards will increase with the cutting (ELR Order 3090, 33 pages) (NTIS Order PB–207 564–D) 3/17.

Coronado National Forest, *Arizona*. Proposed spraying of 2,175 acres with 2,4,5–T herbicide, in order to destroy mesquite trees. Mesquite trees will be dying and defoliating for a minimum of 3 years; there will be a reduced area for honey bees. (ELR Order 4036, 20 pages) (NTIS Order PB–207 746–D) 3/27.

Palzo Restoration Project, Shawnee National Forest, Williamson, Saline and Gallatin Counties, *Illinois*. Project will attempt to utilize treated municipal waste to reclaim abandoned strip mined land which is presently causing severe water pollution problems. (ELR Order 2014, 64 pages) (NTIS Order PB–207 061–D) 2/23.

Sinulaw National Forest, *Oregon*. The proposed use of the herbicides 2,4–D, 2,4,5–T, Amitrole–T, Atrazine, Picoloram, and Dicamba to control specific types of vegetation. Some non-target plants will be destroyed. (ELR Order 2081, 32 pages) (NTIS Order PB–207 465–D) 3/9.

Pelican Butte Winter Sports Development, Klamath County, *Oregon*. Proposed development of a comprehensive winter sports complex. Clearing the area will affect soil, water, and visual resources. Increase in resident and transitory populations will occur, with related impact. (ELR Order 3088, 15 pages) (NTIS Order PB–207 570–D) 3/17.

Chairlift No. 2, Mt. Ashland, *Oregon*. Proposed construction of a 2nd chairlift at an existing winter sports complex. The lift will increase the chances of polluting the Ashland Municipal Watershed. (ELR Order 4075, 16 pages) (NTIS Order PB–207 770–D) 3/30.

Office of Budget and Finance

Final

H.R. 8714 and S. 1943. Bills which would make provisions of the Poultry Products Inspection Act (21 U.S.C. 451–470) applicable to rabbits slaughtered for human food. (ELR Order 3049, 4 pages each) (NTIS Order PB–207–670–F) 3/1.

Rural Electrification Administration

Draft

Cochise and Pima Counties, *Arizona*. Proposed change of purpose for $5,409,028 of a prior REA loan, in order to construct 73 miles of 230 kV transmission line and 16 miles of 115kV line. The lines will be intrusions upon the landscape. (ELR Order 4023, 60 pages) (NTIS Order PB–307 573–D) 3/20.

El Paso, Elbert, and Lincoln Counties, *Colorado*. An application by Tri-State Generation and Transmission Assoc., Inc. for a loan of $3,708,600 from REA, in order to construct 80 miles of 230 kV transmission line from Midway to Limon, including a substation at Limon. The line will be an intrusion upon the landscape. (ELR Order 4022, 60 pages) (NTIS Order PB–207 587–D) 3/20.

Alma and Cassville Stations, Buffalo County, *Wisconsin*. A proposed REA loan of $11,320,000 to the Dairyland Power Cooperative to finance air pollution reducing plant modifications. The installation would minimize fly ash emissions. (ELR Order 3091, 199 pages) (NTIS Order PB–207 560–D) 3/16.

Soil Conservation Service

Draft

Coushatta, Red River Parish, *Louisiana*. Proposed construction of 7.6 miles of flood prevention channels, with appurtenant structures. Approximately 20 acres of woodland will be lost. (ELR Order 4003, 15 pages) (NTIS Order PB–207 575–D) 3/16.

Final

Butler and Chase Counties, *Kansas*. Conservation land treatment over two watersheds, with construction of thirty floodwater retarding structures. Approximately 18 miles of intermittent streams will be inundated. Comments made by Army COE, EPA, HEW, DOI, and state agencies. (ELR Order 2086, 58 pages) (NTIS Order PB–200 794–F) 3/7.

Cameron-Creole Watershed, *Louisiana*. Construction of 19 miles of levee, 35 miles of channel, and 6 water control structures, in order to exclude excessively saline water from 100,800 acres. Approximately 800 acres of privately owned marshland and 200 acres of the Sabine National Wildlife Refuge will be taken by the project. Comments made by Army COE, EPA, HEW, DOI, DOT, state, and local agencies. (ELR Order 2053, 71 pages) (NTIS Order PB–202 445–F) 2/22.

ATOMIC ENERGY COMMISSION

Contact: For Non-Regulatory Matters: Joseph J. DiNunno, Director, Office of Environmental Affairs, Washington, D.C. 29545 (202) 973–5391.

For Regulatory Matters: Christopher L. Henderson, Assistant Director of Regulation for Administration, Washington, D.C. 20545 (202) 973–7531.

Title, description, and date

Draft

Colorado, Utah, and *New Mexico*. Proposed leasing of 25,000 acres of AEC controlled land along the Uravan Mineral Belt to private industries. The purpose of the action is to encourage maximum recovery of the remaining resources of uranium and vanadium in the area. (ELR Order 4011, 130 pages) (NTIS Order PB–207 582–D) 3/22.

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Power Station, Units 1 and 2, Rock Island County, *Illinois*. Proposed issuance of an operating license to the Commonwealth Edison Co. and the Iowa-Illinois Gas and Electric Co. for the operation of two units, at 2,511 MWt each. About 125 miles of transmission lines have been constructed. Heating of 2270 cfs of Mississippi River water 23°F above ambient will be needed for cooling until May 1976, when new controls will lessen the amount needed to 1160 cfs. (ELR Order 2055, 132 pages) (NTIS Order PB–207 242–D) 3/6.

Morris, Grundy County, *Illinois*. The proposed issuance of an operating permit to the General Electric Company for the operation of the Midwest Fuel Recovery Plant. The plant will recover uranium, plutonium, and neptunium from irradiated nuclear fuels. It has a capacity of 300 tons of enriched uranium oxide fuel per year. There is potential for detrimental effects from released fluoxide; this will require monthly testing. (ELR Order 3053, 83 pages) (NTIS Order PB–207 549–D) 3/17.

Proposed Issuance of an operating license to Consumers Power Co. Inc. for Palisades Nuclear Generating Plant, Van Buren County, *Michigan*. The plant uses a pressurized-water reactor having an initial power rating of 2,200 (MWT) with an output of 715 MW electrical of which 15 MW is used in-plant. After Jan. 1, 1974, two rows of mechanical-draft evaporative cooling towers will be in operation to remove the heat from the condensed water; Michigan water will be withdrawn and 61,320 gpm returned to the Lake at no more than 5° F. above the ambient Lake temperature. (ELR Order 2026, 294 pages) (NTIS Order PB–207 117–D) 3/3.

Docket No. 50–341, Enrico Fermi Atomic Power Plant Unit-2, Monroe County, *Michigan*. Proposed issuance of a permit to the Detroit Edison Co. for construction of an 1150 M We boiling-water reactor cooled by wet, natural draft cooling towers. A maximum of 19,500 gal/min of Lake Erie water will be evaporated from the cooling tower and the residual heat removal pond. (ELR Order 2048, 123 pages) (NTIS Order PB–207 249–D) 3/7.

Final

Plant Units 1 and 2, Midland, *Michigan*. Proposed issuance of construction and operating permits to the Consumers Power Company. The plant will have two pressurized water reactors that will generate 1,300 MW for distribution. In addition 4,050,000 lbs/hr of steam will be delivered to the Dow Chemical Company for industrial use. An 880 acre cooling pond will be constructed for use by the plant; 1100 acres will be taken, and 25 residences displaced; nonradioactive chemical wastes will be discharged to the Tittabawasse River; small quantities of radioactive gaseous and liquid wastes will be discharged to the environment; 958 acres will be taken for transmission lines. Comments made by USDA, Army COE, DOC, EPA, FPC, HEW, HUD, DOI, state and local agencies. (ELR Order 4072, 183 pages) (NTIS Order PB–205 573–F) 3/29.

Oconee County, *South Carolina*. Proposed issuance of an operating license to the Duke Power Company for Oconee Nuclear Station, Unit No. 1. (The statement will also serve for future consideration of permits for Units 2 and 3) Each unit of the Nuclear Station has a pressurized water reactor with an electrical output of 922 mw and a waste heat generation of 1650 mw. The nuclear station is integrated into the applicant's Keowee-Toxaway Project in an arrangement that provides water for condenser cooling as well as hydroelectric power. Environmental impact of the 3-unit nuclear station includes the following: loss of 2000 acres for the plant and exclusion area; flooding of 27,000 acres to form 2 lakes; displacement of 900 residents; conversion of 7,800 acres of farm and forest land to transmission line right-of-way; discharge of chemicals into Hartwell Reservoir; discharge of small amounts of radioactive gaseous and liquid wastes to the environment. Comments made by USDA, Army COE, DOC, EPA, HEW, HUD, DOI, DOT, state, regional, and local agencies. (ELR Order 4045, 363 pages) (NTIS Order PB–204 910–F) 3/27.

DEPARTMENT OF DEFENSE

Contact: Robert L. Gilliat, Office of General Counsel, Room 3E977, Department of Defense, The Pentagon, Washington, D.C. 20301 (202) OX 5–3272.

Title, Description, and Date

Draft

Exercise Exotic Dancer V, Jones, Onslow, Pender, Duplin, Craven, Carteret, and Lenior Counties, and Croatan National Forest, *North Carolina*. The proposed exercise is a Joint Chiefs of Staff directed military maneuver, to be conducted by the Atlantic Command. It will involve air, sea, and land forces. Increases in local ambient air and water pollutant levels, and in noise, solid waste, rubbish, sewage, and garbage production will result. Arrangements have been made to minimize the possibilities of forest fires. (ELR Order 4037, 77 pages) (NTIS Order PB–207 741–D) 3/28.

DEPARTMENT OF DEFENSE

DEFENSE SUPPLY AGENCY

Contact: William P. Weston, General Counsel, Defense Supply Agency, Cameron Station, Alexandria, Virginia 22314 (703) 274–6156.

Title, Description, and Date

Draft

The subject of the statement is the procurement of coal by the Defense Supply Agency for military and Federal government activities in the United States. Underground and/or surface mining operations in the following states are considered: Alabama, Alaska, Colorado, Illinois, Indiana, Kentucky, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Utah, Virginia, West Virginia, and Wyoming. (ELR Order 2088, 61 pages) (NTIS Order PB–207 469–D) 3/8.

DEPARTMENT OF DEFENSE—DEPARTMENT OF AIR FORCE

Contact: Col. Cliff M. Whitehead, Room 5E 425, The Pentagon, Washington, D.C. 20330 (202) OX 2889.

Title, Description, and Date

Draft

Sonic Booms. A study of the environmental impact of supersonic flight. Adverse effects discussed are: cumulative physiological-psychological effect on animal life; annoyance and startle effects; and damage to structures. (ELR Order 2085, 31 pages) (NTIS Order PB–207 467–D) 3/3

Advanced Ballistic Reentry System (ARBES) *Radioactive Sensors*. The ARBES program would conduct test flights, on the Western Test Range and on the White Sands Missile Range, of reentry vehicles having radioactive sensors imbedded in the nosetip and heatshield. Flights would be launched from Vandenburg AFB, California, with impact on the Marshall Islands and from Green River Utah with impact on the White Sands Missile Range in New Mexico. An adverse environmental effect would be the dispersion of a small amount (less than 3 Curies) of Cobalt 57 or Tantalum 182 into the upper atmosphere from material ablation. (ELR Order 4010 61 pages) (NTIS Order PB–207 577–D) 3/15.

Over the Horizon (OTH) Radar System. The CONUS OTH–B System is an over the horizon backscatter radar which uses ionospheric refraction techniques to illuminate targets beyond the optical horizon. Two sites are proposed, one to be located in *Maine*, the other in the state of *Washington*. Adverse environmental effects include: radiation hazards to personnel and wildlife within 180′ of the antenna, and to those wearing cardiac pacemakers within 5100′ of the antenna; emission of diesel exhaust fumes from a 6MW standby power plant; noise pollution; and clearing of foliage from 600 acres at each site. (ELR Order 4017, 72 pages) (NTIS Order PB–207 572–D) 3/14.

Tyndall Air Force Base, *Florida*. The proposed outleasing of 150 acres of land on Tyndall AFB to Bay County. The land would be used for the construction and operation of a secondary wastewater treatment plant for four municipalities and two industries. Thirty-five MGD of wastewater with an estimated BOD of 23 mg/1 will be discharged to St. Andrew Bay. The Military Pt. area will be changed from its natural state to that of a sewage lagoon; the use and production of the natural resources—forest, fish, wildlife, and recreation, will be lost. (ELR Order No. 4060, 122 pages) (NTIS Order PB–207 733–D) 3/22.

DEPARTMENT OF DEFENSE—DEPARTMENT OF ARMY

Contact: George A. Cunney, Jr., Acting Chief, Environmental Office, Directorate of Installations, Office of the Deputy Chief of Staff for Logistics, Washington, D.C. 20310 (202) OX 4–4269.

Title, Description, and Date

Draft

Fort Peck, *Montana*. Proposed high explosive cratering experiments, known collectively as Diamond Ore. Phases II B and II C of Diamond Ore, planned for the fall of 1972 and the summer of 1973, respectively, use chemical high explosives (HE) to simulate nuclear energy source cratering. Craters produced by the explosions will vary in depth from 25′ to 30′, and in radius from 52′ to 62′. Present plans call for backfilling and reseeding the cratered area. (ELR Order 3021, 55 pages) (NTIS Order PB–207 472–D) 3/13.

DEPARTMENT OF DEFENSE—DEPARTMENT OF THE ARMY

Corps of Engineers

Contact: Colonel William L. Barnes, Executive Director of Civil Works, Atten: DAEN–CWZ–C, Office of the Chief of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314 (202) 693–7168.

Title, Description, and Date

Draft

Phoenix, Maricopa County, *Arizona*. Construction of a detention basin and associated channel works, for flood control. (ELR Order 4005, 15 pages) (NTIS Order PB–207 580–D) 3/15.

New Melones Lake, Stanislaus River, *California*. Proposed construction of New Melones Dam, a 625' high rockfill structure which will create New Melones Lake, a multipurpose (flood control, irrigation, power generation, recreation, reservoir and downstream fisheries, and water quality control) lake with a gross pool surface area of 12,500 acres. The power plant will have an installed capacity of 300,000 kw. Approximately 22,700 acres of land will be required by the project; numerous historical and Indian sites, as well as significant wildlife habitat, will be inundated; and whitewater stretches of the Stanislaus River will be lost. (ELR Order 3041, 124 pages) (NTIS Order PB–207 435–D) 3/15.

Guilford Harbor, *Connecticut*. Maintenance dredging of two channels and an anchorage basin in Guilford Harbor. Temporary damage to marine life will occur. (ELR Order 4007, 10 pages) (NTIS Order PB–207 578–D) 3/17.

Chicago River, Cook County, *Illinois*. Clearing a 12 mile length of the North Bend of the Chicago River of debris. (ELR Order 2087, 11 pages) (NTIS Order PB–207 464–D) 3/16.

Wells County, *Indiana*. Removal and burning of two log jams on the Salamonie River. The purpose of the action is to control possible flood conditions. (ELR Order 2083, 9 pages) (NTIS Order PB–207 453–D) 3/8.

Red River Emergency Bank Protection, *Louisiana* and *Arkansas*. Proposed construction of emergency flood control structures at 11 sites along the Red River between the Mississippi River and Index, Arkansas. Approximately 920 acres of land will be lost to the project. (ELR Order 4035, 29 pages) (NTIS Order PB–207 725–D) 3/24.

Assateague Island, *Maryland*. Construction of a 1760' long research pier on an 8.4 acre site, midway between Ocean City and Chincoteague inlet. The facility will support operation of instruments and gages by the Coastal Engineering Research Center. The structure will be visible for up to 15 miles under optimum visibility. (ELR Order 2060, 54 pages) (NTIS Order PB–207 264–D) 3/6.

St. Catherine Sound, *Maryland*. Maintenance dredging of the Wicomico River Channel and St. Catherine Sound. Temporary damage to marine life will occur. (ELR Order 3089, 12 pages) (NTIS Order PB–207 565–D) 3/17.

Andrews River, *Massachusetts*. Proposed maintenance dredging of the channel and anchorage basin. Short-term damage to marine life will result. (ELR Order 3087, 9 pages) (NTIS Order PB–207 561–D) 3/17.

Flood control on Saginaw River, *Michigan* and Tributaries: Flint River at Flint, Swartz and Thread Creeks. Project consists of channel realignments and modifications of approximately 11,000 feet of the main stem of the Flint River and approximately 8,900 feet of Swartz and Thread Creeks. Also planned is a concrete-lined channel and concrete floodwalls. (ELR Order 2003, 27 pages), (NTIS Order PB–207 077–D) 2/28.

Rouge River Flood Control Project, Wayne County, *Michigan*. Enlargement, realignment, and paving of the mainstream of the Rouge River, from the Detroit-Dearborn city limits to Michigan Ave. in Dearborn, a distance of 5.8 miles. The natural river bottom will be replaced by concrete payment; an existing greenbelt will be permanently lost; and reduced water levels could alter upstream flora. (ELR Order 2089, 24 pages) (NTIS Order PB–207 451–D) 3/13.

Treasure Island, Dunklin County, *Missouri*. Construction of a 150 cfs pumping plant to augment a 25 cfs pumping plant now serving a leveed area. (ELR Order 4002, 13 pages) (NTIS Order PB–207 576–D) 3/20.

Hampton Harbor, *New Hampshire*. Proposed maintenance dredging of the channel and anchorage basin. Short-term damage to marine life will result. (ELR Order 3086, 12 pages) (NTIS Order PB–207 563–D) 3/17.

Military Ocean Terminal, Sunny Point, *North Carolina*. Proposed dredging of 3.2 million yards of material every two years, with occasional intermittent dredging, from basins and navigation channels. The spoil would be deposited in dike areas. Sixty-four acres of cypress swamp and 27 acres of ponds would be lost due to the action. The area provides habitat for ospreys, American alligators, and other wildlife. Marine life would also be destroyed by the dredging. (ELR Order 4038, 197 pages) (NTIS Order PB–207 726–D) 3/28.

Lower Columbia River, *Oregon* and *Washington*. Construction of bank protection walks along channels in the flood plain of the Columbia River. Loss of shoreline habitat and scenic value will occur. (ELR Order 3085, 33 pages) (NTIS Order PB–207 562–D) 3/20.

Susquehanna River Basin, *Pennsylvania*. Raising of 22,400' of levee, 1065' of steel sheet-pile wall, installing of 1930' of new sheet pile wall, and providing rip rap. Increased sediment loads from run-off will result from the project, as well as adverse visual effects. (ELR Order 3081, 36 pages) (NTIS Order PB–207 567–D) 3/14.

Bullocks Point Cove, *Rhode Island*. Maintenance dredging of channels, mooring and turning basins. Temporary damage to marine life will result. (ELR Order 4004, 10 pages) (NTIS Order PB207 574–D) 3/17.

Obion and Forked Deer Rivers, *Tennessee* and *Kentucky*. Proposed concrete lining of channels on Harris Fork Creek and South Fulton Branch; enlargement of channels from South Fulton to the junction with North Fork, Obion River (a distance of 10 miles), for flood control. Timberland and wildlife habitat will be lost. (ELR Order 3078, 48 pages) (NTIS Order UB–207 557–D) 3/14.

Alpine Lake Project, Alpine, *Texas*. Recommendation for Congressional authorization of a small reservoir to provide flood control for the town of Alpine, Texas (ELR Order 2002, 23 pages). (NTIS Order PB–207 078–D) 3/1.

New Kent County, *Virginia*. Proposed treatment of the waters of the Walker Dam Impoundment with a 50–50 mixture of diquat and potassium endothal. The purpose of the treatment is to control the Brasilian waterweed. Elodea fish will be killed; a reduction of the amount of oxygen in the water will occur; the reservoir will be rendered not potable for one week; and there is potential for damage to an adjacent farm. (ELR Order 4074, 14 pages) (NTIS Order PB–207 771–D) 3/28.

Final

San Leandro Creek, Alameda County, *California*. Construction of both the trapezoidal earth channel and the rectangular concrete channel with riprap transition in order to provide flood control. Comments made by EPA, HEW, HUD, DOI, DOT, Coast Guard, City of Oakland. (ELR Order 1998, 77 pages) (NTIS Order PB–207 056–F) 2/29.

Ventura Marina, Ventura County, *California*. Construction of a detached breakwater 1500' long; dredging of 800,000 cu. yds. to form a sand trap in the lee of the breakwater; construction of recreational facilities and parking lots; maintenance of three jetties and an entrance channel. The purpose of the project is to improve navigation. Comments made by EPA, DOI, state and local agencies. (ELR Order 2066, 49 pages) (NTIS Order PB–204 166–F) 3/1.

Crescent City Harbor, Del Norte County, *California*. Proposed construction of a 20' deep inner harbor, 200' wide at the entrance and extending north a distance of 325'; and a 400' extension of the inner harbor breakwater. Dredging and blasting will cause destruction of marine life. Comments made by USDA, DOC, EPA, DOI, NOAA, state agencies and concerned citizens. (ELR Order 3056, 48 pages) (NTIS Order PB–204 380–F) 3/15.

Panama City Harbor, *Florida*. Proposed dredging and deepening of harbor. Marine ecosystems will be lost, (including 400 acres of bay bottom) and 60 acres of land will be covered by dredge spoils. Comments made by DOC, EPA, HEW, DOI, DOT and one state agency. (ELR Order 4027, 28 pages) (NTIS Order PB–200 196–F) 3/22.

Waimano Stream Flood Control Project, Oahu, *Hawaii*. Construction of 3,400' of reinforced concrete channel and related roadway culvert modifications, in order to improve flood carrying capabilities. Comments made by USDA, EPA, Navy, DOT, state, and local agencies. (ELR Order 2052, 22 pages) (NTIS Order PB–198 882–F) 3/2.

Lake Forest, Lake County, *Illinois*. Replacement of 30' of permeable steel sheet piling grain by an impermeable 110' section and extension of a second section by 140'. The purpose of the project is prevention of beach erosion. Comments made by USDA, USCG, EPA, DOI, state and local agencies. (ELR Order PB–204 663–F) 3/15.

Fort Scott Lake, Marmaton River, *Kansas*. Construction of a multi-purpose (flood control, water quality control, water supply, recreation, and wildlife enhancement) lake. The lake will inundate 5,000 acres, eliminate 25 miles of river, tributary streams and wildlife habitat; displace 395 people and one town. Comments made by USDA, EPA, DOI, state and local agencies. (ELR Order 3064, 37 pages) (NTIS Order PB–201 520–F) 3/17.

Mermantau River, *Louisiana*. Enlargement and realignment of 43 miles of navigation channel in Bayous Nezpique and des Cannes, in the Mermentau River, and in Lake Arthur. A loss of 2,000 acres of wildlife habitat will occur. Unspecified numbers of archeological sites are also located in the area. Comments made by EPA, HEW, DOI, and state agencies. (ELR Order 3008, 48 pages) (NTIS Order PB–200 776–F) 3/9.

Desmoines River, Jackson, *Minnesota*. Proposed construction of earthen levees, concrete floodwalls, closure structures, a ponding area, and modification of sanitary and storm sewer systems. The purpose of the action is flood control. Approximately 25 acres of land will be lost to the project. Comments made by EPA, DOI, state and local agencies. (ELR Order PB–198 726–F) 3/15.

Little Blue Channel Improvement, Little Blue River, *Missouri*. Construction of channel realignment structures and a ring levee around Lake City Army Ammunition Plant in Jackson Co. The purpose of the project is flood control. It will detrimentally alter 22 miles of stream environment and riparian wildlife habitat, and result in lowered fish production and loss of wildlife habitat. Comments made by USDA, EPA, DOI, state and local agencies, and concerned citizens. (ELR Order 3026, 48 pages) (NTIS Order PB–202 916–F) 3/10.

Las Cruces, Don Ana County, *New Mexico*. Proposed construction of a dry flood control dam and diversion ditch with outlet works, spillway structures and an open discharge channel. Loss of an unspecified amount of wildlife habitat will occur. Comments made by USDA, EPA, DOI, International Boundary and Water Commission, state and local agencies, and concerned citizens. (ELR Order 3063, 50 pages) (NTIS Order PB–202 923–F) 3/15.

Chowan River, *North Carolina*, and Blackwater River, *Virginia*. Construction of three cutoff channels to control flooding. Twenty-eight acres will be inundated and other acreage will be covered with spoil. Comments

made by EPA, DOI, and state agencies. (ELR Order 3084, 23 pages) (NTIS Order PB-206 258-F) 3/17.

Skiatook Lake, Osage County, *Oklahoma*. Construction of Skiatook Lake, on Hominy Creek. The purposes of the project include water supply and quality control, recreation, fish and wildlife management, and flood control. Approximately 10,540 acres of land will be permanently inundated and an additional 3,410 acres will be periodically inundated. Fifty-seven families, one state highway, several roads, pipelines, and other utilities, and 25 graves will be displaced by the project. Comments made by USDA, EPA, DOI, state and local agencies, and concerned citizens. (ELR Order 3027, 199 pages) (NTIS Order PB-207 460-F) 3/10.

Gulf Intercoastal Waterway, *Texas*. Proposed relocation of two portions of the authorized shallow-draft navigation project in Matagorda and Corpus Christi Bays. Dredging and filling will destroy marinelife, wildlife, and their habitats. Comments made by USDA, EPA, DOI, NOAA, state, local, and regional agencies. (ELR Order 3071, 58 pages) (NTIS Order PB-198 927-F) 3/15.

San Gabriel River, Laneport, North and South Fork Lakes, *Texas*. Proposed construction of the above three lakes for purposes of flood control, water conservation, fish, wildlife, and recreational uses. Approximately 25,350 acres of land and 28 miles of stream will be lost to the project; habitat for whitetailed deer, small game and birds, and the entire wild turkey population will be inundated; archeological sites, old homesteads, and numerous farms and residences will be permanently lost. Comments made by USDA, EPA, DOI, DOT, state, regional and local agencies, and concerned citizens. (ELR Order 4069, 349 pages) (NTIS Order PB—207 736-F) 3/27.

DEPARTMENT OF DEFENSE—DEPARTMENT OF THE NAVY

Contact: Joseph A. Grimes, Jr., Special Civilian Assistant to the Secretary of the Navy, Washington, D.C. 20350 (202) 697-0892.

Title, Description, and Date

Final

Naval Air Station, Lemoore, *California*. The acquisition of 440 acres in order to construct sewage treatment and evaporation ponds. This land will be lost for its present agricultural use. Comments made by CEQ, EPA, DOI. (ELR Order 2035, 43 pages) (NTIS Order PB-199 018-F), 3/2.

Cross Cay Island, *Caribbean Sea*. Proposed relocation of Navy target facilities from Culebra, Commonwealth of Puerto Rico, to Cross Cay, an uninhabited island 2800' x 1400', 2.5 nautical miles away. Clearing of a shallow boat channel, preparation of an access runway, helicopter landing pad and target area will be necessary. Some destruction of marina life will result. Comments made by USDA, DOC, EPA, and the Mayor of Culebra. (ELR Order 4051, 57 pages) (NTIS Order PB-206 051-F), 3/31.

Norfolk Station, Norfolk, *Virginia*. Proposed acquisition of 508 acres of railroad yard facilities at Sewell's Point. Naval facilities will be constructed on the site. Comments made by EPA, DOI, and state agencies. (ELR Order 4014, 16 pages) (NTIS Order PB-201 855-F), 3/22.

ENVIRONMENTAL PROTECTION AGENCY

Contact: Sheldon Meyers, Director, Office of Federal Activities, Room 3630 Waterside Mall, Washington, D.C. 20460 (202) 755-0940.

Title, Description, and Date

Draft

Bethany Beach Regional Wastewater Treatment Plant, Sussex County, *Delaware*. Proposed construction of a sewerage project to serve Bethany Beach. At issue is the extent to which completion of the project will affect development of seasonal homes. (ELR Order 3070, 99 pages) (NTIS Order PB-207 542-D) 3/16.

Final

Proposed Water Quality Control facilites, Soldotna, *Alaska*. Construction of sanitary sewage treatment facilities. Wastes will be treated by an extended aeration biological process; Effluent will be discharged after disinfection into the Kenai River via an outfall approximately 21 miles upstream from its month. Comments made by Army, COE, DOI, DOC; Coast Guard, Kenai Peninsula Borough. (ELR Order 1999, 48 pages). (NTIS Order PB-204 662-F) 3/1.

Carmel, Monterey County, *California*. Construction of an ocean outfall sewer extension in Carmel Bay. The project will lower existing conditions of pollution near the shoreline. It will also, however, discharge wastewater in an area that is included in a proposed enlargement of the Pt. Lobos Underwater Reserve of the California State Park system. Comments made by Army COE, DOC, HEW, DOI, USCG, state and local agencies, and concerned citizens. (ELR Order 2084, 73 pages) (NTIS Order PB-202 585-F) 3/8.

Lead-Deadwood Sanitary District No. 1, *South Dakota*. The proposed project would combine all municipal and industrial wastes from the cities of Lead and Deadwood, and Homestake Mining Co., in one interceptor pipeline, and convey the waste along the route of Whitewood Creek to a tailings-stabilization pond for treatment by detention and bacterial action. Approximately 600 acres of land will be taken by the project; the potential would exist for groundwater contamination. Comments made by USDA, Army COE, Food and Drug, HEW, HUD, DOI, state and local agencies, and concerned citizens. (ELR Order 4049, 121 pages) (NTIS Order PB-204 669-F) 3/15.

FEDERAL POWER COMMISSION

Contact: Frederick H. Warren, Advisor on Environmental Quality, 441 G Street, N.W., Washington, D.C. 20426 (202) 386-6084.

Title, Description, and Date

Draft

Project No. 2628, Clay and Randolph Counties, *Alabama*. Proposed approval of license for Alabama Power Co. to construct a 140' high, 956' long concrete dam on the Tallapoosa River; an earth-rock fill dike; a resulting 10,661 acre, 24 mile long reservoir; and a two generator (67,500 kw each) powerhouse, with appurtenant facilities. (ELR Order 2042, 58 pages) (NTIS Order PB-207 260-D) 3/2.

Fresno and Madera Counties, *California*. Proposed approval of renewal license for major Big Creek No. 2A and No. 8, Project No. 67. The project consists of two powerhouses with a total capacity of 138,000 kw; several diversion dams, conduits, natural channels and reservoirs; and existing and proposed recreation facilities. (ELR Order 2031, 154 pages) (NTIS Order PB-207 123-D) 3/1.

Project No. 77, Lake and Mendocino Counties, *California*. Proposed approval of renewal license for the Pacific Gas and Electric Co. to operate a 9,040 kw hydroelectric powerhouse, along with two dams, two lakes (2,380 total acres), tunnels, penstocks, and 8890' of conduit. (ELR Order 2063, 31 pages) (NTIS Order PB-207 243-D) 3/8.

Project No. 176, San Diego County, *California*. Proposed approval of a renewal operating license for Escondido Mutual Water Co.'s Lake Wohlford Project. The project consists of a combination rock and hydraulic fill dam, a 224 acre reservoir, and the Rincon and Bear Valley powerhouses, with a total installed capacity of 760 kw. (ELR Order 3010, 89 pages) (NTIS Order PB-207 457-D) 3/8.

Project 120, Fresno, Madera, Tulare, Kern, and Los Angeles Counties, *California*. Proposed approval of a renewal license for the Southern California Edison Co.'s Big Creek No. 3 Project 120. The project consists of a dam and spillway, a reservoir and diversion tunnel, 4 penstocks and a powerhouse with a total installed capacity of 107,100 kw. (ELR Order 4068, 71 pages) (NTIS Order PB-207 732-D) 3/26.

Project No. 1218, Dougherty and Lee Counties, *Georgia*. Proposed approval of a renewal operating license to the Georgia Power Co. for its Flint River Project. The project consists of 2 dams, a connecting dike, a 3-generator powerhouse, a reservoir, and appurtenant facilities. (ELR Order 3077, 46 pages) (NTIS Order PB-207 555-D) 3/17.

Project 2336, Lloyd Shoals Project, *Georgia*. Proposed approval of an application for development of 4 recreation use areas at project 2336, a hydroelectric station of the Georgia Power Co. Total acreage involved is 458.5, with proposed picnicking, camping, boating, fishing, and swimming facilities. (ELR Order 4033, 18 pages) (NTIS Order PB-207 678-D) 3/23.

Wilder Project No. 1892, Grafton County, *New Hampshire* and Windsor and Orange Counties, *Vermont*. Proposed issuance of a new operating license to New England Power Co. for continued operation of an existing 32,400 kw. hydroelectric generating facility with a 3,100 acre, 45 mile long pond. (ELR Order 2027, 59 pages) (NTIS Order PB-207 118-D) 3/1.

Project No. 1855, Cheshire and Sullivan Counties, *New Hampshire*, and Windham and Windsor Counties, *Vermont*. Proposed approval of an application by the New England Power Co. for a renewal operating permit for its Bellows Falls Project. This is a 40,800 kw run-of-river hydroelectric generating facility with a 2,800 acre 26-mile long pond. (ELR Order 2028, 57 pages) (NTIS Order PB-207 PB-122-D) 3/15.

Connecticut River, Cheshire, *New Hampshire* and Windham, *Vermont*. Proposed approval of a renewal operating license for New England Power Co.'s Vernon Project No. 1904. This is a 24,400 kw hydroelectric generating facility with a 2,550 acre, 26 mile long pond. (ELR Order 2030, 48 pages) (NTIS Order PB-207 119-D) 3/1.

South Plainfield, *New Jersey*, and Staten Island, *New York*. Proposed construction of a gasification plant at South Plainfield and a 15 mile, 20'' pipe to terminal and storage facilities which will be constructed on Staten Island. The Tecon Gasification Company is the applicant for the certificate of public convenience and other permits involved. Approximately 400 acres of land will be committed to the project; emission of carbon dioxide, methane, and sulfur oxide will result. (ELR Order 4050, 125 pages) (NTIS Order PB-207 720-D) 3/27.

Project No. 1888, Dauphin, Lancaster, and York Counties, *Pennsylvania*. Proposed approval for a renewal operating license to the York Haven Power Company. The project consists of a main dam across the Susquehanna River, a secondary dam, a headrace wall, a 3½ mile long reservoir, and a powerhouse containing 20 generators with a total (combined) capacity of 19,620 kw. (ELR Order 3082, 41 pages) (NTIS Order PB-207 566-D) 3/16.

Project No. 2705, Newhalem Creek, Seattle, *Washington*. Proposed approval of a renewal license for the City of Seattle to continue operating a 2,500 Kva generating unit, with a 10' overflow crest diversion dam, a 3,300' tunnel, and penstock. (ELR Order 2039, 21 pages) (NTIS Order PB-207 234-D) 2/28.

GENERAL SERVICES ADMINISTRATION

Contact: Rod Kreger, Acting Administrator, GSA-AD, Washington, D.C. 20405 (202) 343-6077.

Alternate: Aaron Woloshin, Director, Office of Environmental Affairs, GSA-AD, Washington, D.C. 20405 (202) 343-4161.

Title, Description, and Date

Draft

Federal Triangle, Washington, D.C. In order to provide office space for Federal personnel the following steps are proposed: demolition of the Old Post Office Building (but retention of its clock tower) and construction of the Internal Revenue Service Building Extension on its site; construction of a Pennsylvania Avenue Annex to the Post Office Building, between the existing Post Office and the District Building; construction of a Grand Plaza, with a two-level, 1,487 car capacity parking structure beneath. (ELR Order 2045, 53 pages) (NTIS Order PB–207 238–D) 2/28.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Contact: Robert Lanza, Office of the Assistant Secretary for Health and Scientific Affairs, Room 4062 HEWN, Washington, D.C. 20202 (202) 962–2241.

Title, Description, and Date

Draft

National Center for Toxicological Research, Pine Bluff, *Arkansas*. Development of existing facilities for use by the Center, with initial action to be conversion of 29,000 sq. ft. of space to animal holding and research use. Cost of this first phase renovation will be $3,000,000. (ELR Order 2037, 41 pages) (NTIS Order PB–207 259–D) 3/2.

Model Secondary School for the Deaf, Gallaudet College, *Washington, D.C.* Construction of permanent facilities for the Model Secondary School, and ancillary facilities at Gallaudet College. The school will serve 450 resident and 150 day students. (ELR Order 2072, 19 pages) (NTIS Order PB–207 244–D) 3/8.

Cape Giradeau, *Missouri*. Proposed construction of a new St. Francis Medical Center, planned to be a complete health care complex, with a first phase capacity of 160 beds. (ELR Order 2050, 24 pages) (NTIS Order PB–207 246–D) 3/3.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contract: Richard H. Broun, Director, Environmental and Land Use Planning Division, Washington, D.C. 20410 (202) 755–6186.

Title, Description, and Date

Draft

Welfare Island New Community, New York, *New York*. Proposed HUD certification of Welfare Island as an eligible new community according to Section 712 of the Urban Growth and New Community Development Act of 1970. (ELR Order 4044, 32 pages) (NTIS Order PB–207 740–D) March 23.

Harbison New Community, Richland and Lexington Counties, *South Carolina*. Proposed HUD guarantee of a $12,000,000 loan for development of a new community over a 20 year period. (ELR Order 4056, 26 pages) (NTIS Order PB–207 745–D) March 23.

Final

Low Rent Public Housing Project No. 5–108, New York, *New York*. Proposed construction of three 24-story residential buildings of 840 (total) units. Increase in use of public facilities and utilities will result. Comments made by USDA, Army COE, AEC, DOC, EPA, FPC, GSA, DOT, local agencies, and concerned citizens. (ELR Order 4062, 114 pages) (NTIS Order PB–205 670–F) March 28.

Marshall Union Apartments, Portland, *Oregon*. Proposed construction of a 12-story high-rise structure of 243 apartment units, designed specifically for senior citizens. The visual impact of the structure is considered in the statement. Comments made by EPA, HEW, state and local agencies, and concerned citizens. (ELR Order 3034, 39 pages) (NTIS Order PB–203 312–F) March 13.

DEPARTMENT OF THE INTERIOR

Contact: Office of Communications, Room 7214, Washington, D.C. 20240 (202) 343–6416.

Title, Description, and Date

Final

Trans-Alaska Pipeline, *Alaska*. Application from Alaska Pipeline Service Co. for a 48-inch oil pipeline right-of-way across Federal lands in Alaska between a point south of Prudhoe Bay on the North Slope and Port Valdez, a port on the south coast. The company would design, construct, operate, and maintain the 789 mile long pipeline system. Impact would result from construction, operation, and maintenance, and would occur on abiotic, biotic, and socio-economic components of the human environment far beyond the relatively small part of Alaska which would be occupied by the pipeline system and oil field. The statement includes six volumes, with three supplemental volumes on the economic and security aspects of the pipeline. Titles are as follows: Volume I, *Introduction and Summary;* Volume II, *Environmental Setting of the Proposed Trans-Alaska Pipeline,* Volume III, *Environmental Setting Between Port Valdez, Alaska, and West Coast Ports;* Volume IV, *Evaluation of Environmental Impact;* Volume V, *Alternatives to the Proposed Action* and Volume VI, *Other Sections and Attachments.* (ELR Order 4034) (NTIS Order No.'s Volume I–VI, PB–206 921–1 to PB–206 921–6, respectively; or PB–206 921–Set; supplemental material, Volumes I–III, PB–205–744, PB–205 745, and PB–207 254, respectively) 3/20.

Bureau of Mines

Draft

Federal Mine Health and Safety Academy, Buckley, *West Virginia*. Proposed construction of a 600 student, multi-building facility. The school would train mine inspectors to help administer the Federal Coal Mine Health and Safety Act of 1969. (ELR Order 3074, 34 pages) (NTIS Order PB–207 543–D) 3/15.

Bureau of Reclamation

Draft

Lake Havasu, *Arizona*. Construction of the Havasu Intake Channel and Pumping Plant, and the Buckskin Monutains Tunnel. The pumping plant will house six 500 cfs pumps, which will pump water from Lake Havasu through two 13-foot-diameter pipes 3000' up the hillside to the tunnel inlet portal. These facilities are part of the Central Arizona Project. (ELR Order 3009, 24 pages) (NTIS Order PB–207 454–D) (3/7.

Lake Berryessa, Napa County, *California*. A proposed management plan for the development of Lake Berryessa as a recreational area. (ELR Order 3083, 116 pages) (NTIS Order PB–207 554–D) 3/10.

Cibolo Creek, Wilson County, *Texas*. Proposed construction of an earthfill dam on Cibolo Creek. The reservoir would inundate 10,000 to 16,260 acres of land, displace 75 families, eliminate 24 miles of fish habitat, and necessitate the relocation of one highway, utility systems, and archeological resources. (ELR Order 4067, 39 pages) (NTIS Order PB–207 729–D) 3/27.

Final

Mountain Park Project. Kiowa County, *Oklahoma*. Proposed construction of a thin-arch concrete dam on Otter Creek, a diversion dam on Elk Creek, and a 10.8 mile diversion canal, with pipelines to deliver municipal and industrial water. Approximately 5 miles of stream and 9,280 acres will be inundated by the project; 35 homes, 7.5 miles of railway, 5 miles of highway and 11 miles of transmission line will have to be relocated. Comments made by USDA, DOI, state agencies and concerned citizens. (ELR Order 4064, 45 pages) (NTIS Order PB–207 728–F) 3/27.

Bureau of Sport Fisheries and Wildlife

Draft

Endangered Species Conservation. Proposed legislation to provide for the conservation, protection, and propagation of species and subspecies of fish and wildlife, domestic and foreign, that are threatened with extinction or likely within the foreseeable future to become threatened with extinction. (ELR Order 4041, 26 pages) (NTIS Order PB–207 731–D) 3/21.

Green Lake National Fish Hatchery, Hancock County, *Maine*. Construction of a fish hatchery for the propagation of Atlantic salmon, to help restore the species in New England waters. (ELR Order 3075, 45 pages) (NTIS Order PB–207 541–D) 3/16.

National Park Service

Draft

City of Refuge National Historical Park, Hononau Bay, *Hawaii*. Proposed master plan for management of the Park, which will serve as a center for preservation of Hawaiian culture of the Kona Coast. Approximately 50 people may be displaced by the action. (ELR Order 4021, 79 pages) (NTIS Order PB–207 583–D) 3/15.

White Sands National Monument, *New Mexico*. A proposed revised master plan for maintenance of the Monument during the next five years. Missile impact within the monument necessitates the use of vehicles and other mechanical equipment. Designation as wilderness is therefore precluded. (ELR Order 4070, 44 pages) (NTIS Order PB–207 776–D) 3/29.

Yellowstone National Park-Yellowstone Wilderness DES 72–28, *Wyoming*. The National Park Service proposes that 1,963,000 acres of Yellowstone National Park be designated as wilderness. (ELR Order 1817, 56 pages) (NTIS Order PB–207 265–D) 2/7.

Yellowstone Master Plan, Yellowstone National Park DES 72–30, *Wyoming*. Proposed action would provide a master plan for future management activity in Yellowstone National Park. (ELR Order 2056, 67 pages) (NTIS Order PB–207 262–D) 2/7.

Grand Teton National Park—Master Plan DES 72–31, *Wyoming*. Proposed master plan for the management and use of Grand Teton National Park. The plan would provide for increased public use of the park. (ELR Order 2057, 64 pages) (NTIS Order PB–207 263–D) 2/7.

Trois Tetons Wilderness Area, *Wyoming*. Proposed establishment of a 110,700 acre wilderness area in Grand Teton National Park. The area would embrace most of the park's mountainous western section and part of the lowlands. (ELR Order 1816, 49 pages) (NTIS Order PB–207 252–D) 2/7.

Office of Saline Water

Draft

San Luis Obispo County, *California*. Construction of a prototype seawater desalting plant and conveyance system, scheduled for completion in late 1977. The plant would be of multiflash design, with a capacity of 40 MGD. Some disturbance of coastline and loss of wildlife habitat will result. (ELR Order 2040, 122 pages) (NTIS Order PB–207 272–D) 3/2.

Southwestern Power Administration

Draft

Texas, Oklahoma, Arkansas and *Missouri*—Operation and Maintenance of 1700 miles of existing transmission lines and 32 substations and switching stations. These actions will be taken during FY 1973. (ELR Order 1997, 10 pages) (NTIS Order PB–207 068–D) 2/24.

INTERSTATE COMMERCE COMMISSION

Contact: James Tao, Room 5107, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423 (202) 783–2097.

Title, Description, and Date

Draft

Increased Freight Rates and Charges, 1972. Proposed approval or disapproval of selected increase proposals for commodity groupings to replace the 2.5% surcharge recently allowed to become effective on a temporary basis, to be applied by the railroads in rendering service throughout the United States. The surcharge may have an adverse effect on the movement of recyclable materials. (ELR Order 4061, 13 pages) (NTIS Order PB–207 730–D) 3/10.

The following statement was mistakenly referred to in the March, 1972 issue of the 102 Monitor as a Federal Power Commission proposal:

Pueblo County, Colorado. Proposed construction of 2.54 miles of railway track by the Colorado and Wyoming Railway Co. This will require approximately 51.51 acres of land. Finance Docket No. 27022. (ELR Order 1914, 10 pages) (NTIS Order PB–206 759–D) 2/16.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Contact: Ralph E. Cushman, Special Assistant, Office of Administration, NASA, Washington, D.C. 20546 (202) 962–8107.

Title, Description, and Date

Final

Jet Propulsion Laboratory, Los Angeles County, *California*. The statement describes the mission, facilities, and community setting of the laboratory. At present the lab supports NASA principally in the conduction of research, development, and flight project activities related to exploration of the planets and interplanetary space with automated spacecraft. Comments made by EPA. (ELR Order 1950, 37 pages) (NTIS Order PB–207 332–F) 2/18.

NATIONAL SCIENCE FOUNDATION

Contact: William J. Hoff, General Counsel, Room 501, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550 (202) 632–4386.

Title, Description, and Date

Final

National Hail Research Experiment. A proposed 5-year series of experiments (beginning in the summer of 1972) which will involve silver iodide seeding of hail cells. The purpose of the project is the development and testing of techniques for modifying hailstorms to suppress the formation of hail and damaging size. The test area, a 50 mile square, is centered on the Pawnee National Grasslands, in northeastern Colorado. Comments made by USDA, AEC, DOD, EPA, DOI, NASA, DOT, and concerned citizens. (ELR Order 3052, 21 pages) (NTIS Order PB–207 539–F) 3/15.

PACIFIC NORTHWEST RIVER BASINS COMMISSION

Contact: Robert Vining, Post Office Box 908, Vancouver, Washington 68660, (206) 695–3606.

Title, Description, and Date

Draft

Puget Sound and Adjacent Waters Comprehensive Plan. A draft study of the Puget Sound and adjacent waterways. The needs for providing water quality control, flood control, industrial and municipal supply, and recreation are discussed. (ELR Order 2070, 17 pages) (NTIS Order PB–207 240–D) 2/23.

POSTAL SERVICE

Contact: James J. Wilson, Assistant General Counsel, Contracts & Property Division, Room 2226, Postal Service, Washington, D.C. 20260, (202) 961–7637.

Title, Description, and Date

Draft

United States Post Office, Honolulu, *Hawaii*. Construction of a one-story general industrial-type building with a two-story office wing. Auxiliary construction consists of parking areas, paved maneuvering areas, an underpass, and all necessary utilities and landscaping. Facility will occupy about 400,000 gross sq. ft. (ELR Order 3025, 20 pages) (NTIS Order PB–207 470–D) 3/13.

TENNESSEE VALLEY AUTHORITY

Contact: Robert H. Marquis, General Counsel, TVA, Knoxville, Tennessee 37902 (615) 522–7181 ext. 2552.

Title, Description, and Date

Final

Nolichucky Project, Greene County, *Tennessee*. Proposed strengthening of the dam on the Nolichucky River, retirement of its power plant, and development of a waterfowl sanctuary and nature study program. The sanctuary would encompass 2,200 acres; total project cost is estimated at $2,700,000. Comments made by USDA, DOC, DOD, EPA, HEW, HUD, FPC, OEO, state and local agencies (ELR Order 3035, 57 pages) (NTIS Order PB–204, 844–F) 3/10.

DEPARTMENT OF TRANSPORTATION

Contact: Martin Convisser, Director, Office of Program Co-ordination, 400 7th Street, SW, Washington, D.C. 20590 (202) 462–4357.

Federal Aviation Agency

Title, Description, and Date

Draft

Phoenix, Maricopa County, *Arizona*. Proposed additions to a formerly privately-owned airport, recently purchased by the City of Phoenix. These would include rehabilitation of present runway, construction of a "touch and go" runway, construction of an administration building, etc. (ELR Order 2049, 80 pages) (NTIS Order PB–207 273–D) 2/28.

Napa County Airport, *California*. Proposed land acquisition and construction of a lighted taxiway and apron. Four families will be displaced by the action. (ELR Order 3092, 35 pages) (NTIS Order PB–207 584–D) 3/17.

Hollywood International Airport, Ft. Lauderdale, *Florida*. Request for Federal financial assistance for: extension of runways and taxiways; installation of VASI, relocation of perimeter road, etc. (ELR Order 2065, 68 pages) (NTIS Order PB–207 266–D) 3/7.

Fitzgerald, *Georgia*. Request for Federal financial assistance to: acquire 18 acres of clearing; extend and widen existing runway in order to accommodate 70% of the turbojet powered aircraft of less than 60,000 lbs.; install medium intensity lighting. (ELR Order 2071, 48 pages) (NTIS Order PB–207 239–D) 3/7.

Thomson-McDuffie Airport McDuffie County, *Georgia*. Request for Federal funds in order to expand existing facilities to accommodate 70% of turbojet powered aircraft of less than 60,000 lbs. Eleven acres of land will be lost to the project. (ELR Order 3062, 41 pages) (NTIS Order PB–207 545–D) 3/15.

Perry-Fort Valley Airport, Perry, *Georgia*. Construction of basic transport runway and related facilities which will accommodate 70% of the basic transport fleet of turbojet powered aircraft weighing less than 60,000 lbs. There will be approximately 10 acres of land cleared as a result. (ELR Order 2001, 35 pages,) (NTIS Order PB–207 070–D) 2/28.

General Lyman Field, Hilo, *Hawaii*. Proposed Federal financial assistance to construct a new terminal and related facilities. Air quality and water tables will be affected by the action (ELR Order 4025, 59 pages) (NTIS Order PB–207 673–D) 3/23.

Coles County Memorial Airport, Mattoon-Charleston, *Illinois*. Relocation and construction of the NW, SE runway with high intensity lighting, construction of new apron, acquisition of 248 acres of land is required. (ELR Order 2000, 57 pages) (NTIS Order PB–207 069) 2/28.

Outland Municipal Airport, Mt. Vernon, *Illinois*. Proposed land acquisition extension of runway and taxiway, installation of lighting, etc. (ELR Order 2051, 121 pages) (NTIS Order PB–207 274–D) 2/28.

Monroe and St. Clair Counties, *Illinois*. The proposed project involves acquisition of 18,650 acres and construction of a new airport to serve the St. Louis metropolitan area. The project will result in noise pollution, air emission, short term impact related to construction, and the displacement of families, farms, businesses, and other properties. (ELR Order 3072, 792 pages) (NTIS Order PB–207 589–D–1 and PB–207 589–D–2 [2 volumes]) 3/15.

Kokomo Airport, Howard County, *Indiana*. Proposed land acquisition, relocation of utilities, extensive runways, lighting, etc. Noise pollution will increase accordingly. (ELR Order 4026, 40 pages) (NTIS Order PB–207 672–D) 3/23.

Ottumwa Industrial Airport, Wapello County, *Iowa*. Request for Federal financial assistance to install Instrument Landing System (ILS) and Approach Lighting System (ALS). (ELR Order 2038, 15 pages) (NTIS Order PB–207 235–D), 2/28.

St. Joseph County, *Michigan*. Construction and lighting of 5700′ x 75′ N/S runway, three taxiways, an administration building, an apron, and related parking area. (ELR Order 2044, 28 pages) (NTIS Order PB–207 251–D), 3/2.

Grand Rapids, Kent County, *Michigan*. Proposed construction of a new 3500′ x 75′ runway and tax system; installation of VASI, fencing, addition to terminal, etc. (ELR Order 4039, 29 pages) (NTIS Order PB–207 723–D), 3/24.

Waseca County, *Minnesota*. Request for Federal financial assistance to lengthen, pave, light, etc. the Waseca City Airport. (ELR Order 4024, 13 pages) (NTIS Order PB–207 674–D), 3/22.

Holly Springs, Marshall County, *Mississippi*. Request for Federal financial assistance to acquire 83 acres and construct a 3200′ x 60′ runway, a taxiway, an apron, and an access road. (ELR Order 3060, 15 pages) (NTIS Order PB–207 540–D), 3/15.

Gulf Central Airport, Hancock County, *Mississippi*. Proposed request for Federal financial aid to strengthen and extend existing runway, taxiways, apron, etc. The purpose of the project is to enable the airport to handle large transport aircraft. Noise and other pollution levels will increase accordingly. (ELR Order 4030, 16 pages) (NTIS Order PB–207 676–D), 3/22.

Grant, Perkins County, *Nebraska*. Proposed land acquisition, construction of runway, taxiway, etc., to replace present turf field which serves 7 aircraft. (ELR Order 4029, 31 pages) (NTIS Order PB–207 675–D), 3/22.

Golden Valley County, *North Dakota*. Construction of an airport facility with one 3400′ x 60′ runway, one 300′ x 30′ taxiway, a 150′ x 150′ apron, and an access road of 850′ x 24′. Approximately 149 acres of land will be used by the project. (ELR Order 2036, 15 pages) (NTIS Order PB–207 236–D), 3/2.

Williamsburg County, *South Carolina*. Request for federal funds to build a public use airport on an existing private turf strip. The proposed project will be able to accommodate aircraft of less than 12,500 lbs., with future expansion to accommodate "business jet" aircraft expected. Five additional acres of land will be used by the project. (ELR Order 2034, 14 pages) (NTIS Order PB–207 250–D) 3/2.

Hoven Municipal Airport, Hoven, *South Dakota*. Proposed land acquisition, runway extension, etc. Noise level will increase. (ELR Order 4028, 26 pages) (NTIS Order PB–207 671–D) 3/22.

Final

St. Mary's, *Alaska*. Request for Federal financial assistance to construct runway extensions at St. Mary's Airport. Comments

made by DOI, DOT, state and local agencies. (ELR Order 2061, 15 pages) (NTIS Order PB–204 565–F) 3/3.

Sitka, *Alaska*. Construction of a runway extension; relocation of REIL, VASI, etc. Comments made by Army COE, USCG, DOC, EPA, state and local agencies. (ELR Order 3066, 26 pages) (NTIS Order PB–205 193–F) 3/16.

Aniak Airport, Aniak, *Alaska*. Reconstruction and/or extension of existing facilities, including runway apron, lighting, and access road. Comments made by Army COE, HEW, DOI, NOAA, and state agencies. (ELR Order 3067, 22 pages) (NTIS Order PB–205 332–F) 3/16.

Auburn Municipal Airport, Placer County, *California*. Acquisition of land and construction, marking, and lighting of a new runway, with VASI–2, beacon, fencing, etc. Comments made by USDA, Army COE, EPA, DOI, DOT, and one state agency. (ELR Order 2067, 25 pages) (NTIS Order PB–205 197–F) 3/3.

Honolulu International Airport, Honolulu, *Hawaii*. Proposed Federal financial assistance for the construction of "Reef Runway." Involves filling, grading, and paving a 12,000' x 200' runway, a 1000' runway safety area on each end, and 250' shoulders. Also involved is construction of a protective structure 1,050' seaward of and parallel to the runway. Loss of 1,240 acres of coral reef, land, dredged coral pits, and lagoon; 186 acres of migratory bird feeding area; and possible loss of tuna bait feeding grounds will result. Comments made by USDA, Army COE, DOD, EPA, FPC, HUD, DOI, NOAA, state and local agencies, and concerned citizens. (ELR Order 2013, 97 pages) (NTIS Order PB–203 235–F) 3/1.

Macomb Airport, McDonough County, *Illinois*. Request for Federal financial assistance to acquire 108 acres of land and extend, light and mark runway. Comments made by USDA, DOI, DOT, and state and local agencies. (ELR Order 3039, 32 pages) (NTIS Order PB–205 794–F) 3/14.

Purdue University Airport, city of Lafayette, Tippecanoe County, *Indiana*. Extension of runway, lighting and marking, installation of VASI; Overlaying of runway, etc. Comments made by State of Indiana. (ELR Order 2015, 24 pages) (NTIS Order PB–203 603–F) 2/25.

Fort Dodge Municipal Airport, Webster County, *Iowa*. Request for Federal financial assistance to construct, mark and high intensity light a NE/SW runway (150' x 6,500'); reconstruct the entrance road; reconstruct and light the general and commercial aviation aprons, etc. Approximately 385 acres will be acquired for the project, and 2–5 families will be displaced. Comments made by USDA, DOC, DOI, state and local agencies. (ELR Order 3028, 83 pages) (NTIS Order PB–201 767–F) 3/14.

Hannibal, Marion County, *Missouri*. Request for Federal financial assistance for new construction at the Hannibal Municipal Airport. The project would include: extension of Runway 16/34 to 4,000' x 75', construction of a parallel taxiway, 3,000' x 40'; acquisition of 89 acres; installation of MIRL, REIL and VASI; construction of a crosswind runway, 3,200' x 75' and taxiway, 3,200' x 40'; and construction of a deep well. Comments made by USDA, EPA, DOI, local and state agencies, and concerned citizens. (ELR Order 2058, 28 pages) (NTIS Order PB–204 962–F) 3/3.

Fall City, Richardson County, *Nebraska*. Request for Federal financial assistance to acquire 39 acres of land to construct a 3400' x 60' NW/SE runway and apron, and to install MIRL, VASI, a lighted windcone and segmented circle at the Falls City Municipal Airport. Comments made by USDA, ARMY COE, EPA, DOI, HUD, and local agencies. (ELR Order 3031, 28 pages) (NTIS Order PB–204 665–F) 3/14.

Herkimer County Airport, Herkimer County, *New York*. Request for Federal financial assistance to acquire land and construct a 4000' x 75' runway, with apron, taxiway and access road, lightnig, AVASI and REILS, etc. One family will be displaced. Comments made by Army COE, DOI, DOT, state and local agencies. (ELR Order 3032, 27 pages) (NTIS Order PB–193 960–F) 3/4.

Adirondack Airport, Saranac Lake, *New York*. A proposed request for Federal financial assistance to acquire land and reconstruct existing airport facilities. Eighteen acres of land will be required by the project; noise and other pollutant levels will rise accordingly. Comments made by USDA, Army COE, EPA, HUD, DOI, state and local agencies. (ELR Order 4006, 30 pages) (NTIS Order PB–207 581–F) 3/17.

Rockingham County Airport, Reidsville, *North Carolina*. A proposed request for Federal financial assistance to construct a general purpose airport capable of accommodating all propeller aircraft of less than 12,500 pounds. (ELR 4063, 16 pages) (NTIS Order PB–204 259–F) 3/28.

Electric City, Grant County, *Washington*. Request for Federal financial assistance to construct the Grand Coulee Dam Airport. The project consists of: a 3000' x 50' runway; a taxiway and apron; a wind cone and segmented circle; fencing; and an access road. Banks Lake, adjacent to the airport, is a resting area for migratory waterfowl, particularly the Canada Goose. Bird-aircraft conflict could therefore arise. Comments made by USDA, EPA, DOI, DOT, and one state agency. (ELR Order 2059, 13 pages) (NTIS Order PB–205 196–F) 3/3.

Wayne and Cabell Counties, *West Virginia*, and Boyd County, *Kentucky*. Request for Federal financial assistance for Tri-State Airport. The project would include acquisition of 150 acres, extension, lighting and marking of runways, etc. The displacement of 5 residences will result. Comments made by Army COE, DOC, HEW, DOT, state and local agencies and concerned citizens. (ELR Order 2062, 60 pages) (NTIS Order PB–205 333–F) 3/6.

Federal Highway Administration

Draft

Project S–275–H, Elmore County, *Alabama*. Reconstruction of Alabama State Route 14, with both 2 and 4 lane sections, for a distance of approximately 17 miles. Approximately 528 acres of land, 18 residences and 1 business will be lost to the project. (ELR Order 3006, 19 pages) (NTIS Order PB–207 456–D) 3/8.

Project S–1755–A, Montgomery County, *Alabama*. Construction of a 4 lane divided highway for a total distance of 2.3 miles and total cost of $5,000,000. Fifty acres of land will be required by the project; 90 families and 10 businesses will be displaced. (ELR Order 3022, 17 pages) (NTIS Order PB–207 438–D) 3/13.

Project S–0953(1), Douglas Island, *Alaska*. Proposed construction of a 5.3 mile road to provide access to the recreational area in the Fish Creek Basin. A 4(f) statement is included as all land involved is parkland. (ELR Order 3042, 69 pages) (NTIS Order PB–207 436–D) 3/10.

Project I–17–2(44), Yavapai County, *Arizona*. Construction of a section of 4 lane I.R. 17, a controlled access highway, for a total distance of 6.78 miles. (ELR Order 3033, 18 pages) (NTIS Order PB–207 411–D) 3/14.

Project No. 12–73, Manchester-Bolton-Coventry-Andover, Columbia, *Connecticut*. Proposed construction of a 12.6 mile section of four-lane I.S. 84. A 4(f) statement included is concerned with encroachment upon the Nathan Hale State Forest. (ELR Order 2043, 128 pages) (NTIS Order PB–207 271–D) 2/25.

Vernon, Tolland, and Willington, *Connecticut*. Reconstruction of a section of I.R. 86, widening the paved area by 30% to 50%. Nine families and two businesses will be displaced. A 4(f) statement attached refers to encroachment upon the Nipmuck State Forest. (ELR Order 3023, 166 pages) (NTIS Order PB–207 452–D) 3/10.

New Castle County, *Delaware*. Reconstruction of 5.8 miles of Naaman's Road into a four lane highway. Ten residences will be displaced, an unspecified amount of land will be taken, and several streams will possibly be polluted by the project. (ELR Order 2074, 35 pages) (NTIS Order PB–207 247–D) 3/6.

State Road 540, Polk County, *Florida*. Reconstruction of a two-lane facility to a four-lane facility between 9th St., Winter Haven, Florida, and US 27, S.R. 540. (ELR Order 1996, 27 pages) (NTIS Order PB–207 071–D) 2/28.

State Road 865, Lee County, *Florida*. Replacement of the substandard Matanzas Pass and Hurricane Bay bridges and approaches; a distance of approximately 4,200 feet. Approximately 10 to 20 individuals will be displaced. (ELR Order 1995, 20 pages) (NTIS Order PB–207 073–D) 2/28.

Project S–709(1), Brevard County, *Florida*. Proposed reconstruction of 1.7 miles of S.R. 516. A substantial amount of Indian River bottom will be filled due to the project. (ELR Order 3069, 115 pages) (NTIS Order PB–207 571–D) 3/16.

State Road 20, Washington County, *Florida*. Proposed Construction of 11.0 miles of 2 lane S.R. 20. An unspecified amount of timberland will be lost to the project. (ELR Order 4032, 64 pages) (NTIS Order PB–207 677–D) 3/21.

Jackson County, *Florida*. Proposed reconstruction of 1.0 mile of SR–71. (ELR Order 4047, 21 pages) (NTIS Order PB–207 742–D) 3/24.

Taylor County, *Florida*. Proposed reconstruction of 6.1 miles of S.R. 20 (U.S. 27). The number of persons displaced depends upon which of several alternate routes is used. (ELR Order 4052, 26 pages) (NTIS Order PB–207 721–D) 3/24.

Walton County, *Florida*. Proposed reconstruction of 16.8 miles of 2-lane F.A.S. Route 12. An unspecified amount of land will be lost to the project. (ELR Order 4053, 18 pages) (NTIS Order PB–207 727–D) 3/27.

Escambia County, *Florida*. Proposed reconstruction of S.R. 95 (U.S. 29), a 4-lane highway. The total length of the project is 8.2 miles (ELR Order 4055, 19 pages) (NTIS Order PB–207 722–D) 3/21.

Project US–680(4), Pinellea County, *Florida*. Proposed reconstruction of 1.4 miles of S.R. 699 from 2 to 4 lanes. (ELR Order 4076, 34 pages) (NTIS Order PB–207 775–D) 3/30.

Project F–120–1, Fulton County, *Georgia*. Proposed construction of 7 miles of highway. There are several lakes in the area; an unspecified amount of land will be lost to the project. (ELR Order 3073, 55 pages) (NTIS Order PB–207 547–D) 3/13.

F.A.S. Route 119, Cook County, *Illinois*. Construction of a 4-lane highway and bridge project with a total length of 3.700'. The project is being built to replace 3 existing bridges. A 4 (f) statement is included due to encroachment upon wooded park area. ELR Order 3047, 108 pages) (NTIS Order PB–207 434–D) 3/9.

Project F–263 ( ), La Salle County, *Illinois*. Proposed reconstruction of 12.0 miles of I.R. 23. One family will be displaced and the highway will be moved closer to existing homes. (ELR Order 3068, 46 pages) (NTIS Order PB–207 552–D) 3/17.

U.S. Highway 30, Allen County, *Indiana*. Construction of a divided, four lane highway, approximately 9.5 miles in length, from U.S. 41 at Dyer to Fort Wayne, Indiana. (ELR Order 2012, 34 pages) (NTIS Order PB–207 059–D) 2/29.

Project S–1127(1) Miami County, *Indiana*. Proposed construction of a new bridge across the Wabash River on Wayne Street in Peru,

Indiana. (ELR Order 4040, 17 pages) (NTIS Order PB–207 737–D) 3/24.

Riley and Geary Counties, *Kansas*. Construction of 6.1 miles of two-lane highway, K–18, at Ogden, on a four-lane right-of-way. It is planned that a second stage to the project will construct two additional lanes. (ELR Order 2041, 60 pages) (NTIS Order PB–207 261–D) 3/2.

Johnson County, *Kansas*. Proposed reconstruction of 6.5 miles of I–35. An unspecified amount of land will be lost to the project. (ELR Order 3055, 92 pages) (NTIS Order PB–207 548–D) 3/17.

Johnson County, *Kansas*. Reconstruction of 12 miles of K–7, including bridge construction. A 4(f) statement will be required as some land involved in parkland. (ELR Order 3080, 29 pages) (NTIS Order PB–207 568–D) 3/15.

Shawnee County, *Kansas*. Proposed reconstruction of 0.208 mile of roadway. A 4(f) statement is required as a section of the right-of-way is public park land. (ELR Order 4046, 16 pages) (NTIS Order PB–207 743–D) 3/27.

Pike County, *Kentucky*. Reconstruction of U.S. 119 and U.S. 23, for a total distance of 3.8 miles. Fifty-eight families, four groceries, one church, and two cemeteries will be displaced by the project. The construction will also require 225 acres of land for right-of-way. (ELR Order 2054, 23 pages) (NTIS Order PB–207 241–D) 3/3.

Pike County, *Kentucky*. Reconstruction of 3.55 miles of U.S. 119, from a two to a four lane highway. A permanent loss of 185 acres, and the displacement of 77 residences and 21 businesses will result. (ELR Order 2082, 24 pages) (NTIS Order PB–207 471–D) 3/7.

F.A.P. 21, Cumberland County, *Kentucky*. Relocation and reconstruction of Corridor "J", a section of the Appalachian Developmental Highway System, for a total of 6.4 miles. The project is of 2 lane initial and 4 lane ultimate construction. Approximately 250 acres will be lost to the project; 23 residences and 2 businesses will be displaced. (ELR Order 3037, 26 pages) (NTIS Order PB–207 416–D) 3/13.

Route 2 and 4, Calvert County, *Maryland*. Construction of a second roadway to the existing facility beginning .24 miles south of Maryland Route 402 (Danes Beach Rd) to 0.38 mile southeast of Maryland Route 509 (Governor Run Road), for total distance of 5.68 miles. Ten residences and three business establishments will be displaced. (ELR Order 2005, 32 pages) (NTIS Order PB–207, 072–D) 2/29.

Route 235, Saint Mary's County, *Maryland*. Reconstruction of a section of Maryland Route 235 from 0.8 mile north of Hollywood to St. Andrews Church Road from a single two lane highway to a dual highway facility. The total length of the proposed facility is 5.0 miles. An unspecified number of residences will be displaced. (ELR Order 2006, 26 pages). (NTIS Order PB–207 075–D) 2/29.

I.S. 70N, Baltimore, *Maryland*. Proposed construction of 1.0 mile of 6-lane I–70N, a controlled access freeway, with one major interchange. Twelve businesses will be displaced. A 4(f) statement is required as 25 acres of parkland would be taken by the project. (ELR Order 4008, 52 pages) (NTIS Order PB–207 579–D) 3/16.

Project I–696–8, Oakland County. *Michigan*. Construction of I–696, a multi-lane highway, from Lasher Road easterly to I–75, a total distance of 8.0 miles. An unspecified number of residences will be displaced. A 4 (f) statement is included due to the project's interference with three parks, one golf course, and the Detroit Zoological Park. (ELR Order 2047, 129 pages) (NTIS Order PB–207 253–D) 3/2.

Lapeer and St. Clair Counties, *Michigan*. Proposed construction of M–21, a 40 mile long freeway. An unspecified amount of land will be lost to the project; water, air, and noise pollution will increase. (ELR Order 3054, 33 pages) (NTIS Order PB–207 559–D) 3/15.

I–94, Hennepin County, *Minnesota*. Construction of a new 2.63 mile section of I–94 and reconstruction of a smaller, existent section in Minneapolis and Brooklyn Center. The total length of the project is 4.4 miles. A 4(f) statement is included due to encroachment upon two local parks. An unspecified number of homes and business will be lost to the project. (ELR Order 3040, 51 pages) (NTIS Order PB–207 414–D) 3/14.

Faribault County, *Minnesota*. Proposed construction of 6.3 miles of 4-lane highway, in 2 sections, involving I–90 and T.H. 169. An unspecified number of residences, businesses, and land will be lost, dependent upon which of several routes are used. (ELR Order 4031, 57 pages) (NTIS Order PB–207 679–D) 3/22.

Route 25, Dunklin County, *Missouri*. Construction of two 12' lanes of highway in two unconnected sections with a total length of 2.6 miles. Approximately 47 acres and one residence will be lost to the project. (ELR Order 3029, 20 pages) (NTIS Order PB–207 413–D) 3/14.

Route I–44, St. Louis, *Missouri* Proposed reconstruction of 1.1 miles of I–44 from 6 to 8 lanes. An unspecified number of homes and one school will be lost to the project. (ELR Order 4012, 32 pages) (NTIS Order PB–207 585–D) 3/20.

Routes J & M, Reynolds County, *Missouri*. Proposed construction of 6.7 miles of 2 lane roadway. Eighty acres of land will be lost to the project. A 4(f) statement is required as some of the land is in a state park. (ELR Order 4013, 28 pages) (NTIS Order PB–207 586–D) 3/20.

Project F–20(1), U.S. 191, Gallatin and Madison counties, *Montana*. Construction of a highway spur between U.S. 191 and Primary Route 50, a distance of 9.7 miles. (ELR Order 2011, 33 pages) (NTIS Order PB–207 060–D) 2/29.

Richardson County, *Nebraska*. Proposed reconstruction of 15.9 miles of U.S. 73. Six residences will be displaced by the project. (ELR Order 4048, 11 pages) (NTIS Order PB–207 744–D) 3/24.

US 64, Transylvania County, *North Carolina*. Construction of a highway improvement for US 64 between Rosman and Brevard for a distance of about 6.2 miles. Project will consist of a new four lane divided highway with two lanes on the western 4.2 mile portion of Harry Blake Road. (ELR Order 1994, 32 pages). (NTIS Order PB–207 076–D) 2/29.

Grand Forks, *North Dakota*. Reconstruction of Fifth Street North for a distance of 11 city blocks. One business and an unspecified amount of land will be required for right-of-way. A 4(f) statement is included for park land. (ELR Order 3007, 14 pages) (NTIS Order PB–207 461–D) 3/2.

Project FU–606, USR–35, Jackson County, *Ohio*. Construction of approximately 4.8 miles of new four lane, median, divided highway. Begins on existing Rt. USR–35 ending at the existing interchange of USR–35 W, SR–124. Thirteen families will be displaced as a result of the project. (ELR Order 2004, 6 pages). (NTIS Order PB–207 071–D) 2/28.

State Route 146, Muskingham County, *Ohio*. Reconstruction of 2.6 miles of S.R. 146, a two lane highway. Five residences will be displaced by the project. A 4 (f) statement is included due to proposed acquisition of public recreational land. (ELR Order 2046, 14 pages) (NTIS Order PB–207 248–D) 3/2.

Project S–1152(5), Wood County, *Ohio*. Proposed reconstruction of 3 miles of Township Road 107 from 2 to 4 lanes. Four residences and fifty acres of land will be lost to the project. (ELR Order 4043, 15 pages) (NTIS Order PB–207 739–D) 3/24.

Project F–625 ( ), Lawrence County, *Ohio*. Proposed construction of 10 miles of new 4-lane limited access highway. Approximately 106 families, businesses, and farms will be displaced by the action. A 4(f) statement would be required as public use land will be utilized. (ELR Order 4066, 20 pages) (NTIS Order PB–207 735–D) 3/27.

Pittsburgh, Allegheny County, *Pennsylvania*. Construction of 2.8 miles of eight-lane I.S. 279, a limited access highway. The project begins at Legislative Route 1021, Section 2, and proceeds north to L.R. 1021, Section 4. Dwellings displaced by the project include 214 residences, 11 businesses, and 2 churches. A 4(f) statement is included due to interference with the William B. Sherer Playground. (ELR Order 2032, 55 pages) (NTIS Order PB–207 120–D) 3/1.

Legislative Route 1142, Centre County, *Pennsylvania*. Construction of L.S. 1142, a 4-lane limited access highway, for a distance of 7.4 miles. The loss of an unspecified amount of farmland and number of homes will result; two streams will be crossed by the project. (ELR Order 3005, 24 pages) (NTIS Order PB–207 459–D) 3/9.

L.R. 16059, Clarion County, *Pennsylvania*. Proposed construction of 5.7 miles of Legislative Route 16059, a new, 2-lane free-access roadway. A 4(f) statement is required as the highway will require land from Cook Forest State Park. (ELR Order 4073, 67 pages) (NTIS Order PB–207 769–D) 3/30.

P.R. 149, *Puerto Rico*. Proposed construction of 7.49 miles of P.R. 149, a non-controlled access highway. The Manati River will be crossed by the project; 25 families will be displaced. (ELR Order 4065, 21 pages) (NTIS Order PB–207 734–D) 3/28.

Charleston, *South Carolina*. Construction of 3.9 miles of the James Island Expressway, a multi-lane highway. An unspecified amount of marshland will be affected by the project, and the development of James Island will be hastened. (ELR Order 2064, 31 pages) (NTIS Order PB–207 237–D) 3/6.

Hamilton County, *Tennessee*. Widening of the Chickamauga Dam Bridge and construction of a new bridge with State Route 153 connection one mile downstream. The length of the connector route is 2.2 miles. Seven residences and five businesses will be displaced as a result of the action. (ELR Order 2029, 22 pages) (NTIS Order PB–207 116–D) 2/28.

F–05–1 ( ), Wise County, *Virginia*. Reconstruction of alternate State Route 58 from 3 to 4 lanes for a total distance of 2.771 miles. The project will disrupt the ecological balance of a stream system and remove a portion of a school playground. (ELR Order 3004, 31 pages) (NTIS Order PB–207 458–D) 3/9.

Cities of Pasco and Kennewick, *Washington*. Construction of a new bridge, 2,475' long, with 2,700' (total) approaches, over the Columbia River. The new structure will parallel an older (1921) bridge, which is considered obsolete. Approximately three acres of right-of-way will be required. (ELR Order 2033, 13 pages) (NTIS Order PB–207 245–D) 3/2.

Duwamish River, Seattle, *Washington*. Proposed construction of a 5-lane bascule bridge across the 200' channel. The navigable width of the channel will be lessened by the action. (ELR Order 3065, 49 pages) (NTIS Order PB–207 546–D) 3/17.

State Route 525, Snohomish County, *Washington*. Relocation and reconstruction of S.R. 525, a 4 lane highway with auxiliary lanes and full access control. Thirty-nine families will be displaced and an unspecified amount of land lost. (ELR Order 303, 23 pages) (NTIS Order PB–207 412–D) 3/14.

Projects S 0652 ( ) and S 0455 ( ), Dane County, *Wisconsin*. Proposed reconstruction of 2.37 miles of roadway. Siltation of Pheasant Branch Creek will result. (ELR Order 4042, 14 pages) (NTIS Order PB–207 738–D) 3/22.

Final

Project I–59, Jefferson County, *Alabama*. Proposed construction of 10.5 miles of 4 lane I–59. Approximately 173 people will be dis-

placed by the project. Comments made by USDA, Army COE, DOC, EPA, DOI, Navy, DOT, and state agencies. (ELR Order 3018, 51 pages) (NTIS Order PB–201 233–F) 3/9.

Project I–459–4(1), Jefferson County, *Alabama*. Construction of highway I–459 for a total distance of 23.4 miles. The highway will displace 768 persons and 4 businesses. Comments made by USDA, Army COE, DOC, HUD, DOI, state, and local agencies. (ELR Order 3096, 48 pages) (NTIS Order PB–201 233–F) 3/21.

Kenai River Crossing, Kenai, *Alaska*. Proposed construction of 3 miles of 4 lane highway on the Kenai Peninsula. The road will cross a tideland area which is used as a nesting area by migratory waterfowl. Measures have been proposed to protect the nesting of the snow goose. Comments made by USDA, HUD, DOI, DOT, state and local agencies. (ELR Order 3076, 132 pages) (NTIS Order PB–207 556–F) 3/17.

Project F–061–1(6), Fairbanks, *Alaska*. Proposed construction of a 4 lane limited access highway in urban Fairbanks, from Gaffney Road to Farmer's Loop Road. An unspecified number of residences will be displaced. A 4(f) statement is required for park land which would be taken by the project. (ELR Order 3094, 156 pages) (NTIS Order PB–202 141–F) 3/21.

Project S–079(1), Northway, *Alaska*. Construction of 7.6 miles of 2 lane highway. Comments made by DOI and state agencies. (ELR Order 4020, 32 pages) (NTIS Order PB–203 108–F) 3/22.

Project I–10–1(21), Ehrenberg-Phoenix Highway, Interstate 10, Yuma County, *Arizona*. Construction of 1.5 miles of highway and connections. Comments made by EPA, state, and local agencies. (ELR Order 2008, 17 pages) (NTIS Order PB–201 568–F) 2/28.

State Highway 1, Santa Barbara County, *California*. Reconstruction of 5.7 miles of S.H. 1. This is the final section of a four lane planned access freeway from south of Lompoc to Santa Maria. Two present and one future interchanges are planned. Comments made by USAF, HEW, DOI, state and local agencies. (ELR Order 3001, 94 pages) (NTIS Order PB–200 335–F) 3/9.

Route 6; Wallingford, *Connecticut*. Proposed reconstruction of Route 68, for a total length of approximately 1.4 miles. Fourteen families will be displaced by the action. Comments made by USDA, Army COE, DOC, EPA, FPC, HUD, DOI, state and local agencies. (ELR Order 3046, 50 pages) (NTIS Order PB–200 026–F) 3/13.

Project RS–96(4), Woodbridge, *Connecticut*. Proposed reconstruction of a 0.85 mile section of Route 69. Comments made by USDA, Army COE, EPA, DOI, state, and local agencies. (ELR Order 3093, 61 pages) (NTIS Order PB–201 528–F) 3/21.

Project F–010–1(19), Volusia County, *Florida*. Reconstruction of 10.4 miles of U.S. 92, from 2 to 4 lanes. An unspecified amount of marsh and wood land will be lost to the project. Comments made by USDA, DOC, EPA, HUD, DOI, and state agencies. (ELR Order 2092, 62 pages) (NTIS Order PB–200 769–F) 3/9.

Project F–031–1(13), Polk County, *Florida*. Proposed reconstruction of SR 700 (U.S. 98) for a total length of 5.6 miles. An unspecified number of displacements will occur, depending upon which of several alternate routes are taken. Comments made by USDA, Army COE, EPA, DOI, and state and local agencies. (ELR Order 3044, 53 pages) (NTIS Order PB–202 304–F) 3/13.

Project I–75–7(42)448, Pinellas County, *Florida*. Proposed construction of 24.3 miles of I–75. Approximately 84 families will be displaced by the action; 2204 acres will be lost to the project. A 4(f) statement is required as public use land will be taken by the project. Comments made by USDA, Army COE, EPA, HUD, DOT, state and local agencies, and concerned citizens. (ELR Order 4059, 521 pages) (NTIS Order PB–204 462–F) 3/21.

Project F–057–1(3), Cherokee County, *Georgia*. Proposed construction of 3.0 miles of the Canton By-Pass. The highway passes through an area with numerous minor streams and tributaries. Comments made by Army COE, DOC, DOI, and DOT. (ELR Order 3043, 51 pages) (NTIS Order PB–202 918–F) 3/13.

Project No. 63–A–05–68, Oahu, *Hawaii*. Construction of a traffic interchange at the intersection of Likelike Highway (FAP Route 63) and Kahekili Highway, (FAP Route 83). Twelve residences will be displaced and small agricultural holdings will be affected by the project. Comments made by USDA, Army COE, DOC, DOI, DOT, state and local agencies, and concerned citizens. (ELR Order 2023, 117 pages) (NTIS Order PB–201 582–F) 2/29.

U.S. 45, Effingham County, *Illinois*. Reconstruction of U.S. 45 from two to four lanes, beginning at Wabash Ave. in Effingham and extending to Township Road 123, a distance of 2.0 miles. Twenty-one residences and nine commercial establishments will be displaced. Comments made by EPA, DOI, state and local agencies. (ELR Order 2017, 38 pages) (NTIS Order PB–201 712–F) 2/28.

Madison County, *Illinois*. Reconstruction of Federal aid Secondary Route 765, beginning at Illinois Route 111 and extending eastwardly for 2.5 miles. Approximately 41 acres of land will be needed for right-of-way. Comments made by EPA, HEW, DOI, state and local agencies. (ELR Order 2018, 51 pages) (NTIS Order PB–200–752–F) 2/28.

Cass County, *Illinois*. Reconstruction of F. A. Route 48 for a total distance of 1.5 miles. Comments made by USDA, DOC, EPA, HUD, DOI, and state agencies. (ELR Order 2095, 34 pages) (NTIS Order PB–202 084–F) 3/9.

Project S–1086(1), Grant County, *Indiana*. Proposed construction of a bridge and 2,600' approaches. A 4(f) statement is necessary as a local park would be infringed upon. Comments made by USDA, EPA, HUD, and DOI. (ELR Order 4057, 36 pages) (NTIS Order PB–201 235–F) 3/22.

Project APD–127(30), Pike County, *Kentucky*. Proposed reconstruction of 4.95 miles of U.S. 23, a 4-lane highway. Approximately 380 acres of land will be lost to the project. Comments made by USDA, DOC, EPA, HUD, DOI, state and local agencies. (ELR Order 3002, 44 pages) (NTIS Order PB–202 002–F) 3/9.

Project S–346(1), Whitley County, *Kentucky*. Construction of a bridge and approaches; the total length of the project is 0.16 miles. Seven residences and 2 acres of land will be lost to the project. Comments made by USDA, EPA, DOI, TVA and state agencies. (ELR Order 3098, 27 pages) (NTIS Order PB–202 430–F) 3/9.

Project S–10(9), Wayne County, *Kentucky*. Reconstruction of a new section of KY 90, a 4 lane highway, for approximately 4 miles. Approximately 95 acres will be lost to the project and 18 residences displaced. Comments made by AEC, Army COE, DOI, TVA, state and local agencies. (ELR Order 3099, 45 pages) (NTIS Order PB–199 573–F) 3/21.

Project F–125( ), Davies County, *Kentucky*. Proposed widening of 1.56 miles of highway. Comments made by EPA, DOI, TVA, and state agencies. (ELR Order 4018, 23 pages) (NTIS Order PB–202 178–F) 3/22.

S–9102(8) St. Mary's County, *Maryland*. Proposed widening of Md. Route 235, for a distance of 1.392 miles. Comments made by USDA, HUD, state and local agencies. (ELR Order 4019, 16 pages (NTIS Order PB–200 760–F) 3/22.

Project F–20 (36), Douglas County, *Nebraska*. Reconstruction of a 0.9 mile section of U.S. 6 in Omaha. One residence and an unspecified number of businesses will be displaced by the project. Comments made by USDA, EPA, DOI, state, and local agencies. (ELR Order 3097, 25 pages) (NTIS Order PB–201 857–F) 3/21.

Hudson County, *New Jersey*. Construction of a six lane controlled access highway, I.R. 280, from the Strichel Bridge in Harrison to I.R. 95 in Kearny, a distance of 2.3 miles. Approximately 120 families, 14 commercial, and 11 industrial structures will be displaced. Comments made by DOI, DOT. (ELR Order 2022, 29 pages) (NTIS Order PB–207 117–F) 2/28.

San Miguel and Quay Counties, *New Mexico*. Reconstruction of 5.5 miles of State Road 104, from the county line east toward Tucumari. Comments made by USDA, Army COE, and state agencies. (ELR Order 2016, 22 pages) (NTIS Order PB–199 610–F) 2/28.

Amador Ave., in Las Cruces from Alameda to S.R. 292, *New Mexico*. The proposed improvement is an integral part of the highway master plan for Las Cruces. Comments made by USDA. (ELR Order 2024, 23 pages) (NTIS Order PB–201 243–F) 2/28.

Rome, Oneida County, *New York*. Proposed construction of several miles of arterial highway in the city of Rome. Approximately 3800' of the Mohawk River will be rechanneled by the project; 43 residences, 2 farms, 5 businesses, and 1 church will be lost. Comments made by EPA, DOI, state and local agencies. (ELR Order 2075, 50 pages) (NTIS Order PB–199 258–F) 3/1.

Project PIN 13320.00, Franklin and Essex Counties, *New York*. Proposed reconstruction of 0.55 miles of highway. A 4(f) statement is attached, as the project is located in the Adirondack Park. Comments made by DOI. (ELR Order 2099, 81 pages) (NTIS Order PB–200 802–F) 3/9.

Webster, *New York*. Construction of the final section of expressway from Five Mile Line Road to County Line Road, a distance of 5.3 miles. Comments made by USDA and HEW. (ELR Order 2009, 16 pages) (NTIS Order PB–200 333–F) 2/29.

State Road 2480, Mecklenburg County, *North Carolina*. Widening of S.R. 2480, from its intersection with I–85 to S.R. 2502, a distance of 1.3 miles. Comments made by USDA, Army, COE, EPA, GSA, HUD, DOI, OEO, and state agencies. (ELR Order 2010, 40 pages) (NTIS Order PB–200 211–F) 2/27.

Madison County, *North Carolina*. Reconstruction of NC 213 from Marshall to Mars Hill, a distance of 7.2 miles. Sixteen residences and one business will be displaced; one archaeological site will be disturbed. Comments made by USDA, Army COE, GSA, DOI, OEO, TVA, state and local agencies. (ELR Order 2020, 33 pages) (NTIS Order PB–199 579–F) 2/28.

Greenville, Pitt County, *North Carolina*. Widening of State Route 1707 between U.S. 264 Bypass and Cutanche Street at 11th St.; widening of one block section of Cutanche St. One business will be displaced and 3.5 acres required for right-of-way. Comments made by USDA, Army COE, EPA, GSA, DOI, OEO, State and local agencies. (ELR Order 2021, 31 pages) (NTIS Order PB–202 087–F) 2/28.

Buncombe and Madison Counties, *North Carolina*. Proposed construction of a new 4-lane highway between Weaverville and Marshall, a total distance of 8.8 miles. Eighteen families will be displaced by the project, and an unspecified amount of woodland lost. Comments made by USDA, Army COE, DOC, EPA, GSA, DOI, OEO, TVA, state and local agencies. (ELR Order 2091, 51 pages) (NTIS Order PB–199 618–F) 3/9.

Kings Mountain Bypass, Gaston and Cleveland Counties, *North Carolina*. Relocation and reconstruction of U.S. 74, from two to four lanes, for a distance of 7.3 miles. Approximately 120 families and 3 businesses will be displaced by the project. Comments made by USDA, Army COE, EPA, GSA, DOI, OEO, state, and regional agencies. (ELR

Order 2093, 47 pages) (NTIS Order PB–200 (326–F) 3/9.

U.S. 169, Tulsa and Rogers Counties, *Oklahoma*. Reconstruction of U.S. 169, a primary state highway, from Collinsville 16.7 miles northeast to Talala. Comments made by DOI, state, and local agencies. (ELR Order 2007, 27 pages) (NTIS Order PB–207 055–F) 2/29.

Tillman County, *Oklahoma*. Reconstruction of 1.5 miles of U.S. 183. Approximately 37 acres of grassland will be lost to the project. Comments made by EPA, DOI, and state agencies (ELR Order 2076, 19 pages) (NTIS Order PB–199 578–F) 3/1.

Project F–198, Payne County, *Oklahoma*. Addition of two parallel lanes to existing two lane S.H. 51 for 9.5 miles east from Interstate 35. Approximately 175 acres of pasture will be lost as a result. Comments made by EPA, DOI, and state agencies. (ELR Order 2078, 18 pages) (NTIS Order PB–202 122–F) 3/1.

S.H. 99, Osage County, *Oklahoma*. Proposed relocation of S.H. 99, for a total length of 9.6 miles. Approximately 200 acres of land will be lost to the project. Comments made by EPA and DOI. (ELR Order 3045, 20 pages) (NTIS Order PB–199 619–F) 3/13.

Power Highway, Coos County, *Oregon*. Proposed reconstruction of 19 miles of 2 lane highway. Comments made by EPA, DOI, and state agencies. (ELR Order 4015, 21 pages) (NTIS Order PB–207 588–F), 3/22.

Cumberland County, *Pennsylvania*. Relocation of 0.8 miles of Legislative Route 21051 in order to eliminate curves. The condemnation of one dwelling and the crossing of a small tributary is necessary. Comments made by EPA, DOI, state and local agencies. (ELR Order 2019, 26 pages) (NTIS Order PB–201 248–F) 2/28.

Crile Appalachia Access Road, Washington, *Pennsylvania*. Proposed construction of a 1300' access road to serve an industrial park. Comments made by EPA, DOI, state and local agencies. (ELR Order 3098, 31 pages) (NTIS Order PB–202 298–F) 3/21.

Chesterfield and Marlboro Counties, *South Carolina*. Reconstruction of sections of S.C. Route 9 from two to four lanes. Approximately 30 residences and 11 businesses will be displaced as a result. Comments made by HUD, state, and local agencies. (ELR Order 2077, 23 pages) (NTIS Order PB–207 233–F) 3/1.

U.S. 17, Georgetown County, *South Carolina*. Reconstruction of 6.8 miles of U.S. 17, from 2 to 4 lanes. Five businesses and one residence will be lost to the project. Comments made by HUD. (ELR Order 2090, 15 pages) (NTIS Order PB–207 463–F) 3/9.

Bryan Drive, Harry County, *South Carolina*. Proposed reconstruction of Bryan Drive for a total length of 7.9 miles. Noise, air, and dust pollution will occur, with erosion and siltation possible. Comments made by Army COE, and HUD. (ELR Order 3020, 18 pages) (NTIS Order PB–207 462–F) 3/9.

Corridor "F," Campbell and Claiborne Counties, *Tennessee*. Three projects in the State Route 63 corridor are involved. The proposed action, reconstruction of 10.54 miles of S.R. 63, would displace nine residences and cross several streams. Comments made by USDA, Army COE, EPA, DOI, TVA, state and local agencies, and concerned citizens. (ELR Order 2094, 91 pages) (NTIS Order PB–202 899–F) 3/9.

Project F–055–1 ( ), Robertson County, *Tennessee*. Proposed construction of 7.68 miles of 2-lane highway. An unspecified amount of land and number of residences will be lost to the project. Comments made by USDA, Army COE, DOI, TVA, state and local agencies. (ELR Order 3000, 78 pages) (NTIS Order PB–207 468–F) 3/9.

State Route 5, Chester and Madison Counties, *Tennessee*. Construction of a 4-lane highway to provide a continuous facility from Henderson to Jackson. Six creeks will be crossed, 16 houses and 1 business and an unspecified amount of land will be lost as a result of the action. Comments made by USDA, Army COE, DOI, TVA, DOT, and state and local agencies. (ELR Order 3012, 51 pages) (NTIS Order PB–207 433–F) 3/9.

U.S. 67, Ellis County, *Texas*. Construction of a four lane divided highway, with frontal roads and grade separations at intersecting roadways, from 1 mile north of Midlothian to the Dallas County line. The total distance is 3.2 miles. Three families and one business will be displaced. Comments made by DOC, EPA, state, and local agencies. (ELR Order 2073 43 pages) (NTIS Order PB–207 232–F) 3/1.

Project I–27–7, Lubbock County, *Texas*. Reconstruction of 6.45 miles of U.S. 87. Five residences and five businesses will be displaced as a result of the project. Comments made by USDA, Army COE, HEW, HUD, and DOT. (ELR Order 2097, 27 pages) NTIS Order PB– 201 709–F) 3/9.

U.S. 69, Angelina County, *Texas*. Reconstruction of U.S. 69 from 2 to 4 lanes for a distance of 4.0 miles. Two families will be displaced by the project and sections of 9 front lawns lost. Comments made by USDA, EPA, and state and local agencies. (ELR Order 3013, 18 pages) (NTIS Order PB–199 863–F) 3/9.

Project F–1081, Galveston County, *Texas*. Reconstruction of existing 2-lane state highway 146 to a 6-lane limited access highway, and construction of a new bridge. The total length of the project is 4.9 miles. An unspecified amount of land will be lost to the project. Comments made by USDA, EPA, HEW, DOT, state and local agencies. (ELR Order 3014, 30 pages) (NTIS Order PB–200 758–F) 3/9.

Project I–35–4, Bell County, *Texas*. Reconstruction of I–35 from 4 to 6 lanes, for a total length of 3.5 miles. Two families and four businesses will be displaced by the action. Comments made by USDA, Army COE, HEW, DOT, state and local agencies. (ELR Order 3017, 28 pages) (NTIS Order PB–202 127–F) 3/9.

F–022–1(6), Salina, *Utah*. Construction of a two lane, 40' wide highway, from Salina Connection to I–70, a total distance of two miles. One residence will be displaced by the action. Comments made by EPA, HUD, DOI, state and local agencies. (ELR Order 3003, 36 pages) (NTIS Order PB–202 801–F) 3/9.

Project S–43 ( ), Amherst County, *Virginia*. Proposed reconstruction of 2.061 miles of Route 622. Four families will be displaced by the project. Comments made by EPA, DOI, and state agencies. (ELR Order 2096, 39 pages) (NTIS Order PB–202 316–F) 3/9.

Route 460, Prince Edward County, *Virginia*. Construction of 8.4 miles of 2-lane highway and 15 bridges. An unspecified amount of land will be lost to the project. Comments made by EPA, DOI, and state agencies. (ELR Order 4000, 31 pages) (NTIS Order PB–207 558–D) 3/21.

Project F–07–1, Henry County, *Virginia*. Construction of 18.06 miles of 4-lane highway to by-pass Martinsville. Approximately 230 individuals will be displaced, along with 7 businesses; an unspecified amount of land will be lost. Comments made by USDA, HUD, DOI, and state agencies. (ELR Order 4001, 48 pages) (NTIS Order PB–200 322–F) 3/21.

I–90–1, King County, *Washington*. Reconstruction of SR 90 from four to six lanes, for a distance of 4.06 miles. Comments made by USDA, Army COE, EPA, HUD, state, and local agencies. (ELR Order 3095, 76 pages) (NTIS Order PB–204 167–F) 3/21.

S.R. 169, King County, *Washington*. Reconstruction of 1.50 miles of 2 lane S.R. 169. The displacement of 3 homes and 2 businesses will result. Comments made by USDA, Army COE, EPA, HUD, state and local agencies. (ELR Order 4016, 44 pages) (NTIS Order PB–201 858–F) 3/22.

Project ADP–200 (24), Mercer County, *West Virginia*. Proposed construction of 2.79 miles of 4-lane divided highway. Thirty three residences and one business will be displaced by the highway; there is expressed concern that water runoff will affect groundwater quality. Comments made by USDA, Army COE, DOC, EPA, DOI, state and local agencies, and concerned citizens. (ELR Order 3019, 159 pages) (NTIS Order PB–201 705–F) 3/9.

Project S 0260 (1), Dane County, *Wisconsin*. Proposed reconstruction of County Trunk Highway "D" for a total length of 6.08 miles. An unspecified amount of land will be lost to the project. Comments made by USDA, EPA, HUD, DOI, DOT, state and local agencies. (ELR Order 3015, 33 pages) (NTIS Order PB–202 657–F) 3/9.

Project F–03–2( ), Winnebago County, *Wisconsin*. Proposed reconstruction of U.S. 41 to limited access freeway standards. An unspecified number of residences and amount of land will be lost to the project. Comments made by USDA, EPA, HEW, HUD, DOI, and state agencies. (ELR Order 3016, 29 pages) (NTIS Order PB–200 940–F) 3/9.

Robert Street Bridge and Approaches, Jefferson County, City of Fort Atkinson, *Wisconsin*. Relocation of the Robert Street structure and approaches, a length of approximately 1500 feet. Comments made by EPA, HUD, HEW, DOI, USDA, State of Wisconsin. (ELR Order 2025, 18 pages) (NTIS Order PB–203 096–F) 2/29.

Natrona County, *Wyoming*. Reconstruction of 2.2 miles of streets on the outskirts of Casper. A 4(f) statement is included to cover the Fort Casper Historic Site. Comments made by USDA, Army COE, EPA, DOI, state and local agencies. (ELR Order 2069, 91 pages) (NTIS Order PB–201 300–F) 3/7.

Urban Mass Transportation Administration

Draft

Manhattan, *New York*. An application by the City of New York for Federal financial assistance in constructing the Second Avenue Subway. The grant would cover 2/3 of the $381,000,000 project. (ELR Order 3079, 55 pages) (NTIS Order PB–207 569–D) 3/17.

U.S. COAST GUARD

Contact: D. B. Charter, Jr., Commander, U.S. Coast Guard, Chief, Environmental Coordination Branch, 400 7th Street, SW., Washington, D.C. 20591 (202) 426–9573.

Title, Description, and Date

Final

Shoreline Erosion Control Project, Light Station Point Loma, San Diego County, *California*. Installation of 800 lineal ft. of rubble mount revetment at the base of the bluff in order to prevent its erosion. Comments made by Army COE, DOC, EPA, DOI, DOT, mayor of San Diego and the San Diego Historical Society. (ELR Order 2068, 15 pages) (NTIS Order PB–202 177–F) 3/3.

Point Conception, *California*. Proposed testing of a high seas oil containment barrier, in order to furnish verification of the prototype design. The test will determine the combined effects of waves and currents on barrier motions and oil retention efficiency in rough water. Two tests, one using 900 bbls. of soybean oil in 3–5 foot seas and the second without oil in 5–10 foot seas, will be conducted in international waters 5 to 30 miles of Point Conception. Comments made by Army COE, USN, state agencies of California, Florida, and Mississippi, and local California agencies. (ELR Order 3038, 34 pages) (NTIS Order PB–204 564–F) 3/14.

U.S. Coast Guard Reserve Training Center, Yorktown, *Virginia*. Proposed reconstruction of an access road and construction of family housing. Comments made by USDA, DOI, DOT, and the state of Virginia. (ELR Order 3058, 14 pages) (NTIS Order PB–204 163–F) 3/14.

U.S. WATER RESOURCES COUNCIL

Contact: W. Don Maughan, U.S. Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037 (202) 254–6408.

Title, Description, and Date
Draft

Big Muddy River Basin, *Illinois*. The statement is a study of the problems and needs of the river basin, with proposed projects and programs. Structural projects proposed by the plan include construction of 10 reservoirs. Significant Indian cultural remains are located in the basin. (ELR Order 3036, 20 pages) (NTIS Order PB–207 415–D) 3/10.

Genesee River Basin, *New York*. The statement is a study of the problems and needs of the river basin, with proposed projects and programs. Structural projects proposed by the plan include construction of 16 upland reservoirs; 10 reservoirs in the Ontario Lake Plain; the Canaserago multipurpose project; and the Stannard multipurpose reservoir (ELR Order 3024, 22 pages) (NTIS Order PB–207 437–D) 3/13.

REGIONAL FEDERAL HIGHWAY ADMINISTRATORS

Region 1*—(Conn., Me., Mass., N.H., R.I., Vt., N.J., N.Y., Puerto Rico) Administrator: G. D. Love, 4 Normanskill Blvd., Delmar, N.Y. 12054.

Region 3—(Del., D.C., Md., Pa., Va. W.Va.) Administrator: August Schofer, 31 Hopkins Plaza, Baltimore, Md., 21201.

Region 4—(Ala., Fla., Ga., Ky., Miss., N.C., S.C., Tenn.) Administrator: H. E. Stark, 1720 Peachtree Rd., N.W., Atlanta, Ga. 30309.

Region 5—(Ill., Ind., Mich., Minn., Ohio, Wisc.) Administrator: F. B. Farrell, 18209 Dixie Hwy., Homewood, Ill. 60430.

Region 6—(Ark., La., N.M., Okla., Texas) Administrator: J. W. White, 819 Taylor St., Fort Worth, Texas 76102.

Region 7—(Iowa, Kansas, Mo., Neb.) Administrator: J. B. Kemp, P. O. Box 7186, Country Club Station, Kansas City, Mo. 64113.

Region 8—(Colo., Montana, N.D., S.D., Utah, Wyoming) Administrator: W. H. Baugh (Acting), Rm. 242, Bldg. 40, Denver Federal Center, Denver, Colo. 80225.

Region 9—(Arizona, Calif., Hawaii, Nev.) Administrator: S. E. Farin, 450 Golden Gate Ave., San Francisco, Calif. 94102.

Region 10—(Alaska, Idaho, Oregon, Wash.) Administrator: R. M. Phillips, 222 Southwest Morrison St., Portland, Oreg. 97204.

*Conforms to Standard Federal Regions 1 & 2.

AVAILABILITY OF ENVIRONMENTAL PROTECTION AGENCY COMMENTS ON ENVIRONMENTAL IMPACT STATEMENTS

Appendix I contains a listing of draft environmental impact statements which the Environmental Protection Agency (EPA) has reviewed and commented upon in writing during the period from February 28, 1972, to March 31, 1972, as required by section 102(2)(C) of the *National Environmental Policy Act* of 1969 and section 309 of the *Clean Air Act*, as amended. The listing includes the Federal agency responsible for the statement, the number assigned by EPA to the statement, the title of the statement, the classification of the nature of EPA's comments, and the source for copies of the comments.

Appendix II contains a listing of proposed regulations reviewed by EPA during the period from February 28, 1972, to March 31, 1972, under section 309 of the *Clean Air Act*. The listing includes the Federal agency responsible for the proposed regulation, the title of the regulation, the classification of the nature of EPA's comments, and the source for copies of the comments.

Appendix III contains definitions of the four classifications of the general nature of EPA's comments. Copies of EPA's comments on these draft environmental impact statements are available to the public from the EPA offices noted.

Appendix IV contains a listing of the addresses of the sources for copies of EPA comments listed in Appendix I.

Copies of the draft environmental impact statements are available from the Federal department or agency which prepared the draft statement or from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151.

SHELDON MEYERS,
Director,
Office of Federal Activities.

APPENDIX I

ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN FEB. 27, 1972 AND MAR. 31, 1972

Title	Identifying number	General nature of comments	Source for copies of comments
Atomic Energy Commission:			
Radioactive solid waste volume reduction facility.	D–AEC–00026–35	2	A
Bedrock waste storage exploration	D–AEC–00025–19	2	A
Rio Blanco gas stimulation project	D–AEC–00022–45	2	A
Plutonium–238 fuel fabrication	D–AEC–00020–19	2	A
Pilgrim nuclear power station	D–AEC–00040–20	1	A
Turkey Point plant units 3 and 4	D–AEC–00039–21	2	A
Point Beach nuclear plant	D–AEC–00038–26	3	A
Calvert Cliffs nuclear powerplant	D–AEC–00037–12	2	A
Rover fuels processing facility	D–AEC–00035–45	2	A
Contaminated soil removal facility, Richland, Wash.	D–AEC–00032–54	1	A
Land acquisition, Rocky Flats Plant, Colorado.	D–AEC–C0031–45	1	A
Corps of Engineers:			
Charles River study	D–COE–36108–04	1	B
Bound Brook flood control project scituate, Mass.	D–COE–36088–04	2	B
Maintenance Andrews River, Harwich, Mass.	D–COE–32317–04	2	B
Bullock's Point Cove Maintenance Dredging Proj.	D–COE–25106–04	2	B
South Branch Rahway River flood control, N.Y., #142.	D–COE–32312–07	2	C
Maintenance of Newton Creek, N.Y. Navigation proj.	D–COE–32310–07	1	C
Maintenance of the Harlem River Channel	D–COE–32161–07	1	C
New York Harbor Anchorages	D–COE–32159–07	1	C
Maintenance of Westchester Creek, N.Y.	D–COE–32156–07	1	C
Proposed installation of water line Buckhannon, W.	D–COE–34028–14	2	D
Branch Channel, vicinity of Delaware City Delaware.	D–COE–32100–11	2	D
Coastal Engineering Research Center Pier Assateague Island, Maryland.	D–COE–30026–12	3	D
Mayfield Creek and tributaries, Ky. flood Control.	D–COE–36087–17	2	E
Mississippi River East bank to Warren, Wilkinson Co., Miss.	D–COE–32095–24	1	E
Savannah National Recreation Area Ga. & SC.	D–COE–61135–20	2	E
Lower Detroit River and River Rouge, Wayne Co., Mich.	D–COE–32151–25	2	F
Upper Mississippi River Basin, Minn.	D–COE–32313–30	2	F
River Rouge Flood Control, Wayne Co., Mich.	D–COE–36084–25	1	F
Flint River Flood Control, Flint, Mich.	D–COE–36085–25	1	F
South Fork Zumbro River, Rochester, Minn.	D–COE–32150–30	1	F
Milwaukee Diked Disposal Area Milwaukee Co., Mich.	D–COE–25017–26	1	F
Debris Removal, North Branch Chicago River, Ill.	D–COE–25015–27	2	F
Alpine Lake Project Alpine, Tex.	D–COE–32323–34	2	G
Red River Emergency Bank Protection, La. & Ark.	D–COE–36109–33	1	G
Big Sioux R., Sioux City, Iowa & N. Sioux City S.D.	D–COE–32104–37	2	H
Construction of US Post Office, Honolulu, Hawaii	D–COE–81043–49	2	J
Oak Harbor, Wash., Small Boat Basin	D–COE–32015–55	2	K
Wahkiakum County Diking District	D–COE–31019–54	2	K
Tesoro Tank Farm & Barge Slip	D–COE–32316–57	2	K
Lost Creek Lake project, Rogue River, Oreg.	D–COE–32153–55	2	K
Lower Columbia Bank Protection Project	D–COE–36110–55	2	K
Department of Agriculture:			
Commitment of acreage to new Continental cane sugar producing areas.	D–DOA–89056–00	2	A
Boll weevil, Texas cooperative diapause control.	D–DOA–82010–34	2	A
Installation of 20 MW gas turbine, Hilton Head, S.C.	D–DOA–05181–19	1	E
Sowashee Creek watershed, Lauderdale Co., Fla.	D–DOA–36086–21	1	E
Department of Defense:			
Disposition of orange herbicide by incineration.	D–DOD–82015–00	2	A
Relocation of target facilities from Aqua Cay to Cross Cay, Atlantic Fleet Weapons Range, Puerto Rico.	D–DOD–10016–09	1	C
Bombing and target range, BT–3, Brown's Island MCB, Camp Lejeune, N.C.	D–DOD–10017–18	2	E
Department of the Interior:			
Brigantine Wilderness Area, N.J.	D–DOI–62010–08	1	C
Delaware Water Gap National Recreation Area.	D–DOI–61001–11	2	D
Wolf Island Wilderness Area, Ga.	D–DOI–62014–20	1	E
St. Marks Wilderness Area Refuge, Fla.	D–DOI–62013–21	1	E
Cape Romain Wilderness Area Charleston Co., S.C.	D–DOI–62012–19	1	E
Big Cypress Nat'l Fresh Water Reserve, Fla.	D–DOI–61034–21	1	E
Palmetto Bend Project, Texas	D–DOI–31026–34	2	G
Proposed Prototype Distillation Plant Brownsville, Tex.	D–DOI–89055–34	2	G
Padre Island National Seashore, Texas	D–DOI–60037–34	1	G
O'Neill Unit, Pick-Sloan Missouri Basin Program.	D–DOI–32102–36	3	H
Chase Lake National Wildlife Refuge, N. Dak.	D–DOI–61030–41	2	I
Lostwood National Wildlife Refuge, N. Dak.	D–DOI–61029–41	2	I
Pueblo Dam and Reservoir Frying Pan Arkansas Project.	D–DOI–34026–00	2	I
China Meadows Dam and Reservoir, Wyo.	D–DOI–31018–43	3	I
Deep well drilling for geothermal resource investigations, Imperial Valley, Calif.	D–DOI–02015–46	2	J
Proposed concrete lining of main outlet drain, Colorado River Front Work and Levee System, Arizona.	D–DOI–36107–48	2	J
SR2, Sultan Vicinity, Passing Lanes	D–DOI–40820–54	2	K
Department of Transportation:			
Airport Customs Building Replacement Bangor, Maine.	D–DOT–51150–01	2	B
Reconstruction of Interstate Route 91 and construction of Interstate Route 291 and Western St., Conn.	D–DOT–41133–05	2	B

APPENDIX I—Continued

ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN FEB. 27, 1972 AND MAR. 31, 1972—Continued

Title	Identifying number	General nature of comments	Source for copies of comments
Reconstruction Route 262 Plymouth, Conn.	D-DOT-41119-05	3	B
U.S. Route 1A Improvement, Harrington, Maine.	D-DOT-40823-01	2	B
Buckley Corners-Hollowville Route 23, Columbia Co., N.Y.	D-DOT-40130-07	1	C
Nassau Expressway, #78	D-DOT-40117-07	1	C
Albany Co. Airport Regional #123	D-DOT-51018-07	2	C
Route 206 Newton Bypass, N.J., #133	D-DOT-41114-08	1	C
Sunrise Highway Extension, Route 27, Shinnecock Hills to East of Amsganett, Southampton and East Hampton, Suffolk.	D-DOT-40135-07	2	C
Beacon Arterial-Route 9D, Improvement Dutchess Junction to Interstate Route 84, Dutchess Co., N.Y.	D-DOT-40133-07	1	C
Artificial Reef, Ponce, Puerto Rico	D-DOT-89061-09	1	C
East-West Runway at Stewart Airport	D-DOT-51120-07	3	C
US RT202, Concord Pike (I-95 to Del-Pa line).	D-DOT-40523-CO	2	D
Route 66, Fairfax and Arlington Cos., Va.	D-DOT-40393-15	3	D
Rte. 258 Bridge and Approaches Smithsfield.	D-DOT-50041-CO	2	D
Rt 92-Naamans Rd. US 13 to US 202 New Castle Co. Del.	D-DOT-41170-13	2	D
Rt 141 Centre Rd., New Castle Co., Del.	D-DOT-41151-13	2	D
L.R. 1052 Sec 4 Cross Valley Expy, Luzerne Co., Pa.	D-DOT-41098-11	2	D
Fannin Co. Airport, Blue Ridge, Ga.	D-DOT-51161-20	1	E
APD 640 (5) & (2) Pike Co., Ken.	D-DOT-40967-17	2	E
Haywood Co., N.C. Canton to US276	D-DOT-40966-18	1	E
Guilford Co., High Point, N.C.	D-DOT-40965-18	1	E
Mason County, Ky. Hwy Project KY-10	D-DOT-40822-17	1	E
Ashe County Airport, West Jefferson, N.C.	D-DOT-51146-18	1	E
Fort Lauderdale-Hollywood International Airport.	D-DOT-51127-21	1	E
St Rds 41 and 43 Hillsborough and Pasco Counties., Fla.	D-DOT-41153-21	2	E
Kentucky 15-Hazard Bypass, Perry Co., KY.	D-DOT-41152-17	1	E
Brewton South Bypass Escambia Co., Ala	D-DOT-41142-22	1	E
Heckle Bypass around Rock Hill York Co., S.C.	D-DOT-41137-19	1	E
SU-5105 (101) Perry Hill Rd., Montgomery Co., Ala.	D-DOT-41139-22	1	E
New Connector between US-29-601 & I-85, Salisbury, Rowan Co., N.C.	D-DOT-41138-18	1	E
Widening of Chickamauga Dam Bridge and construction of new bridge and ST RT153 connector RT., Hamilton.	D-DOT-41140-23	1	E
Green County Airport Greensboro-Union Point, Ga.	D-DOT-51147-20	1	E
Interstate RT77, Columbia to Rock Hill, S.C.	D-DOT-41102-19	1	E
S-202-F State RT20 Lauderdale Co., Ala.	D-DOT-41114-22	1	E
US Highway 19E Bypass Mitchell Co., N.C.	D-DOT-41103-18	1	E
Rosewood Dr. Improvement Columbia, S.C.	D-DOT-41136-19	1	E
AP-100-95-6L Sommerset-London Rd Pulaski Co., KY.			
US-220 Guilford-Randolph Cos., N.C.	D-DOT-41116-18	1	E
US-006-3 Davidson Co., Tenn.	D-DOT-41115-23	1	E
Defiance 15-14.09, Railroad Grade Separation Replacement, Defiance Co., Ohio.	D-DOT-40977-29	1	F
State RT112, Lucas Co., Ohio	D-DOT-40961-29	1	F
Stadium Freeway, Milwaukee Co., Wis.	D-DOT-40960-26	1	F
FA RT171 (Ill. 76) Boone Co., Ill.	D-DOT-41108-27	2	F
FA RT7 Spur, Cook Co., Ill.	D-DOT-41105-27	2	F
Schoolcraft County Airport, Manistique Co. Mich.	D-DOT-51098-25	1	F
Springfield Municipal Airport, Brown Co., Minn.	D-DOT-51097-30	1	F
Fremont Municipal Airport, Newygo Co., Mich.	D-DOT-51097-25	1	F
John F. Kennedy Memorial Airport, Ashland, Wis.	D-DOT-51053-26	1	F
St. Mary's South Connector, Auglaize Co., Ohio.	D-DOT-41106-29	1	F
Wilson Mills Rd, Ch 8, Geauga Co., Mich.	D-DOT-40963-25	1	F
S-Project d 208(5) Jefferson Co., Ind.	D-DOT-40962-28	1	F
FA RT24, S.B.1.RT23, Livingston Co., Ill.	D-DOT-40510-27	1	F
Effingham County Airport, Ill.	D-DOT-51052-27	1	F
F.A. Route 45 Cook County, Ill.	D-DOT-40818-27	1	F
State Road 37, Perry County, Ind.	D-DOT-40529-28	1	F
T.H.23, Lyon, Yellow Medicine, Chippewa Co., Minn.	D-DOT-40529-30	1	F
Antlers Municipal Airport, Antlers, Okla.	D-DOT-51119-32	2	G
Hemphill Municipal Airport, Hemphill, Tex.	D-DOT-51119-34	1	G
Goldsby Airport, Norman, Okla.	D-DOT-51054-32	2	G
Interstate 630 Little Rock, Ark.	D-DOT-41125-33	2	G
FM RD 2791 in Queen City North, Cass and Bowie Co., Tex.	D-DOT-41104-34	1	G
From Spur 394 SE of Waxahachie to near W City Limits of Ennis, Ellis Co., Tex.	D-DOT-40976-34	1	G
Lawton Municipal Airport, Lawton, Okla.	D-DOT-51120-32	1	G
SH350 in Big Spring from Interstate Hwy. 20 along Owens Street to Loop 402.	D-DOT-41124-34	2	G
SH 71 1.6 miles E. of W. Point to Bastrop Co. line in Fayette Co., Tex.	D-DOT-41123-34	2	G
Pryor Airport, Pryor Creek, Okla.	D-DOT-51154-32	1	G
Carnegie Airport Carnegie, Okla.	D-DOT-51149-32	2	G
Ponca City Municipal Airport, Ponoa City, Okla.	D-DOT-51148-32	2	G
Garner Field, Uvalde, Tex.	D-DOT-51121-34	1	G
Controlled access facility of SH288, Texas.	D-DOT-40826-34	2	G
SH 19 from FM 1507 in Paris S to Jct. SH 19, Tex.	D-DOT-40975-34	2	G
Project S-1418(1) 6 mi. W.US85 N. Mex.	D-DOT-40974-31	2	G
Federal Air Project # F-399(12) State RT in White Castle Iberville Parish, La.	D-DOT-40973-35	1	G
From 1.5 miles N. of Monroe overpass, Lubbock Co., Tex.	D-DOT-40972-38	1	G
Arrowhead Airport, Canadian, Okla.	D-DOT-51165-32	1	G
Freeway 628 Woodbury Co., Iowa	D-DOT-40824-37	1	H
Proposed improvement of US54 to freeway stand.	D-DOT-40970-38	1	H
I-80-1 (11) & (12) S-259 (4) & S-620-A Cheyenne Co., Nebr.	D-DOT-40969-36	2	H
Freeway 520-Black Hawk Co., Iowa	D-DOT-40968-37	2	H
Hwy Proj. Miami County, Kans.	D-DOT-40825-38	2	H
Ottumwa Industrial Airport, Ottumwa, Iowa.	D-DOT-51163-37	1	H
I-435 extension (KCI route), Missouri	D-DOT-41101-39	2	H
RTCC, Ozark Co., Mo.	D-DOT-41100-39	2	H
24-44 F 072-1(19) Jefferson Co., Kans.	D-DOT-40971-38	2	H
Hwy. project FA 9963 Codington Co., S. Dak.	D-DOT-41096-42	1	I
Hwy proj. AS-(12)2, Langdon, N. Dak.	D-DOT-41113-41	2	I
F. 020-7 Lake Co., S. Dak.	D-DOT-41097-42	1	I
Langdon N.D. Airport improvement	D-DOT-51152-41	2	I
Manti-Ephriam Airport, Utah	D-DOT-51126-44	2	I
Phoenix Deer Valley Municipal Airport, Ariz.	D-DOT-51164-48	2	J
72-2505 Gastineau Channel Bridge	D-DOT-50080-57	2	K
Project S-0649(1) Geist RD.	D-DOT-41162-57	1	K
Oregon Coast Hwy—Waterline Dr. Section Newport Lincoln Co., Oreg.	D-DOT-41130-55	1	K
Santa Clara-Eugene Section City-Eugene Hwy.	D-DOT-40821-55	2	K
West Seattle Freeway Project.	D-DOT-40526-54	2	K
Industrial Freeway (I-505) Multnomah Co., Ore.	D-DOT-40525-55	2	K
Warren-Scappoose Unit St. Helens-Columbia Co. Line Sect.	D-DOT-40524-55	2	K
Federal Power Commission:			
Rec. facs. for Conowingo Proj. # 405, Harford & Cecil Cos., Md., York.	D-FPC-06035-00	1	D
Palo Pinto Generating Station Unit # 3, Tex.	D-FPC-07044-34	1	G
Proposed Revised Tariff, El Paso Natural Gas.	D-FPC-02011-00	2	J
South Substation-Delridge Substation 230KV Tran.	D-FPC-07036-54	1	K
Transmission Line Reconstruction, Seattle.	D-FPC-07035-54	1	K
General Services Administration: Pentagon Sewer Connection to Arlington Co. System.	D-GSA-24030-15	1	D
Department of Housing and Urban Development:			
Ganada, new community final statement	D-HUD-85033-07	2	C
King Co. multipurpose stadium and convention/exhibition complex.	D-HUD-85034-54	2	K
Veterans' Administration: New 630 bed VA Hospital, Loma Linda, Ca.	D-VA-81042-46	2	J

APPENDIX II—PROPOSED FEDERAL REGULATIONS FOR WHICH COMMENTS WERE ISSUED BETWEEN FEB. 27, 1972, AND MAR. 31, 1972

Title	Identifying number	General nature of comments	Source for copies of comments
Interstate Commerce Commission: Procedures for implementing the National Environmental Policy Act of 1969	R-ICC-90046-00	2	A
Department of Agriculture: National forest development trails	R-DOA-90045-00	1	A

APPENDIX III.—DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

(1) General Agreement/Lack of Objections: The Agency generally:

(a) has no objections to the proposed action as described in the draft impact statement;

(b) suggest only minor changes in the proposed action or the draft impact statement; or

(c) has no comments on the draft impact statement or the proposed action.

(2) Inadequate Information: The Agency feels that the draft impact statement does not contain adequate information to assess fully the environmental impact of the proposed action. The Agency's comments call for more information about the potential environmental hazards addressed in the statement, or ask that a potential environmental hazard be addressed since it was not addressed in the draft statement.

(3) Major Changes Necessary: The Agency believes that the proposed action, as described in the draft impact statement, needs major revisions or major additional safeguards to adequately protect the environment.

(4) Unsatisfactory: The Agency believes that the proposed action is unsatisfactory be-

cause of its potentially harmful effect on the environment. Furthermore, the Agency believes that the safeguards which might be utilized may not adequately protect the environment from the hazards arising from this action. The Agency therefore recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

APPENDIX IV. SOURCES FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, Room 2303, John F. Kennedy Federal Bldg., Boston, Massachusetts 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, Room 847, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Bldg., 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, Suite 300, 1421 Peachtree St., N.E., Atlanta, Georgia 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, 1 N. Wacker Drive, Chicago, Illinois 60606.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Texas 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, Lincoln Tower, Room 916, 1860 Lincoln Street, Denver, Colorado 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, California 94102.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101.

SUMMARY OF 102 STATEMENTS FILED WITH THE CEQ THROUGH MAR. 31, 1972 (BY AGENCY)

Agency	Draft 102's for actions on which no final 102's have yet been received	Final 102's on legislations and actions	Total actions on which final or draft 102 statements for Federal actions have been received
Agriculture, Department of	62	109	171
Appalachian Regional Commission	1	0	1
Atomic Energy Commission	43	30	73
Commerce, Department of	1	7	8
Defense, Department of	5	2	7
Air Force	6	3	9
Army	6	8	14
Army Corps of Engineers	188	311	499
Navy	3	8	11
Delaware River Basin Commission	3	0	3
Environmental Protection Agency	8	14	22
Federal Power Commission	35	5	40
General Services Administration	14	26	40
HEW, Department of	4	1	4
HUD, Department of	10	21	31
Interior, Department of	82	42	124
International Boundary and Water Commission—United States and Mexico	1	4	5
Interstate Commerce Commission	2	0	2
National Aeronautics and Space Administration	13	9	22
National Science Foundation	0	2	2
New England River Basins Commission	1	0	1
Office of Science and Technology	0	1	1
Pacific Northwest River Basins Commission	1	0	1
Tennessee Valley Authority	9	6	15
Transportation, Department of	878	706	1,584
Treasury, Department of	4	3	7
U.S. Postal Service	1	0	1
U.S. Water Resource Council	7	0	7
Veterans Administration	1	0	1
Total	1,388	1,318	2,706

SUMMARY OF 102 STATEMENTS FILED WITH THE CEQ THROUGH, MAR. 31, 1972 (BY PROJECT TYPE)

	Draft statements for actions on which no final statements have yet been filed	Final statements on legislation and actions	Total actions on which final or draft statements have been taken
AEC nuclear development	11	11	22
Aircraft, ships and vehicles	1	5	6
Airports	56	152	208
Buildings	5	8	13
Bridge permits	9	9	18
Defense systems	4	2	6
Forestry	3	4	7
Housing, urban problems new communities	7	13	20
International boundary	4	2	6
Land acquisition, disposal	11	31	42
Mass transit	3	2	5
Mining	5	2	7
Military installations	10	11	21
Natural gas and oil:			
Transportation and pipeline	9	4	13
Drilling and exploration	3	5	8
Parks, Wildlife refuges, recreation facilities	37	17	54
Pesticides, herbicides	17	12	29
Power:			
Hydroelectric	32	6	38
Nuclear	31	18	49
Other	13	6	19
Transmission	10	8	18
Railroads	2	1	3
Roads	659	505	1,164
Plus roads through parks	147	32	179
Space programs	3	5	8
Waste disposal:			
Detoxification of toxic substances	6	2	8
Munition disposal	2	3	5
Radioactive waste disposal	5	1	6
Sewage facilities	7	10	17
Solid wastes	2	0	2
Water:			
Beach erosion, hurricane protection	3	22	25
Irrigation	18	9	27
Navigation	61	108	169
Municipal and industrial supply	9	2	11
Permit (Refuse Act, dredge and fill)	11	1	12
Watershed protection and flood control	124	260	384
Weather modification	6	5	11
Research and Development	14	9	25
Miscellaneous	28	15	43
Total	1,388	1,318	2,706

C–5A BREAKS DOWN EVERY HOUR

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. ASPIN. Mr. Speaker, I have publicly released a report by the General Accounting Office concerning the C–5A aircraft. The report indicates that a major system on the trouble-plagued C–5A jet transport, which will cost $55 million per plane, breaks down, on the average, every hour of flight. The GAO report also reveals that 14 of the C–5A major systems are deficient.

This is incredible. It is just unbelievable that after being handed more than $4 billion of the taxpayers' money, the Air Force cannot produce an aircraft that runs without a hitch for more than an hour.

Specifically, the GAO report reveals that the Air Force has been forced to completely rebuild the connections known as pylons between the aircraft's wings and engines. The Air Force was not aware of any problem until one of the engines fell off the plane late last year. The report goes on to say that the landing gear on the C–5A aircraft breaks

down on the average once every 4 hours. Fifteen typical C–5A's studied by the GAO contain an average of 251 major and minor deficiencies. A previous GAO study, released in February 1970, uncovered 250 such deficiencies.

Obviously only a few of the numerous difficulties with the C–5A have been remedied.

I have written to Secretary of the Air Force Robert Seamans asking him to assure the Congress that the $207 million requested by the Air Force in next year's budget will be enough to repair defects that currently exist on a C–5A aircraft. As my colleagues know, the Air Force has requested $207 million in this year's budget to be used to correct defects and to complete the program.

I have also requested that Secretary Seamans accelerate the repair program so that defects on the C–5A aircraft can be remedied as soon as humanly possible. Since we have made such a huge investment in this cost overridden monster, the least we can expect is an airplane that runs properly.

According to the C–5A renegotiated contract, the Lockheed Corp. has assumed the $200 million loss on the C–5A and has promised to correct all deficiencies without receiving any additional profits. Hence, it is the obligation of the Air Force and Lockheed—on a cost basis—to work the bugs out of the C–5A.

I also wish to congratulate the General Accounting Office for the fine job they did in this most comprehensive examination of the worst boondoggle in Pentagon history.

My letter to Secretary Seamans follows and an article by Richard J. Levine that appeared in the April 6 Wall Street Journal:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 5, 1972.

Hon. ROBERT C. SEAMANS, Jr.,
Secretary of the Air Force,
Washington, D.C.

DEAR MR. SECRETARY: I have just finished reading the United States General Accounting Office's staff study on the C–5A aircraft dated March, 1972. Figure X on page 45 indicates the failures, mean time between failures and hours flown on a C–5A air reliability test for a six month period ending August 31, 1971. A total of 13,366 hours were flown in the C–5A during this test. A total of 12,994 failures were reported in major systems of the C–5A. Apparently, on the average, there is a failure in a major system of the C–5A aircraft every hour.

This is incredible. It is just unbelievable that after being handed more than $4 billion of the taxpayers' money that the Air Force cannot produce an aircraft that runs without a hitch for more than an hour.

According to the report, the Air Force as of last July, estimated that it would cost $164 million to correct all the deficiencies in the C–5A aircraft. As you know, the Air Force has requested $207 million in the fiscal year 1973 budget to complete the C–5A aircraft program and to correct all of the defects. I hope that you can assure the Congress that $207 million requested by the Air Force in next year's budget to repair defects will be enough to correct all the problems.

I also hope that you could accelerate the repair program so that defects on the C–5A can be remedied as soon as humanly possible. As long as we have made such enormous investment in this aircraft, it is only logical to bring it into a full operational status (without the current deficiencies) as soon as possible.

The GAO study is, in my opinion, the most comprehensive examination of the worst boondoggle in Pentagon history—the C–5A. I hope it is thoroughly reviewed by your staff.

I look forward to an early response to my questions concerning the amount of funds needed to correct deficiencies and the possibility of accelerating the repair program.

Thank you very much for your cooperation.

Sincerely,

LES ASPIN,
Member of Congress.

NEW GAO REPORT INDICATES C–5A'S MAY FAIL SOME MISSIONS, REQUIRE TOO MUCH UPKEEP

(By Richard J. Levine)

WASHINGTON.—A new and unpublicized government study harshly criticizes the troubled C5A cargo jet, built by Lockheed Aircraft Corp., and warns that more problems may be in the offing.

The detailed study was prepared by the General Accounting Office, Congress' fiscal watchdog agency. A copy was obtained from Rep. Les Aspin, the young Wisconsin Democrat who is emerging as one of the Pentagon's toughest critics.

Much of the technical 58-page report is devoted to problems that have already been publicized—involving the C5A's wing, its landing gear and the pylons that hold the engines to the wing.

But the GAO investigators also raise significant questions about the plane's ability to perform certain tactical combat missions and point to what they believe may be a new problem area: aircraft reliability and need for maintenance.

"Close surveillance should continue over the C5A program, particularly in the area of technical deficiencies that, if not corrected, may impair the operating mission capability of the aircraft," the report declares. "There are also indications that aircraft reliability and mantainability may emerge as major problem areas."

In Marietta, Ga., I. O. Kitchen, president of the Lockheed-Georgia division, said, "If this really is an unpublished GAO study, we haven't had an opportunity to review or comment on its contents. Therefore, we have no statement."

The GAO report comes at a time when the Pentagon itself, once the fiercest defender of the giant C5A, is becoming disenchanted with the plane. Even in the Air Force, it is currently considered permissible to concede that the C5A isn't as good a plane as once claimed, In February, Defense Secretary Melvin Laird told Congress that although the plane is needed, "it's clear that the C5A cannot, and probably never could, meet all the design objectives specified in the original contract."

Originally, the C5A was supposed to have an operational life of 30,000 hours, but today the Air Force is counting on "about 20,000 hours." And to stretch the plane's life, restrictions have been placed on how it may be flown. Lockheed also is making a number of modifications to correct past "deficiencies" involving such components as the wings and the landing gear.

At the same time the big contractor is making corrections, it is delivering new planes marred by shoddy workmanship, the report indicates. For example, the GAO investigators found that a C5A recently accepted by the Air Force had 196 deficiencies—47 major and 149 minor. "Of the 47 major deficiencies, 14 impair the aircraft's capability to perform all or a portion of six missions," the staff study states.

Perhaps the most startling and potentially troublesome of the GAO findings are those concerning C5A maintenance and reliability, an area that hasn't got much public attention.

One group of 12 aircraft assigned to Charleston Air Force Base in South Carolina required a total of 36.34 man-hours of maintenance for each hour of flight during an eight-month period ended last Aug. 31, the report shows. This compared with a specified rate of only 17.65 man-hours. Moreover, the GAO says that for a nine-month period ended last Sept. 30 these planes were "operationally ready" only 47% of the time compared with the specified objective of 75%.

The GAO also looked at the experience of the entire C5A fleet for the six-month period ended last Aug. 31. Among other things, it found that during 13,366 hours of flight, there were 3,327 "failures" involving landing gear—or a malfunction about every four hours. The landing gear had the poorest reliability rate of any major system in the aircraft, according to the GAO.

Dealing with the C5A's cost problems, the GAO notes that the Air Force estimated last July that it would cost "approximately $164 million" to correct the plane's deficiencies. But the GAO stresses this estimate was made before a wing crack was discovered in a ground test last September and before an engine broke off a wing a few weeks later.

The $164 million estimate assumed that "there would be no additional major structural failures in the test program," the GAO said, thus implying the Pentagon may yet come to Congress for additional C5A money. Under Lockheed's restructured C5A contract, which provides that the company absorb a $200 million losss the government will reimburse Lockheed for necessary modifications.

The Air Force is asking Congress for $207.6 million in its new budget for the C5A program. This will allow the government to "buy out," or finish, the $4.45 billion project, Air Force officials say. The program consists of 81 planes, of which 56 have come off the production line; two of the 56 were destroyed by fire.

But Congress is worried that with the list of technical and maintenance problems cited by the GAO, the end of C5A financing isn't yet in sight. Rep. Aspin wants Air Force Secretary Robert Seamans to "assure Congress" that the money in next year's budget "will be enough to correct all problems." Calling the GAO study the "most comprehensive" C5A examination to date, Mr. Aspin has asked that the repair program be accelerated.

Last November, the Air Force set up a high-level team to conduct a year-long review of the C5A with a view to recommending any further operational refinements or modifications.

MAN'S INHUMANITY TO MAN—HOW LONG?

HON. WILLIAM J. SCHERLE
OF IOWA
IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. SCHERLE. Mr. Speaker, a child asks: "Where is daddy?" A mother asks: "How is my son?" A wife asks: "Is my husband alive or dead?"

Communist North Vietnam is sadistically practicing spiritual and mental genocide on over 1,600 American prisoners of war and their families.

How long?

MEAT PRICES EXPLOITED TO PROMOTE SOCIALISM

HON. JOHN R. RARICK

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. RARICK. Mr. Speaker, this week's hearings by the Livestock and Feed Grain Subcommittee of the Agriculture Committee on meat prices have been most extensive and have been participated in not only by the livestock growers but also by the packers, distributors, retail representatives, and a representative of the Secretary of Agriculture's office.

The hearings thus far, without contradiction, proved that America's cattlemen and agriculture producers are only not receiving more money for the sale of live beef but that they are receiving the same price that beef producers received 20 and 25 years ago. In fact, one young farmer with three children from Iowa testified that his farm earnings were only 90 cents an hour.

The hysteria generated by the meat price furor may well result in a great disservice to both the meat producer and the consumer. If the consumers now decrease their use of beef, the market price for live cattle will go down. If so, there will be fewer cattle sales with the eventual result that beef prices can be expected to go higher.

Things just do not happen. They are either planned or conditions are taken advantage of. The great number of farm producers from across our country who testified before the committee indicated that they felt the damage to livestock sales occurred as the result of full page newspaper ads by a chain store which had the effect of recommending a boycott of beef by food customers. The author of these ads was identified as Mrs. Esther Peterson, consumer adviser to the president of Giant Food, Inc.

Mrs. Peterson voluntarily appeared before the committee, delivered a prepared statement and answered questions. She submitted with her testimony a copy of her ad which read in part as follows:

YOU HAVE THE RIGHT TO BE INFORMED ABOUT MEAT PRICES!

Meat prices are high and from all predictions will remain high. Beef is near the highest level since the end of the Korean War. Why are they so high? It begins at the source:

Livestock prices were not and are not now controlled under the present economic program.

Less meat is reaching the market.

Prices from our suppliers have skyrocketed. BECAUSE of all these reasons, you will find higher prices on almost all fresh meats.

We consumers can help bring prices down.

Buy less meat.

Use other forms of protein.

Buy something else.

Mrs. Peterson, in her very charming and disarming style denied that she intended to blame the farmers or that she had intended to provide a beef boycott.

Mrs. Peterson's Giant Food store ad was not only false and fraudulent but was in reality exactly opposite from the existing facts and conditions readily available to any economist or true friend of the consumer. The farmers of America, whose livelihood depends upon honesty in the marketplace and the American consumer, who is entitled to the truth about prices and bargains, may at a later date be interested and are both entitled to know who was responsible for what may have set in motion the events which will result in even higher meat prices.

Farmers and consumers alike are entitled to know just who Mrs. Peterson is—this woman who served as an adviser to two Democratic Presidents and is being promoted by the left-wing news media as a Ralph Nader in the grocery store.

At the hearings, Mrs. Peterson acknowledged her association with the Consumers Union, originally headed by Arthur Kallet, alias Edward Adams; the National Consumers League, and working with its publication "Consumer Affairs," and the Women's Africa Committee, a division of the African-American Institute. It was when being asked if she knew Dr. James E. Mendenhall that Mrs. Peterson lost her cool.

Mrs. Peterson admitted knowing Dr. Mendenhall but said she could not see what her association with him had to do with food prices. The fact is that it sheds light on her values and contempt for the free enterprise system.

In July 1965, Consumers Union announced the publication of a paperback book entitled "Consumer Education in Lincoln High School." In the book prepared while Dr. Mendenhall was in charge of educational activities for CU, Mrs. Esther Peterson, the former Special Assistant to the President for Consumer Affairs, is quoted to the effect that high school courses "should instruct youth in such matters as the virtues and vices of advertising" and "the problems of comparative shopping in an age of odd-size packages."

"Consumer Education in Lincoln High School" continues:

Mrs. Peterson noted that young persons must be taught the difference between a consumption-directed economy and a consumer-directed economy.

In a consumption-directed economy, she observed, "anything would be permissible. Deceptive and false advertising would be perfectly okay as long as it made people buy. Planned obsolescence as a means of increasing consumption would be the rule rather than the exception.

"In this kind of system, skill, craftsmanship, and quality are unimportant," she continued.

"All that is important is that there be many things to buy and that they be bought. This system frowns on frugality and financial planning and promotes overextended credit buying."

In a consumer-directed society, Mrs. Peterson declared, "the individual is treated as a person whose natural inclination is toward human excellence, self-improvement, and esthetic improvement of his environment."

Mrs. Peterson's pernicious distinction is a reflection of her prejudice against American business enterprise which is shared by Consumers Union. It may be poisoning the minds of many high school students and teachers.

Dr. James E. Mendenhall was as late as 1967, educational director of Consumers Union, and his association with the organization goes back to the 1930's. After leaving Teachers College, Dr. Mendenhall became associate director of the Institute for Consumer Education at Stephens College. At Stephens, he was also an editor of the Institute's monthly newsletter, Consumer Education.

During his tenure at Stephens, from 1939 to 1942, Dr. Mendenhall participated in several consumer conferences which were financed by the Sloan Foundation. Dr. Colston Warne, the president of Consumers Union, was a frequent speaker at these conferences. Some business representatives resented the heavy-handedness of Consumers Union at the Stephens conferences, according to Advertising Age, which reported that the conference of 1940 "developed into a hammer and tongs battle over advertising."

In 1942, the Stephens Institute was abandoned, and Dr. Mendenhall went to the Office of Price Administration in Washington. By 1948, he had become executive editor of Compton's Pictured Encyclopedia.

Additional information concerning the background of Dr. Mendenhall is given in the public record of Congressional hearings from both the Senate and the House.

Elizabeth Bentley, whose testimony before the House Committee on Un-American Activities exposed espionage in Washington during the 1930's and 1940's—hearings regarding Communist espionage in the U.S. Government—testified on July 31, 1948, that Dr. Mendenhall recruited her into the Communist Party. The testimony follows:

Mr. STRIPLING. Miss Bentley, were you ever a member of the Communist Party of the United States?

Miss BENTLEY. Yes; I was.

Mr. STRIPLING. When did you join?

Miss BENTLEY. March 1935.

Mr. STRIPLING. Who recruited you into the Communist Party?

Miss BENTLEY. The two people who signed my membership card were Mrs. Lee Fuhr and Dr. James P. (sic) Mendenhall.

* * * * *

Mr. STRIPLING. Could you identify Dr. James Mendenhall:

Miss BENTLEY. Yes. At that time he was a professor in the Lincoln School which is part of Teachers College, Columbia. Since then, I believe, he went into the OPA, but I have also lost track of him recently.

Mr. STRIPLING. Would you tell the committee the circumstances under which you were recruited into the party?

Miss BENTLEY. Yes. I had come back from a year in Italy quite upset about Fascist conditions there. On my return I met a number of Communists of whom those two are a part, and they got me into the American League Against War and Fascism, which was interested in my impressions of Italy.

After that they gradually got me into the Communist Party. (page 504)

In her book "Out of Bondage," published in 1951, Miss Bentley related that she had secured temporary employment at Consumers Union in 1937. She said:

I continued on with my odd jobs and by Communist work in Harlem until the early spring of 1937, when I got a two-months' temporary position with Consumers' Union." (page 79)

Dr. Mendenhall, according to the press—New York Journal American, August 3, 1948—denied that he had ever been a member of the Communist Party, although he remembered Miss Bentley and Mrs. Fuhr.

Several years later, Miss Bentley's testimony was corroborated by Dr. Benjamin Fine, a highly respected liberal educator who had long been associated with the New York Times. On January 6, 1956, Dr. Fine testified before the Senate Internal Security Subcommittee. According to the Senate subcommittee's 1956 annual report—page 106:

Benjamin Fine, education editor of the New York *Times*, said he joined the Communist Party in 1935 when he was a graduate student at Teachers College, Columbia University in New York . . .

He said he knew James Mendenhall, later an educator of some prominence, as a member of the party at that time.

Dr. Mendenhall's denial of membership in the Communist Party, although in the press, has not been made under oath before either of the congressional committees which heard conflicting testimony from Miss Bentley and Dr. Fine. The public record does not show that Dr. Mendenhall availed himself of the privilege of testifying before either the Senate or House committee.

The Communist newspaper, the Daily Worker, for June 9, 1934, gives information not made public by the congressional committees. That issue of the Daily Worker included an advertisement for a New York City meeting on behalf of a children's camp. Among the speakers were Dr. Mendenhall and Mr. C. A. Hathaway, then editor of the Daily Worker. Dr. Mendenhall's denial of party membership may not preclude association with party leaders at that time.

While at Columbia Teachers College, Dr. Mendenhall was editor of Building America, which was "prepared with the assistance of the U.S. Works Progress Administration and the Lincoln School." The March, 1937, issue was devoted to "We Consumers." Many of the issues raised by Consumers Union today were discussed by this publication, including the alleged difficulty of consumers faced with the variety of product choices. Cooperatives were given a big boost.

Building America, however, came under attack because of its left-wing orientation. According to the California Senate Committee on Education, the Building America series was "replete with Communist propaganda."

To inform those who wonder why a highly intelligent person like Mrs. Esther Peterson, a former Special Assistant to the President of the United States for Consumer Affairs, would inadvertently start a price war between the American farmers and American consumers, her ad may serve to answer the question. Someone in our country wants a fully regimented economy of a socialist state which must include the placing of livestock under price controls.

The pertinent provisions of the thinly veiled call for socialism in the advertisement is as follows:

Livestock prices were not and are not now controlled under the present economic program. * * * "Inasmuch as Phase II of the Economic Stabilization Program did not, perhaps for good reason (I don't know), see fit to control livestock—and inasmuch as beef and pork were in short supply relative to demand because of the corn blight, and other factors—the only approach that I could recommend to the people I represent (the consumers) was to revert to the ageless law of supply and demand, and reduce demand by buying less meat and substituting other protein foods.

If the psychology of the artificially created market works, Mrs. Peterson will hope to become a consumer's heroine when the market rebounds, meat prices again soar and she is able to blame renewed high food prices on lack of controls.

I ask that the ad, a news clipping, an article "Consumerism," from American Opinion, and portions of a report from "Treason is the Reason," follow my remarks.

[Ad from testimony by Esther Peterson, Consumer Advisor to the President of Giant Food, Inc. before the Subcommittee on Livestock and Grains of the House Agriculture Committee, April 13, 1972]

YOU HAVE THE RIGHT TO BE INFORMED ABOUT MEAT PRICES!

Meat prices are high and from all predictions will remain high. Beef is near the highest level since the end of the Korean War. Why are they so high? *It begins at the source.*

Livestock prices were not and are not now controlled under the present economic program. Less meat is reaching the market. Prices from our suppliers have skyrocketed. Because of all these reasons, you will find higher prices on almost all fresh meats.

We consumers can help bring prices down.

Buy less meat.

Use other forms of protein.

Buy something else.

Inasmuch as Phase II of the Economic Stabilization Program did not, perhaps for good reason (I don't know), see fit to control livestock—and inasmuch as beef and pork were in short supply relative to demand because of the corn blight, and other factors—the only approach that I could recommend to the people I represent (the consumers) was to revert to the ageless law of supply and demand, and reduce demand by buying less meat and substituting other protein foods.

I did no more than the Department of Agriculture does every month in bulletins issued to the retail trade—i.e., recommend the purchase of foods that are in plentiful supply.

[From the Washington Post, April 9, 1972]

PETERSON: MARKET REFORMS

Cosmic issues—The Dita Beards, the SALT talks, the Clifford Irvings—may come and go, but another recent controversy hit people where they live: their pocketbooks.

It hit the newspapers March 14, when Secretary of Agriculture Earl Butz, who earns $60,000 a year, praised the high prices of beef because they "provide the best way to insure a good supply of the better cuts of beef that I prefer."

Meanwhile, back at Giant Food Inc's headquarters in Landover, Md., Esther Peterson seized the moment, and the editorial pages by rushing through an advertisement which had been hanging around her office for a year. Giant's ad, advising consumers to buy less meat and "Buy Something Else" was published in Washington newspapers the week after Butz' remarks.

She is Giant's consumer affairs adviser, cited by observers of the trend to appoint ombudsmen as "the best, the classic example of the real thing" and "an example of the real thing" and "an example of very, very good faith efforts." The "Buy Something Else" ad had appeared a year earlier in the form of posters she put in Giant's stores.

C. W. McMillin, executive vice president of the American National Cattlemen's Association says the ad is "contrary to what we've been told are sound merchandising techniques." He hints that Mrs. Peterson may have had an ulterior political motive by making "oblique" references in the ad to President Nixon's wage-price freeze.

The ad asked why meat prices are so high and answered by saying, "Livestock prices were not and are not now controlled under the present economic program . . . Less meat is reaching the market . . . Prices from our suppliers have skyrocketed."

Other supermarkets—Safeway and Consumers Supermarkets—responded to Mrs. Peterson's ad. Safeway spokesman Ronald Zachary said Giant's ad is "negative," while Safeway's ads—featuring "inflation fighters"—were "positive." Consumers Supermarkets ad invented "a hunger gap" in which a bean and cheese-surfeited husband makes clandestine forays to a hamburger stand to get his beef fix. "Now you can have your beef," said Consumers, "and enjoy low prices too."

After the Giant ads appeared, a conference was called by the administration on meat prices and prices are lower now.

Figures on the reactions of Giant's customers aren't in yet, but after the posters went up last year, Mrs. Peterson said "They still kept buying meat, but the complaints went down."

Complaint-handling is not all Esther Peterson does.

Since Mrs. Peterson, 65, came to Giant Food in 1970, she has initiated such reforms as see-through meat trays, open dating, unit pricing, ingredient labeling (how much pork in pork and beans), nutritional value charts for certain food, and soap and paper for the ecology-minded.

She asks questions like "What does 'fancy' mean on the fish?" And Giant executives reply "We were afraid you'd ask that. It means 'previously frozen.'" She is now planning a reform of all such so-called "grade labels."

Her success is based on access to power—on Capitol Hill, among crusading consumer watchdogs, and apparently within Giant Food Inc. as well.

As a lobbyist here for more than 20 years, as a labor and consumer affairs aide to Presidents Kennedy and Johnson, and—according to the Democratic National Committee—a woman of "very high standing" in the Democratic party, Mrs. Peterson has valuable friends and influential contacts.

A recent interview in her cluttered office at Giant's headquarters, was interrupted by a telephone query from the Hill.

She says she gets a lot of phone calls like that, and often gives advice to congressmen who calls about legislation—"just informally, though."

But when there are things to be done formally, people remember Mrs. Peterson's help So when Giant has a new line of recycled paper products to announce, for example, Esther Peterson contacts her old friend, Sen. Frank Moss (D., Utah), who is chairman of the Senate Subcommittee on Consumer Affairs. A native of Utah, she worked on his campaign. So, on Jan. 31 when Giant introduced their paper plates and napkins, the ceremony took place in Moss' office and the Senator himself added some laudatory words. Even if he hadn't been "a good friend," says Mrs. Peterson, "he would have done it anyway."

Mrs. Peterson finds her dealings within the Giant hierarchy a relief from her White House days as LBJ's consumer adviser. "It's just so clear here," says she. "Its free of the intrigues of government and bureaucracy and politics."

When she develops an agenda for action, the plan for unit pricing, say, she works it out in detail and then presents it to a "consumer task force"—Giant's 12 vice presidents. Each one is in charge of a depart-

ment—dairy, bakery, general merchandising, operations—and each one implements in his area the Peterson plans they approve.

"I take an agenda to them and we vote it up and down. Once we get the task force to agree on something, nobody pulls the rug out from under me. Not like at the White House."

Mrs. Peterson does not see herself as a broker of complaint letters and calls—"I discourage it"—but when consumers complain directly to her, she refers their complaints and suggestions to the vice president in charge.

Her programs are a formidable public relations asset. She is asked to speak all over the country by universities and industry and considers two speeches a week a "light" schedule. She tapes television spots including a half-hour Giant-sponsored nutrition special called "What's for Dinner? Do You Really Know?" which has re-run twice on WMAL-TV.

So why did Joseph Danzansky, Giant's president want to hire her badly enough to spend a small fortune wining and dining and convincing her at Paul Young's restaurant? Why did he agree to her conditions including a $30,000 a year salary—all in an effort to inveigle her away from a job that she loved: lobbyist for the Amalgamated Clothing Workers of America?

Some of the reasons—consumerism as good PR and as a handle on government regulation—are expressed in Mrs. Peterson's answer to that question. Her reply embodies a hard-nosed, nonaltruistic but honest philosophy.

"Consumerism is a good marketing tool. Industry shouldn't try to wiggle out of the legislation that's being made, it should shape the direction in which it's to go, on the basis of their own retail experience," says the old lobbyist. "Be leaders of the progressive group! I think that's the thing that's bringing industry around to the idea of consumerism."

And Joseph Danzansky knows that Giant is number two in this area. Safeway is number one, headquartered in Oakland, Calif. Giant is a regional operation, heaquartered in nearby Landover. Danzansky's favored marketing tool is to capitalize on the regionalism, to be active in the region's community affairs (he's been president of the United Givers Fund and the Board of Trade and keeps offering to help buy us a new baseball team).

And how better to take advantage of the region and cultivate the image of public-servant-and-friendly-neighborhood-grocer than to hire the woman who advised the President of the United States on consumer affairs?

That Esther Peterson is good at her job, "a classic example" of the effective consumer ombudsman, may or may not have a lot to do with the reason she was hired. She knows the town, knows the job, and people who count know her. And, although Mrs. Peterson credits discount pricing and late night hours, Giant's profits have doubled in the last six months over the previous year, to $3.4 million. Joseph Danzansky expects the rise to continue. And Esther Peterson, after a year's leave of absence to test the Giant job, has formally quit her lobbying job with the Amalgamated Clothing Workers of America.

JEANETTE SMYTH.

[From American Opinion, May, 1972]

CONSUMERISM: A TEST REPORT ON CONSUMERS UNION

(By Alan Stang)

A spectre is haunting America, to paraphrase Marx's *Manifesto*. Americans who ride in automobiles are dangerously courting death—unless the automobiles are equipped with air bags and seat belts, dashboard lights that flash if you forget to "buckle up," and "pollution-control" devices to keep the air pure. The automobile industry is a conspiracy which aims to kill and suffocate our people. So is the food industry, which is trying to poison them. Americans cannot eat their dinners without fear. Each bite may contain the fatal rat poison and be their last. Medicine prescribed by doctors is out of the question. Medicine and doctors are both plots against the people. So are electrical appliances. The user may get shocked. Cigarettes are out because they cause cancer. Marijuana is coming in. All it does is dull the brain. And don't even think of borrowing money. You'll be robbed. The only thing still approved is sex, unless it causes children, who are also plots against the people if you have more than two.

The spectre Marx meant, of course, was Communism. The spectre responsible for the nonsensical propaganda above is "Consumerism," which as you will see adds up to the same thing. And the best known, most powerful organization in the consumer "movement" is Consumers Union, which tests and rates various products and publishes the findings in *Consumer Reports*.

COMMUNISTS AGAINST CONSUMERS

The beginning of this century saw the work of the "muckrakers," who specialized in raking muck about American industry. Early consumerists formed various organizations. But the current phase of the movement began in 1927, with the publication of *Your Money's Worth* (New York, Macmillan), by F. J. Schlink, a mechanical engineer who had worked for the Bureau of Standards, and Stuart Chase, a certified public accountant who had worked for the Federal Trade Commission. *Your Money's Worth* was an exposé of the frauds and shortcomings in American business at the time, but it was not subversive. The frauds and shortcomings were real. "The blazes on that trail which the authors will indicate are in no sense revolutionary," we are told. "They imply no drastic change in our system of law or of property . . . We shall plead for an extension of the principle of buying goods according to impartial scientific test, rather than according to the fanfare and trumpets of the higher salesmanship. This is all . . ."

Chase later sold out to the revolutionaries and has been one ever since. In 1932, for instance, he wrote in a book called *A New Deal* (New York, Macmillan); "Best of all, the new regime would have the clearest idea of what an economic system was for. The 16 methods of becoming wealthy would be proscribed—by firing squad if necessary—ceasing to plague and disrupt the orderly process of production and distribution. . . . The whole vicious pecuniary complex would collapse as it has in Russia. . . ."

Schlink went on to organize Consumers' Research, which tests various products as recommended in *Your Money's Worth*, and publishes the findings in *Consumer Bulletin*.

On Sunday, July 7, 1935, there was a meeting in the apartment of one Rebecca Drucker, at 121 Madison Avenue, in New York, at which those present were Susan Jenkins, Arthur Kallet, Dewey H. Palmer, Rose Nelson, Dexter Masters, Mildred Edie, and J. B. Matthews. Miss Jenkins ran the switchboard at the *Daily Worker*, official newspaper of the Communist Party. Rose Nelson was a well known Communist. She has been a member of the Party's National Committee. Arthur Kallet and Dewey Palmer worked for Consumers' Research as did J. B. Matthews, Dexter Masters and Mildred Edie were editors of an advertising journal called *Tide*.

In an affidavit three months later, Matthews testified that Miss Jenkins told the others that Clarence Hathaway, editor of the *Daily Worker*, had promised to be present if he returned to the city in time to attend. "Arthur Kallet announced that he had been in frequent conference with a Mr. Siskind whom he designated as the Communist Party organizer for New York City and who, he further declared, had been designated by Communist Party leaders as advisor to the group assembled. Mr. Kallet also stated that Mr. Siskind would attend in person any future meetings of the group."

In other words, this was a Communist meeting. Indeed, says Matthews: "Miss Jenkins explained that it would be absolutely necessary to maintain the utmost secrecy concerning the existence of the group and all of its plans, especially in view of the fact that two of its members (Masters and Edie) were editors of an advertising trade journal and that their employers would look upon it as most extraordinary if they were known to be in any way associated with a group whose direct connections with the Communist Party were so close. . . ."

For instance, after some opening remarks by Miss Jenkins, Miss Edie nominated Masters as chairman of this Communist meeting, and he took over. And in a prepared speech, Arthur Kallet then made clear that the purpose of the meeting was to plan the capture of Consumers' Research by the Communist Party. The purpose of course was to organize consumers to attack the system, in accordance with the new "people's front" strategy ordered for use in the same year by the Seventh World Congress of the Communist International in Moscow.

Miss Jenkins went to work for Consumers' Research, neglecting to reveal that she was a switchboard operator at the *Daily Worker*, and on September 4, 1935, some of C.R.'s workers went on strike, demanding such things as the right to select the organization's board of directors. And a gentleman named Walter M. Trumbull entered the affair as union organizer. Trumbull was of course a high-ranking Communist Party official, who in 1925 had been sentenced to twenty-six years in prison by a general court-martial, for Communist activities inside the United States Army. He was sent to Alcatraz, his sentence was reduced in response to pressure from the radical American Civil Liberties Union, and by 1929 he was running the Communist strike in Gastonia, North Carolina, which included the murder of the town's chief of police. In the next year, he became national secretary of the Workers Ex-Servicemen's League, the purpose of which was to continue the Communist infiltration of our Army. In 1932, he was active in the Communist-led "bonus march" on Washington.

And the strike Comrade Trumbull led at Consumers' Research in 1935 included the usual Communist tactics. Pickets smashed windshields and overturned cars. Telephone wires were cut. Entrances were blocked, so that the only way in was the back way, through the fields. Secretaries needed escorts to get home without being molested. Union leaders threatened business reprisals against the families of workers who refused to join. One such worker was threatened with death. The crippled son of another was knocked down. Strikers repeatedly blocked all cars on the public highway. The usually peaceful little town of Washington, New Jersey, was being subjected to guerrilla warfare.

Mildred Edie herself appeared at the Schlinks' door, and warned that C.R. would be made a "laughing stock." A mock trial was arranged for Schlink at New York City's Town Hall, presided over by Communists Vito Marcantonio and Heywood Broun. And an "impartial" investigating committee went to Consumers' Research to investigate, found that the C.R. management was at fault, and advised it to surrender. The "impartial" committee included Marxist revolutionary Reinhold Niebuhr, an advocate of the violent seizure of the American government, and a member of innumerable Communist organizations such as the American League Against War and Fascism; Marxist revolutionary Roger N. Baldwin, another advocate of violence, and a founder of the pro-Communist A.C.L.U.; Marxist revolutionary George S. Counts, who had set up the schools

in Communist Russia for Lenin; and Marxist revolutionary Norman Thomas, perennial Presidential candidate of the Socialist Party.

Schlink refused to give in, however, so the Communists ordered Trumbull, Kallet, and Miss Jenkins to form a rival organization, which they did. They called it Consumers Union, and began to publish *Consumer Reports*. This is the origin, and these are the founders, of the same organization that is still trying to corral consumers today—which, once again, was the reason the Communists decided to found it.

CONSUMERS UNION: COMMUNIST FRONT

Arthur Kallet was made director of Consumers Union, and by this time, of course, he was a member of the Communist Party. His Party name was "Edward Adams," a phony label for a fanatic advocate of honest labelling. At the time, Don Wharton wrote of Kallet in *Scribner's* for November 1937: ". . . He will tell anyone that he dislikes our economic system, that he feels it is doomed, and that he hopes the Russian experiment works out so well that we shall be compelled to adopt it . . ."

In a book called *Counterfeit: Not Your Money But What It Buys* (New York, Vanguard, 1935), Arthur Kallet himself said this: "It is hopeless to look for legislative remedies . . . . The remedy must be sought not in legislation, but in a fundamental change in our economic system." And he signed a "call" to the Communist Congress of American Revolutionary Writers, which said as follows (*Daily Worker*, January 18, 1935): "The Capitalist system crumbles so rapidly before our eyes that, whereas ten years ago scarcely more than a handful of writers were sufficiently far-sighted and courageous to take a stand for proletarian revolution, today hundreds of poets, novelists, dramatists, critics, short story writers and journalists recognize the necessity of personally helping to accelerate the destruction of Capitalism and the establishment of a workers' government."

One of his co-signers was Earl Browder, general secretary of the Communist Party, U.S.A.

And Arthur Kallet was also affiliated with the following Communist Front organizations: American Committee for Democracy and Intellectual Freedom (sponsor); American Friends of the Chinese People (sponsor); Consumer-Farmer Milk Cooperative (sponsor); Consumers National Federation (sponsor); Coordinating Committee Against Profiteering (sponsor); International Workers Order (sponsor); Jewish People's Committee (sponsor); League for Mutual Aid (member of executive committee); Milk Consumers Protective Committee (member of advisory board); National Council to Aid Agricultural Labor (sponsor); National Federation for Constitutional Liberties (signer of message); New York Peace Association (sponsor); *New Masses* (contributor); Open Letter to American Liberals (signer); *Sunday Worker* (contributor); United Action Against Facism and Anti-Semitism (sponsor); United American Artists (sponsor); and *Health And Hygiene* (editor, contributor, and member of advisory board).

But you can't say Comrade Kallet didn't have a sense of humor. In an issue of *Health And Hygiene* we read the following interchange: *"Question:* My wife fails to experience orgasm. Is this dangerous?

"Answer: Under Capitalism the sex life of woman is abnormal."

The Communist Front organization Kallet founded and called Consumers Union naturally also needed a president. The Comrades picked a professor named Colston E. Warne for the job. I would like to record Warne's record of Communist Front activities in its entirety, but to do so is impossible. They allow us only ninety-six pages per issue of this magazine. Bear in mind as you keep reading that there is much, much more—enough in fact to make Arthur Kallet look like a Rightwing Extremist.

We first hear of Colston Warne at the University of Pittsburgh in 1929, where he collaborated with a Communist named William Albertson in some "civil liberties" agitation. He left the University of Pittsburgh and went to Amherst, in Massachusetts, where he is now. In 1933, he signed a petition issued by the Marxist Fellowship of Reconciliation, asking for the diplomatic recognition of Communist Russia. In 1934, he was a speaker and writer for the Communist *New Masses*, and a member of the national executive committee of the American League Against War and Fascism, a Communist Front. In 1936, he led a tour to Communist Russia, sponsored by a Communist outfit called Open Road. In 1938, he signed a letter issued by the Communists' American Friends of Spanish Democracy. In 1939, Warne spoke at a rally run by the Communists' Boston Coordinating Committee to Lift the Embargo on Loyalist Spain. In 1940, he was a sponsor of the Communists' Conference on Constitutional Liberties in America. In 1941, when Stalin was allied with Hitler by treaty, Warne signed an open letter defending the Communist Party.

In 1942, Colston Warne was a member of the national committee of the Communists' International Juridical Association. In 1945 he signed a statement issued by the Communists' Council for Pan American Democracy. In 1947, he was a sponsor of the Communists' Civil Rights Congress; a member of the board of trustees of the Communists' Samuel Adams School; and, publicly refused to swear an oath of allegiance to the United States. In 1948, he signed a statement defending Communist Party schools, and attended a convention of "intellectuals" in Communist Poland. In 1949, he was a sponsor of the Communists' Bill of Rights Conference. In 1950, Professor Warne signed a letter from the Communists' American Committee for Protection of Foreign Born, in which he protested the government's attempt to deport Communists. In 1951, he was on the letterhead of the Communists' National Committee to Repeal the McCarran Act.

And in 1956, in a document called *The Communist Party Of The United States Of America*, the Senate Internal Security Subcommittee listed Colston E. Warne as one of the "most typical" sponsors of Communist Fronts.

Indeed, former F.B.I. counterspy Herbert Philbrick recalls a gentleman named Nathaniel Mills, whose widowed mother scrimped in her gift shop to send him to Amherst to become a minister; who came under the influence of Colston Warne; who as a result of that influence joined the Communist Party—after which Warne boasted to Philbrick that Mills was one of his "finest protégés."

In fact, it was Mills—one of Warne's "finest protégés"—*who in turn recruited Philbrick.*

So as you have just seen—and remember that what you have just seen is only a sample—Colston E. Warne of Consumers Union is better qualified to run the Communist Party than Gus Hall.

Then there is Dexter Masters, who as you will remember ran the secret Communist meeting at which the plans were laid to capture Consumers' Research. Masters has been in and out of Consumers Union in various official positions for years. He has also been a member of the League of American Writers, a Communist Front. And in April, 1940, he signed a statement issued by the American Committee for Democracy and Intellectual Freedom, another Communist Front.

There is Mildred Edie, who also attended the secret Communist meeting in 1935, and who for years, along with her husband, Robert A. Brady, was an important Consumers Union official. On September 6, 1941, Congressman Martin Dies, chairman of the Special House Committee on Un-American Activities, sent a letter and forty-three exhibits to President Franklin Roosevelt, detailing the Communist affiliation and background of three officials of the Office of Price Administration, and recommending that because of the evidence they should be fired. The three officials he named were Robert A. Brady, Mildred Edie Brady, and Dewey H. Palmer. Palmer, as you will recall, also attended the secret Communist meeting in 1935. As a result of the Dies letter, Mildred Edie Brady quit the government.

There is Adelaide Schulkind, for years a member of Consumers Union's board, and affiliated with the following Communist Fronts: International Labor Defense, League for Mutual Aid, Prestes Defense Committee, Consumers National Federation, Conference on Pan American Democracy, National Emergency Conference, American Committee for Protection of Foreign Born, and Council for Pan American Democracy.

There is Jerome Hellerstein, another Consumer Union official, and a member of the editorial board of the magazine published by the National Lawyers Guild, which is officially cited as "the foremost legal bulwark of the Communist Party."

There is Consumers Union secretary Helen Hall, who in 1938 sponsored the Communist World Youth Congress. In 1939, she was a member of the Medical Bureau and North American Committee to Aid Spanish Democracy, a Communist Front. In 1945, she belonged to a committee trying to reelect Benjamin J. Davis, Communist Party candidate for city council in New York. In 1946, she was a sponsor of the Communists' Win the Peace Conference. In 1947, she was a sponsor of the Committee for a Democratic Far Eastern Policy, a Communist Front. She has been chairman of Consumers National Federation, another Communist Front.

There is Consumers Union board member Persia Campbell, executive secretary of the Consumers National Federation, a Communist Front.

And there is more, much more—once again, I have given you just a sample; it seems almost every Communist who is anybody has been an official of Consumers Union—but the danger approaches that if we continue in this vein this article will begin to resemble a laundry list.

C.U.'S COMMUNIST ACTIVITIES

Since Consumers Union was founded by Communists, and run by Communists, for Communist purposes, it naturally had the support of the Communist apparatus from the beginning. *New Masses, Soviet Russia Today*, and *Fight*, all Communist publications, praised it. *Fraternal Outlook*, published by the International Workers Order, a Communist outfit later dissolved by the government, reprinted many articles from *Consumer Reports*. The Communist *Worker* itself readily gave space to C.U., and in turn used C.U.'s files as the need arose. Indeed, Consumers Union repeatedly ran ads in the Communist *Worker*.

And at the same time, from the very beginning and ever since, Consumers Union has conducted a campaign against advertising, sometimes subtle, sometimes blatant. On December 10, 1939, for instance, in a radio discussion, C.U. president Warne pontificated that "the values insistently pressed upon human consciousness by competitive advertising are those designed to impel an individual to live badly. Using the weapons of fear, of sex, and of material emulation we are driven like sheep toward the specious, the costly, the gaudy and the sensational. . ."

This of course is what we should expect from the president of a Communist Front. Communists have always been opponents of advertising.

In March of 1942, in a speech in Washington to the People's Lobby, Warne recom-

mended that America "develop during the war period a basic government brand of goods in each essential field . . .

"Style would be acceptable, but would be subordinated to the central idea of serviceability. Prices on the 'Victory' model would be set from the raw materials through to the ultimate consumer. Every producer in the field would be compelled to give the bulk of his attention to the production of this design. Forgotten would be the extra gadgets, the advertising and the sales differentiation."

And this, by coincidence, is exactly the same system they have in Russia.

Then there was the case of a gentleman named Ernst Toller. In 1919, he was chairman of the central committee of the Bavarian Soviet, which seized and held power in Bavaria for twenty-five days. His last official act was to murder ten hostages, including a woman, after which he was sent to prison, where he remained until 1924. Along with other Communists, he created the atmosphere which made it possible for Hitler to take control of Germany. In 1938, he was a featured speaker at the Second Annual Meeting of Consumers Union, an experience which apparently unnerved him. He committed suicide some time later.

And there was a lady named Lydia Altschuler, who has been an employee of a Soviet advertising agency, a member of the Communists' National Council of American-Soviet Friendship, a Soviet espionage agent—and for many years educational director of Consumers Union. F.B.I. agent Larry Kerley testified as follows before the House Committee on Un-American Activities: "I was also assigned to check on another spy 'apparatus' with headquarters on Perry Street, New York City. This was the home of a woman named Lydia Altschuler. Her home was a base of operations for a Communist international group which was attempting to assassinate Frank Jacson, the murderer of Leon Trotsky in Mexico City in 1940 . . . Secret writings in letters addressed to the Altschuler 'apparatus' showed a detailed plan for Jacson's assassination."

There was a gentleman named Karl Amatneek, who worker for Consumers Union testing electrical equipment, and who previously had worked for another gentleman named Samuel Novick, head of the Electronic Corporation of America. Novick told the Committee on Un-American Activities that he had made substantial equipment sales to Amtorg, the official Soviet Government trade agency.

And a number of board members of Consumers Union have been neck-deep in an outfit called the American Association of Scientific Workers, the American affiliate of the World Federation of Scientific Workers. The Communists formed the latter in 1946. Its president was Professor Frédéric Joliot-Curie, a member of the central executive committee of the Communist Party of France. And one of its purposes was to facilitate Soviet espionage. For instance, Professor Raymond Boyer, president of the Canadian Association of Scientific Workers, another of its affiliates, was convicted of Soviet espionage and sent to jail. So was Professor Allan Nunn May, of the executive committee of the Canadian Association.

On one occasion, the national officers of the American Association, including Professors Theodor Rosebury and Lawrence B. Arguimbau, sent a telegram to French Premier Georges Bidault. It began as follows: "We the undersigned, officers of the American Association of Scientific Workers, view with profound regret the dismissal of Dr. Frédéric Joliot-Curie from his post as High Commissioner of Atomic Energy in your country."

Arguimbau later admitted he was a Communist and was convicted of contempt of Congress. Rosebury was connected with the Communist Front National Council of the Arts, Sciences and Professions, and with the Communist Front Mid-Century Conference for Peace.

The national secretary of the American Association of Scientific Workers was Professor Harry Grundfest, of the Communists' National Council of American-Soviet Friendship, who refused to deny under oath that he was a Communist and was therefore denied a passport.

The point is that all three of these worthies—Grundfest, Arguimbau, and Rosebury—have been members of the board of Consumers Union.

Indeed, at the annual meeting of the American Association in 1939, Colston E. Warne was the principal speaker. And in 1940, there was a joint conference at Amherst of Consumers Union and a local American Association branch, at which Communist Arthur Kallet, C.U.'s director, said this: "As many of you know, for some time now there has been close cooperation between the American Association of Scientific Workers and Consumers Union. Up until a short time ago, the Boston-Cambridge branch was the only branch of the Association participating in the work. I am happy to say that arrangements with other branches have been approaching completion so that during the coming year we will see a larger scale of cooperation."

Finally, there was an outfit called the Federation of Architects, Engineers, Chemists, and Technicians, run by Soviet spy Marcel Scherer for espionage purposes. Paul Crouch, at the time a top Communist official, was present in Party headquarters when Scherer was authorized to set it up. Crouch at one time had been Walter Trumbull's Party boss, and had been convicted, along with that Consumers Union founder, of Communist activities in the Army.

Needless to say, Colston E. Warne was a member of the espionage-based Federation that Scherer ran.

Indeed, Crouch, who later broke with the Communists, afterward wrote as follows of Consumers Union and a gentleman named Harold Aaron (*Facts Forum News*, April, 1955): ". . . Dr. Aaron, head of the Consumers Union medical department, was for years my personal physician—assigned by the national office of the Communist Party to treat me without fees when I was a leading Red official. I have participated in important policy conferences with both Dr. Aaron and Mr. Kallet, and I have firsthand knowledge of the real aims of the organization headed by them.

"The work of the Consumers Union contributed greatly to Communist progress in medical and scientific fields. *Membership and activities in the Consumers Union gave Communists a 'legitimate' excuse for their interest in all technological advances and the latest and most efficient manufacturing methods.* The work of the organization was self-supporting, avoiding the necessity of financial outlay by the Party. Communist scientists were able to recruit their friends into a well-concealed Red front and gradually bring them closer and closer to the Party itself. *The department headed by Scherer was greatly benefited by the new organization headed by Mr. Kallet.*" [Emphasis added.]

What Crouch is saying in short is that the Communists used Consumers Union as a cover for Soviet espionage!

Indeed, F.B.I. counterspy Herbert Philbrick further reports that Nathaniel Mills—the Colston Warne protégé who recruited him into the Party—was at one time ordered by the Party to infiltrate General Electric, as part of the Communist espionage strategy of "colonization."

C.U. AND THE COMMITTEE

In 1944, the House Committee on Un-American Activities cited Consumers Union as a Communist Front. In 1954, in its annual report, the Committee deleted the citation. And no one has ever been able to find out why. We are told only that the Committee met in executive session and so decided. Exactly what happened and what was said is a secret. Perhaps Richard Nixon, the enemy of secrecy, can find out. To delete Consumers Union from a list of subversive organizations was tantamount to deleting the Communist Party. Furthermore, the Committee on Un-American Activities was not the only government agency that called Consumers Union Communist. In the entry for Consumers Union in the *Guide To Subversive Organizations And Publications* from 1944 to 1954, we learn that Consumers Union has not only been cited as Communist by the Committee on Un-American Activities (which publishes the *Guide*), but also by the Special Subcommittee of the House Committee on Appropriations; by the California Committee on Un-American Activities; and by the Pennsylvania Commonwealth Counsel before the reviewing board of the Philadelphia County Board of Assistance; and, that it was even so denounced by the New York City Council Committee investigating the Municipal Civil Service Commission.

How did it happen that the Committee deleted not only its own citation, but all these others?

Not long after this, a gentleman named Paul J. Kern resigned from the board of Consumers Union. He had been a member for eighteen years. He is a thoroughly reliable witness on this score because he has also been a member of the Communist Front National Lawyers Guild; of the Communist Front Medical Bureau and North American Committee to Aid Spanish Democracy; of the Communist Front Consumers National Federation; of the Communist Front American Labor Party; of the Communist Front National Federation for Constitutional Liberties; and, of the Communist Front American League for Peace and Democracy—among many others.

In his letter of resignation, Kern said as follows: "To my mind no adequate statement has been made to the Board of the work to be performed by Mr. Reeves for $1,000 a month in Washington."

It would be nice to know. The Reeves he refers to is Albert L. Reeves Jr., of the Washington law firm of Cummings, Sellers, Reeves & Conner. In an explanatory letter dated March 30, 1954, Reeves wrote: ". . . Some months ago Consumers Union had applied to the Committee for the removal of the listings and had requested an opportunity to appear and be heard. The request was granted, and Mr. Arthur Kallet, Director of Consumers Union, appeared before the Committee as a witness, and the undersigned appeared as counsel. Mr. Kallet testified at length and introduced numerous exhibits. Each and all of the items listed in the 'Guide' were specifically covered by his testimony, and the history and record were reviewed in detail. The Committee's action followed."

So Arthur Kallet, a Communist espionage agent, testifies that Consumers Union is not Communist—and the *House Committee on Un-American Activities* buys it. Exactly which Committee members were present, heard the testimony, and made the decision—and what, if anything, helped them make it—we don't yet know.

If, after reading all of this, you take the trouble to write Consumers Union for an explanation, you will probably receive a letter expressing "regret that there are those in our country still resorting to smear tactics," and righteously claiming that C.U. has been "cleared." You will be told that C.U. board members "are chosen through open annual elections by our membership," which is true, except that only the board can *nominate* board members. And you will

be told that "Consumers Union never had anything to do with the Communist Party" which is a lie.

You will not be told of the other government agencies that also cited Consumers Union as a Communist Front.

It is also important to record that, by means of a letter and many telephone calls, the editors of AMERICAN OPINION requested a meeting with Warne or with any other C.U. representative, to get its side of the story—and that Consumers Union turned us down.

SAME OLD LINE

To clear itself of charges of Communist control, an organization like Consumers Union must first admit that it *has been* Communist-controlled. But as we have seen, C.U. self-righteously doesn't do this. Another thing it must obviously do is remove the Communists who control it. So now let us see who controlled C.U. after it was "cleared." After it was "cleared," Communist Arthur Kallet was still its director. He was succeeded by Dexter Masters, who ran the secret Communist meeting that led to the Communist strike at Consumers' Research. Mildred Edie Brady was editorial director of C.U. She too had attended that Communist meeting, and had been forced out of the government for her Communist affiliations. Colston Warne was still its president. Jerome Hellerstein, of the Communist Front National Lawyers Guild, was still a member of the board. Helen Hall, of the Communist Front Consumers National Federation, was still its secretary. She was succeeded by Persia Campbell, also of the Consumers National Federation.

And there is Consumers Union's educational director, James Mendenhall. The late F.B.I. counterspy Elizabeth Bentley testified that Dr. James Mendenhall was one of the Communists who recruited her into the Party. Indeed, Dr. Benjamin Fine also testified that he knew Mendenhall was a Communist—which must be true because Fine has been education editor of the *New York Times*.

And, finally, if an organization frees itself from Communist control, it naturally shows a change not only in its personnel but in their activities. For instance, J. B. Matthews, vice president of Consumers' Research, and a Communist fellow-traveller, later did much valuable work to expose the Communists while on the staff of the House Committee on Un-American Activities. So in his own way has F. J. Schlink, president of Consumer's Research, who in the Twenties was a financial contributor to the Communist International Labor Defense, and a lecturer for the Marxist revolutionary League for Industrial Democracy.

So now let us take a look at what the Consumers Union leaders have been doing since they were so mysteriously "cleared." In 1961, for instance, Colston E. Warne was a member of the Methodist Federation for Social Action, previously cited as a Communist Front in the documents of the same House Committee on Un-American Activities that "cleared" C.U. In 1963 and 1964, he was a sponsor of the Highlander Research and Education Center. the new name for a Communist training camp called the Highlander Folk School, which in 1960 had been closed by the State of Tennessee. And in 1965, he was a sponsor of the National Teach-in on the Vietnam War, which the Senate Internal Security Subcommittee reviewed in a study entitled *The Anti-Vietnam Agitation And The Teach-In Movement: The Problem Of Communist Infiltration And Exploitation*

Then there are C.U.'s educational activities. In 1961, for instance, it gave money to radio station KPFK in Los Angeles, part of the Pacifica Foundation chain, to produce some documentaries on "consumer problems." Station KPFK was the appropriate choice, because among its broadcasting stars were such Communists as Dorothy Healey, Paul Robeson, Helen Sobell, and Rockwell Kent. Indeed, in *Advertising Age* of July 26, 1965, we learn that James Mendenhall, Consumers Union's educational director, who was identified under oath as a Communist, is developing a course to teach American high school students "how to shop." In what no doubt is just coincidence, the Department of Health, Education and Welfare recently gave Consumers Union some $250,000 of tax money to develop "consumer education" material.

And there is the perennial Communist campaign against advertising. In October of 1962, after C.U. was "cleared," Warne explained in the *Journal Of Marketing* that "insofar as advertising does succeed in destroying rational choice of goods by appealing to irrational motives, it is contributing to the time when we may find ourselves a have-not nation with respect to important resources; and advertising is also substituting tinsel for substance in our living standard. . . ." As usual, he criticized brand names, and he issued what he called a "*consumer* manifesto"—probably a slip of the typewriter—in which he explained that the airwaves and the countryside are owned by the consumer, and that advertising should be further regulated by legislation.

And in 1966, in *Challenge* (November-December), Warne again attacks name brands, and adds an attack on the envy of the rest of the world, our supermarkets: ". . . Our cities and towns have become encircled with vast structures, beckoning the buyer with neon signs and a bewildering display of competitive brands and sanitized packages."

Indeed, C.U. is apparently also against simple buying and selling. In *The Intelligent Buyer's Guide To Sellers* (Mount Vernon, New York, Consumers Union, 1965), Dexter Masters explains as follows: ". . . from the buyer-seller relationship the seller typically achieves something which . . . the buyer does not; the seller succeeds, the buyer fails; the seller is a success, the buyer is a failure; successes look down on failure, and nice guy finish last."

Consumers Union's concern for honest labelling is touching. Some years ago, Masters was a contestant on a television quiz show and won $500. And C.U. public relations man Hank Bloomgarden won $98,500. And C.U. dictionary consultant Charles Van Doren won $129,000. Man, you talk about private enterprise!

The show they were on was called "Twenty One." As you may remember, it was later exposed as a rigged fraud.

Then there was the Armstrong Cork Company, which sponsored some television shows exposing Communism. In October of 1961, *Consumer Reports* did a job on vinyl floor tiles, in which the Armstrong product "ranked so far behind the others that it was placed in a separate, lower category." There was the manufacturer of men's suits who rated men's suits for Consumers Union, and as chance would have it liked his own best. And in 1971, the Bose Corporation filed suit for $500,000 against Consumers Union, charging that A.L. Seligson, C.U.'s audio technician, who gave bad marks to the Bose 901 loudspeaker system, holds a patent on a potentially competitive product. The C.U. evaluation, says Bose, is "biased and fraudulent."

Indeed, Consumers' Research once received a $2,400 check mistakenly sent to it by the Ford Motor Company, and meant for Consumers Union. Consumers' Research is still wondering what the check was for.

GOVERNMENT CONTROLS

And finally there is the fact that Communism is One Hundred Percent Government. All Communists everywhere want total government control of everything. On July 23, 1937, for instance, in a speech at Wellesley, Professor Warne said as follows: "The economic system will be in perpetual ill balance under the present system. Future crises are inevitable unless some drastic economic reorganization is effected. We have much to learn from the economic planning of the Soviet Union. It is no longer valid to decry Communism and Socialism as undemocratic foreign growths. . . ."

In March of 1942, he said to the People's Lobby: "In America, it is becoming increasingly evident that the coordination of industrial enterprise must be undertaken through government control or operation." In the summer of 1945, at the end of the war, he told the People's Lobby that we should "retain and expand public ownership."

Congress, Colston Warne said elsewhere, should "make processors and distributors of farm products agencies of the government, with equipment and distribution facilities pooled. . . ."

And in 1957, according to *Time* (August 12, 1957), Warne "wanted Consumers Union to use its prestige with consumers to influence U.S. economic policy."

For instance, in 1962, President John Kennedy organized a Consumers Advisory Council, the twelve members of which included five C.U. agents, such as Colston Warne and Persia Campbell. In 1964, President Lyndon Johnson appointed a new Consumers Advisory Council, which included C.U. board member Helen Nelson and former board member Sidney Margolius. In 1966, it issued a report filled with the usual attacks on business and advertising—and recommending the creation of a Federal Department of Consumers in the Cabinet, which of course was exactly what the Communist Front Consumers Union had advocated in 1936, in the very first issue of *Consumer Reports*. Such a new federal department would have the power to pry into every corner of our private lives.

From the very beginning, Consumers Union has done everything possible to organize consumers into a "proletariat," and to lead it in a demand that the government take total power over everything—the name of which, in a word, once again, is Communism.

Which brings us, of course, to a gentleman named Ralph Nader, a member of Consumers Union's board since 1968. We first hear of Ralph when he defeats General Motors, after which "defeat" G.M. adds to its profits with a booming business in seat belts. Ralph is very worried about our safety. Indeed, word has it that the new safety requirements he advocates would add $755 to the price of the average car.

At one time, Ralph was a consulting editor for an underground publication called *Mayday*, now known as *Hard Times*, which describes itself as "ammunition in an arsenal of guerrilla journalism," and which is aided by the Radical Education Project of the Communist outfit known as Students for a Democratic Society. It publishes such worthies as Andrew Kopkind of S.D.S., Marxist revolutionary Ernest Mandel, and Robin Blackburn, who calls for "the violent overthrow of the Capitalist system."

Nader's Center for the Study of Responsive Law is financed by various foundations such as Field, which also finances the Southern Christian Leadership Conference, staffed for years by Communist Hunter Pitts O'Dell; the New World Foundation, which was founded to investigate "communication between the seen and unseen worlds" (don't ask me); and, the Stern Family Fund, which has contributed to the Marxist revolutionary League for Industrial Democracy—which published one of Nader's books: *Who Speaks For the Consumer?* Indeed, the League for Industrial Democracy—headed by Socialist Party Chairman Michael Harrington—gave Nader its annual award in 1970.

Nader's Center for Auto Safety is of course supported by Consumers Union.

Now, what does Ralph Nader want? Well, he wants corporate executives jailed if their companies don't behave as Nader thinks they should. He wants a government rating system for every consumer product. He wants a "federal charter" for all corporations, and an attack on pollution "with maximum use of known technology and down to zero profits." He wants companies to appoint someone "who is responsible for compliance with Federal regulations." He wants company trade secrets—which may cost millions—exposed. He wants The People to elect members to corporation boards of directors. He wants to put companies out of business if they don't entirely please him.

Indeed, his Clearinghouse for Professional Responsibility is using "whistle blowers," a Nader euphemism for spies, who report to him what is going on in industry—which raises the interesting question of where his good friend Jack Anderson got the so-called goods on I.T. & T.

And the only thing wrong with all this is that if Nader is successful, the result will be complete government control of everything—totalitarian dictatorship, which Nader claims to be against. *Only* a totalitarian government—run by the businessmen-bureaucrats he "opposes"—could supervise all the "reforms" he recommends. Indeed, if H.R. 10835 and S. 1177, currently in Congress, succeed in establishing the Consumer Protection Agency that Nader and Consumers Union back, totalitarian control is exactly what we will get.

It was the co-editor of *Hard Times* who explained what Nader really wants: ". . . Nader's fundamental task is not so much to protect the consumer, as it is to organize his own constituency, the legal profession, for assumption of power in a post-industrial society."

In other words, he is simply *using* consumers, and the many perfectly honest people in "consumerism," in order to win power for himself. He has even been seriously mentioned as a possible candidate for President.

There is another name for the system Consumers Union and board member Ralph Nader are demanding. The name is "Fascism." That's what Mussolini called it when he did *exactly the same thing* in Fascist Italy. And the only difference between Fascism and Communism is the symbol on their respective armbands. It was the Communists who brought Hitler to power on orders from Stalin in 1933, thinking they could "handle" him.

"Consumerism," as we have seen, is a fraud. There already are plenty of laws to deal with dishonest businessmen. They should be enforced. There is also nothing wrong with an honest magazine rating consumer products, but Consumers Union is using consumers for other purposes. Is it the Communist Front organization it was founded to be? Well, the California Committee on Un-American Activities said so. The Special Subcommittee of the House Committee on Appropriations said so. The Pennsylvania Commonwealth Counsel said so.

Maybe I'm wrong, but that's good enough for me.

[From The Herald of Freedom]

TREASON IS THE REASON—847 REASONS FOR INVESTIGATING THE STATE DEPARTMENT

(By Frank A. Capell)

Mrs. Esther Peterson is the Assistant Secretary of Labor in charge of Labor Standards. She was appointed by Pres. Kennedy and is a hold-over from the last administration. She is also a Presidential Assistant on Consumers Affairs. Some labor leaders, who are Mrs. Peterson's old friends, have been recommending her for a full Cabinet post.

Esther Eggertsen Peterson is the daughter of Lars Eggertsen and the former Annie Nielsen. She grew up at Provo, Utah, where she attended school and her father was Superintendent of Schools. She graduated from Brigham Young University in 1927 and received her M.A. from Columbia University in 1930. She married Oliver Arthur Peterson on May 28, 1932. Mrs. Peterson began teaching in 1927 at an Agricultural College in Cedar City, Utah. She then taught at the Boston YWCA in the Industrial Department. She worked for Sidney Hillman's (Hubert Humphrey's "great American") Amalgamated Clothing Workers of America as Educational Director and as Washington, D.C. Legislative Representative. She later became the Legislative Representative for the Industrial Union Department of the AFL–CIO.

Her husband, Oliver Arthur Peterson, was born in Crookston, Minn., June 14, 1903, the son of Ole Sigvart and the former Astrid Bjorge. He graduated from the University of North Dakota and did post-graduate work at Columbia University and Harvard University. He worked for the YMCA from 1927 to 1929 in Boston and from 1929 to 1933 in Brooklyn. He then became a paid employee of the American Labor Party, doing field work from 1934 to 1936. He worked for the WPA from 1936 to 1941, the OPA from 1941 to 1946, the Department of Agriculture from 1946 to 1947 and the Stimson Committee for the Marshall Plan from 1947 to 1948. He went with the State Department as Labor Attache at the American Embassy in Stockholm from 1948 to 1952. He was Attache at the American Embassy in Brussels from 1952 to 1957 and then became Labor Adviser for the Bureau of African Affairs, Department of State, in 1958. He is now retired on a pension from the State Department.

Mrs. Peterson was a member of the American Labor Party from 1939 through 1943 at a time when it was heavily infiltrated by communists. Intelligence Agencies of our Government were advised by confidential and reliable informants that both Esther and Oliver Peterson were reported as having been secret members of the Communist Party for a period of at least thirteen years during the 1930's and 1940's. They maintained a close personal relationship over a period of years with a long list of individuals known to be communists and either actually engaged in espionage work on behalf of the Soviet Union or cooperated with communist espionage agents. Among those whom they were friends of, met with socially, and attended secret meetings with were Mr. and Mrs. Henry H. Collins, Jr. who had an apartment located in the St. Matthew Court Apartments, Washington, D.C. and in whose apartment key individuals in the Washington, D.C. underground communist espionage apparatus met secretly. It was reported to security agencies that Henry Collins had given an extra key for this apartment to the Petersons so they could meet there with the underground members. It was also reported that federal agents have a record of at least fifteen meetings of one or both of the Petersons with Henry H. Collins, Jr. prior to 1942 and three additional ones after 1945. Collins was reported as having been critical of Mrs. Peterson for not holding strictly to the Communist Party Line. This was one in the presence of Mr. Collins, the former Susan B. Anthony III. The Petersons lived for a time in an apartment at 411 West 114th St., New York, N.Y. and were reported as having entertained Mr and Mrs. Collins at this apartment. Henry Collins owned a country place at White Pines, Lanham. Maryland, and the Petersons were reported as having visited the Collins' here as late as 1947. Collins was identified as a communist and espionage agent by Whittaker Chambers. He had worked for the NRA, the Agriculture Department, the Labor Department, the House Committee on Small Business, the Senate Sub-Committee on Technical Mobilization, the State Department Displaced Persons Program, and the Intergovernmental Committee on Refugees. He had been a Major in the U.S. Army. Collins took the Fifth Amendment in regard to his Communist Party affiliation.

The Petersons were reported as close friends, contacts, and fellow users of Collins' apartment with John Abt. He too was identified as a communist and espionage agent by Whittaker Chambers and also by Elizabeth Bentley. Abt was General Counsel for Sidney Hillman's Amalgamated Clothing Workers of America where Mrs. Peterson had worked. Abt was Attorney for the Agricultural Adjustment Administration, was Assistant General Counsel for the WPA where Oliver Peterson worked. Abt was Special Counsel for the Securities and Exchange Commission, Chief Counsel for the LaFollette Committee on which Alger Hiss worked and was a Special Assistant to the Attorney General of the United States in charge of antitrust case prosecutions.

The Petersons were reported as close friends and contacts of Charles Kramer (Krivitsky) and his wife, who also used the Collins' apartment. Kramer was identified by both Whittaker Chambers and Elizabeth Bentley as being a communist underground member and engaged in espionage for the Soviet Union. Kramer had been a Staff Member of Senator Kilgore's Committee doing investigation work. He was an employee of the Agricultural Adjustment Administration, the National Youth Administration, the LaFollette Senate Committee, the National Labor Relations Board, the Senate Committee on War Mobilization and the Senate Committee on Wartime Health and Education. When questioned before a Congressional Committee, he took the Fifth Amendment concerning his Communist Party membership and activities.

The Petersons were reported as being close friends and contacts of Mr. and Mrs. Victor Perlo who also used the Collins apartment. Perlo was identified by both Whittaker Chambers and Elizabeth Bentley in sworn testimony as being both a communist and an espionage agent for the Soviet Union. He took the Fifth Amendment regarding his Communist Party membership and activities. Perlo was employed by the Office of Price Administration as was Mr. Peterson. He also worked for the National Recovery Administration, the Home Owners Loan Corporation, the Commerce Department and the War Production Board where he dealt with military aircraft production. He now writes for the communist paper THE WORKER.

The Petersons were reported as being close friends and contacts of Mr. and Mrs. Lee Pressman who also used the Collins' apartment. Lee Pressman was identified by Whittaker Chambers as being a member of the communist underground apparatus in Washington, D.C. Pressman was Assistant General Counsel of the Agricultural Adjustment Administration where Abe Fortas and Adlai Stevenson worked. He was the General Counsel of the Works Progress Administration where Peterson worked. He was General Counsel for the Congress of Industrial Unions of which Mrs. Peterson's employer was an affiliate and Sidney Hillman was the key figure in both. Prssman admitted his Communist Party membership in a hearing before the HCUA.

The Petersons were good friends of Lydia Altschuler (Mrs. Eric Strong) who had affiliations with communist-fronts. She was active in the Consumers Union which was headed by Arthur Kallet, alias Edward Adams, who was a writer for the DAILY WORKER. She signed a letter, sent to Union delegates, which showed on the Advisory Committee such well known radicals as Ben Gold of the Furriers Union. Louis Weinstock of the Printers Union, and Jacob Potofsky who was one of Mrs. Peterson's superiors at the Amalgamated Clothing Workers Union and who has since become President of the Union, succeeding the late Sidney Hillman. Mrs. Peterson is now going about the country advising the American public to form Con-

sumers Unions, similar to this old discredited communist-front.

Another good friend, associate, and contact of the Petersons was Harriet Bouslog (Mrs. Howard Sawyer) who was the Legislative Representative of the International Ladies Garment Workers Union, headed by David Dubinsky. Harriet Bouslog was identified as a Communist Party member in sworn testimony before the HCUA in 1951 and again in 1953.

The Petersons were close friends of Marie Josephine Reed (Mrs. Fred Haug) who had strong pro-Soviet sympathies and was mentioned many times in Congressional Hearings. She allowed her name to be used openly in support of the Communist Party.

The Collins were repaying the Petersons when they permitted the use of their apartment by the Petersons. After Henry Collins married Susan B. Anthony III in 1940 they used the Peterson's apartment at 411 West 114th St., New York, for a week. The Petersons were contacts of Henry Collins, communist and Soviet espionage agent, before his marriage and of both Mr. and Mrs. Collins afterwards.

Oliver Peterson was a radical left-winger from his early days. After he married Esther and they were located in Boston he was an instructor on the side for a Workers School located in the New International Hall, 42 Winona Street, Boston, Mass., in which lectures, meetings, and social affairs were also held. Peterson's father died and his mother remarried a man named Iver P. Wick who was a radical longshoreman. The Petersons often visited his mother and stepfather at 3008 Pershing Way, Long View, Washington, and at 2702 Louisiana Street, Long View, Washington. The stepfather was reportedly one of Harry Bridges' men and was known to subscribe to communist papers and publications.

Mrs. Peterson was a registered member of the American Labor Party and is reported as having paid dues to them for at least four years. She was active in the ALP when they sponsored Vito Marcantonio, a communist, for election to Congress. Her husband was a paid employee of the ALP for two years. Mrs. Peterson was well known in the N.Y. Teachers Union and was a dues-paying member. This Union had been barred from representing teachers in New York City for thirteen years because it was communist-controlled. Mrs. Peterson is remembered by a former official of the Teachers Union as a person who claimed to be a socialist but who was most cooperative with the communist leadership in the Union and their communist programs. She was a friend and associate of important communists in the Union who were busy indoctrinating the youth of our country into the Marxist philosophy in schools and colleges.

Mrs. Peterson also most actively assisted the communists in their drive to raise funds for the communists in Spain during the days of the Abraham Lincoln Brigade and the Spanish Revolution. The Petersons became interested in the "emerging African nations" while Oliver was the Labor Adviser of the Bureau of African Affairs. Mrs. Peterson became active in the Women's Africa Committee of 345 East 46th St., New York City. She became a member and one of their advisers. According to their literature, the Womens Africa Committee is a division of the African-American Institute and they provide a clearing house for American women's organizations with African interests. They act as a reference center, sponsor meetings of interested organizations to discuss mutual problems.

While Oliver Peterson was the Labor Attache at the U.S. Embassies in Sweden and Belgium from 1948 to 1957, Mrs. Peterson was visiting with and in close contact with Swedish and Belgian Union representatives. She was made Vice Chairman of the President's Committee on the Status of Women and was the official representative of the U.S. Department of Labor at the Pan-Pacific Conferences held at Manila, P.I., in 1963.

Mrs. Peterson is active in the National Consumers League and is now working on "Consumers Affairs." She and her assistant, Bel Rubenstein, have been corresponding with a number of people on the "High Cost of Dying." This subject was given much publicity through a book on the same subject by Jessica Milford (Decca Treuhaft) who has been identified as a communist. Forming of cooperatives, as with all enterprise, is recommended by the communists. Mrs. Peterson was also head of the Womens Bureau of the U.S. Government until recently when her place was taken by Mrs. Mary Keyserling who, under her maiden name of Mary Dublin, has a long history of affiliations with communist fronts.

Esther Peterson came into U.S. Government service as Assistant Secretary of Labor. In the normal course of events the Head of the Department is supplied with a security report which is the result of a full field investigation. In this case the Department Head was Arthur Goldberg who was Secretary of Labor at the time. In spite of all the known facts concerning Mrs. Peterson's background the Secretary of Labor found her acceptable.

GALA OCCASION IN BUFFALO AS JOHN WRIGHT MARKS 100TH

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. DULSKI. Mr. Speaker, today marks the 100th birthday of a well known and highly respected resident of my district, John W. Wright.

Born in Lynchburg, Va., he has been a resident of Buffalo, N.Y., for more than half a century. He was a natural craftsman who acquired the skill of a caster in brass and gained a high reputation for workmanship in his more than 40 years in the business.

He came to Buffalo from Detroit in 1916 and immediately obtained employment as a skilled caster for the Buffalo Brass and Copper Rolling Mill. This company, as well as the company where he worked in Detroit, are predecessors of the Anaconda American Brass Co., which continues to have a Buffalo division.

Most impressive to me were the letters which Mr. Wright received from top executives of Anaconda American, including President R. H. Van Horn, congratulating Mr. Wright on his birthday anniversary and highly complimenting him for his loyal service as a long-time employee.

Kenneth M. Kinsey, vice president-employee relations for Anaconda American, wrote that—

I well remember Jack during the years between 1939, when I started with the company, and 1952, when he retired. I am sure he probably recalls my father also, who was labor supervisor back in the 1920's.

Jack was a truly remarkable employee in every way and his achievements and contributions as a "master of casting" are still legendary. Please convey to him my heartiest best wishes on this occasion. May he go on to see many more birthdays.

SOME 400 AT CHURCH RECEPTION

Last evening at the Bethel A.M.E. Church in Buffalo, some 400 persons gathered for a communion-reception honoring Mr. Wright. The assistant minister, Rev. Thomas Moore, presided and was assisted by the church choir. Mr. Wright is a former church trustee and devoted much time over the years to church affairs.

Unfortunately, my congressional duties prevented me from attending the birthday reception. But I did arrange to have presented to Mr. Wright from me a U.S. flag which had been flown over the U.S. Capitol especially for him.

Further, as a result of my request, Mr. Wright received a letter from President Nixon which was read to the assembled gathering. He also received a letter from Governor Rockefeller. The key to the city of Buffalo was presented to him on behalf of Mayor Sedita by the mayor's confidential assistant, Judy Johnson. Present from the Erie County government was the county executive, the Honorable Edward V. Regan.

This afternoon, shortly after lunch, a busload of 25 kindergarten children from the Build Academy—located in old school 32 in the heart of Buffalo's poorer section—arrived at Mr. Wright's home. They presented him with a cake and then serenaded him with a rendition of happy birthday and all the verses of the Negro national anthem. It was truly an impressive and touching salute to the still-wiry centenarian.

While employed with the brass companies, Mr. Wright was a loyal member of the United Steelworkers of America—AFL–CIO. Local 593 sent him a gift on the occasion.

At the request of his daughter, Mrs. Edith B. Robinson, Anaconda American searched its employment records on the service of Mr. Wright. Here is the revealing report provided by K. H. Bald, employee relations manager for the Buffalo division of Anaconda American:

REPORT

Since I did not join the Buffalo Division until 1966 I did not know your father personally. I have searched our meager records and the memories of some of his fellow workers and supervisors who are still working for us, and it has given me great pleasure to discover during my research what a remarkable and outstanding employee your father was.

Checking into Mr. Wright's employment history was somewhat like checking into the history of our Company and the Brass Industry. "Jack", as he was known to his friends here, started to work as a Caster for the Buffalo Brass and Copper Rolling Mill on April 9, 1916, at the age of 44, approximately one year before this mill was bought by the American Brass Company and became the Buffalo Division.

His association with our Company goes back further, however, because before coming to Buffalo he worked for the Detroit Brass and Copper Company, which became part of American Brass in 1927. We have no record about the length or dates of his employment at Detroit, but there is an affidavit from one of his foremen stating that he worked with John W Wright at the Detroit Brass and Copper Company before they both came to Buffalo.

Judging from the fact that your father was employed here immediately as a Caster, a highly skilled and specialized occupation, I assume he worked as a Caster at Detroit also.

In October 1919 he quit our employ to leave town, but returned in May 1921. From then until November 1949, when he was over

77 years old, he worked as a Caster, tending various types of casting furnaces, from primitive pit furnaces to electric furnaces.

Despite the fact that casting was one of the physically most demanding and hazardous occupations in those days, his record shows only one injury of significance, which is not only an unbelievable safety record, but illustrates much better than anything I can say his exceptional competence and carefulness.

Aside from his unmatched safety record he also had an outstanding work record and is remembered as one of the finest, most dependable and conscientious employees that ever worked here.

Jack retired on December 1, 1952 at the age of 80 years and 8 months and I am sure he would have stayed on longer had his eyes not been failing him. I enclose a picture of him which was taken in 1941 for his plant identification badge, and I am sure you will agree it would be very difficult to find another 69 year old gentleman looking as vital and young as he does in this snapshot.

I hope your father has enjoyed his years of retirement in good health and I pray the Lord will continue to bless him. It was most gratifying to hear from you that he has fond memories of his association with our Division, and I can assure you that the feeling is entirely mutual. He was one in a thousand and I am indebted to your letter to become aware of his existence.

WORK SAFETY

HON. PHILLIP BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 29, 1972

Mr. BURTON. Mr. Speaker, Congressman STEIGER has presented some additional information as to problems involved in the enforcement of the Occupational Safety and Health Act. However, other available evidence now indicates that these problems of implementation are largely the unnecessary result of a gross misapplication of priorities in allocating the limited number of inspectors. In other words, the administration has, for reasons best known to itself, decided to conduct some inspections in areas that do not involve target industries nor other apparent significant safety or health problems. The net result of this decision is necessarily to deprive certain groups of workers of needed protection. More importantly, this Labor Department decision to allocate inspectors for low-priority work is in clear violation of the mandate—in the legislative history of this act—to preserve the maximum number of lives with the available inspection resources.

This is not the first time that the Labor Department has unilaterally deviated from the clear intent of Congress. In the 15 months which have passed since this act was passed, the facts show that the Department of Labor, acting for the Nixon administration in implementing that act, has compiled a record of arbitrary and ill-founded actions and decisions which even a charitable description would call antiworker, if not antihuman. For example, the Nixon record shows that the Department of Labor has engaged in arbitrary and unlawful delays in meeting the act's mandatory deadlines. No adequate reasons existed or were even offered. The complete labor record of the Nixon administration shows numerous other examples of open hostility to the letter and spirit of that law and to the interests of working men and women.

One of the problems which the Congress has been most aggrieved is the unnecessary secrecy of the Department of Labor. This deprives the Congress of the information as to the full extent of all of the actions which are being taken to undermine this law by the Department of Labor.

Fortunately, however, the actual record has been and is being compiled by others outside the administration. The best of this is being compiled by several members of the Washington press corps. Among these persons are: Stewart Udall and Jeff Stansbury, editors of Our Environment, and Frank Wallick, editor of the Washington Report, published weekly by the United Automobile Workers.

The Udall report covers a wide range of matters very capably. The UAW's Washington Report is a weekly publication primarily sent to local unions around the country; fortunately, however, one copy often finds its way to me. I am regularly impressed with its accuracy, scope, and basic sense of humanity. I also note that the March 17, 1972, issue of "Worker Power" contains an excellent article further documenting the outrageous misbehavior, intentional underfunding, and outright illegalities which have characterized the Nixon administration's refusal to enforce the Occupational Safety and Health Act.

In addition to these documents, the sorry record of the Nixon regime is being regularly compiled by the Oil, Chemical & Atomic Workers Union, whose Washington office is led by the very able Tony Mazzocchi. That office has regularly given both help and information to workers who were attempting to have the law enforced. The OCAW has also distinguished itself by its particular diligence in pursuing its legal rights in the courts and in testifying before the Congress. The OCAW has filed substantial challenges to the OSHA enforcement policies of the Department of Labor. The legal complaints in those cases along with some of the other materials referenced above, are included at this point in the RECORD for the benefit of my colleagues:

LIFE AND LIMB

(By Dr. Alice Watts)

The Occupational Health and Safety Law of 1970 supposedly guarantees every worker in America a safe and healthful workplace. The preamble to the law states that its purpose is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions . . ." However, the law is sorely lacking in many respects, and is unlikely to come anywhere near accomplishing its lofty purpose.

The law is based on a series of standards which cover the conditions of the work environment. These standards are to be set by the Secretary of Labor. The secretary derives the standards from the recommendations of such semi-official bodies as the American Conference of Government Industrial Hygienists—a committee made up of government and business representatives, who decide by "consensus" the maximum amount of poisons to which workers can be exposed in the context of economic feasibility.

DEATH STANDARDS

The noise guidelines provide a good example of how such standards are set. Government officials wanted a standard of 85 decibels, the level above which all scientists agree some loss of hearing occurs among a moderate percentage (about 3–6 percent) of the exposed population. General Motors and other companies objected, saying that they could not meet this standard. So, a compromise of 90 decibels was reached.

The difference between 85 decibels and 90 decibels is an increase of about 7 times in noise intensity. Ninety decibels guarantees serious deafness to a large percentage (15–20 percent) of the workers exposed.

Another interesting aspect of noise is that all other industrial countries but the United States recognize that noise can cause heart disease, hormone imbalance, and other physiologic effects. American workers are somehow "immune" to these effects, according to the government.

The case of the asbestos standard is also illuminating. Asbestos is a substance encountered in almost every industry, since it is integral to the insulation of most industrial plants. It is also used in over 3,000 products made in this country.

For the past 70 years, scientists have known that inhalation of asbestos dust causes severe, even fatal scarring of the lungs (abestosis). More recently, it has been found that even small exposures to asbestos dust frequently result in cancer (in a large fraction of the people exposed), as long as 30 or 40 years after the exposure.

Because it is so hazardous, the Department of Labor declared that asbestos control was to be a prime target for the new Occupational Health and Safety Administration (OSHA). The first step in controlling asbestos hazard was the publication of an emergency standard on December 6.

A standard of 2 fibers per cubic centimeter was proposed by labor representatives in Washington. This level of dust has been shown in England to almost completely prevent the disease asbestosis.

The emergency standard accepted by the government was five fibers per cubic centimeter. The permanent standard becomes law three months after the emergency standard is announced. The government will probably adopt the lower 2-fiber standard in April.

However, both the higher and the lower standards were aimed only at prevention of asbestosis, not cancer. There is evidence that cancer has occurred in British workers who have been exposed to no more than two fibers per cubic centimeter throughout their working lives. If health were really the criterion, no (zero) asbestos exposure would be permissible.

Businessmen must be forced to design and use equipment which does not allow the release of any asbestos dust into the air which workers breathe. Some equipment which meets these rigorous criteria exists—and what is more, it is simple and cheap to use. It would be a technically simple task to design more of such equipment.

So far, there are very few standards for workplace hazards. There are over one million chemical substances in use in American workplaces, but there are only 450 substances to which a standard applies. Most of the existing standards are not intended to prevent chronic disease or illness which becomes evident many years after exposure; they are only "scientific" enough to prevent obvious expense (compensable) disease.

Even if the law were to set decent standards for health and safety, it would still remain a sham because enforcement is almost nonexistent. There are 4.1 million workplaces, and 55 million workers, but only 500 inspec-

tors. There are only 14 industrial hygienists in the country.

Inspectors cannot take the air samples necessary for ascertaining whether a toxic substance in the air exceeds the concentration limit set in the law. This type of sample can only be taken by one of the 14 industrial hygienists.

Even if the 500 inspectors were empowered to give citations and to ensure enforcement of the law, it has been calculated that if they had no paperwork, and continuously visited plants, they would visit each plant only once every 23 years. With paper work, and the frequent court appearances required by the law, they will visit each plant once every 93½ years—with luck!

The lack of inspectors is a direct result of the lack of money devoted to this problem. As with all programs for public welfare, a small fraction of what is necessary is appropriated for it.

Labor representatives asked for $150 million for the Occupational Health and Safety program. The program is now functioning with a budget of $36 million. The result of this asperity is a hiring freeze on all personnel in the program—including inspectors.

The government has also insured that the overworked inspectors are not sympathetic to working people. It is official policy that inspectors are never workers or unionists. The government claims that only business management has the experience to ensure fair enforcement of the law.

With all these impediments to the enforcement of the law, it is amazing that there is any enforcement at all. This is exactly what industry and government officials seem to want.

As of November, 1971, there had been a total of 10,668 inspections in 9,817 workplaces which employ 1,851,688 workers. Only 23 percent of the establishments inspected were found to be in compliance—that means that 76 percent of the employers weren't furnishing even the minimal safety and health conditions that the law provides. (Moreover, the compliance officers admit they are unable to look for violations under each and every regulation of the act during their inspections.)

By November, 1971, the government had issued 7,450 citations for lack of compliance with the law. Of these, over 400 citations were being contested by business. Many companies are even contesting trivial fines of $20–$30, of which there are many.

"DUE PROCESS"

This apparently reflects a determined effort on the part of some business groups to tie up the enforcement apparatus of the law by contesting all citations, no matter how trivial. For businesses, lengthy litigation is an effective weapon against the law. They have control over tremendous economic resources, which allows them to engage in litigation, and the time—their lives aren't at stake.

The government goes along with industry's wish to continue to exercise its perogatives without interference from any outsiders. In a behind-closed-doors session for the National Association of Manufacturers, the government stressed its concern for "due process"—for business enterprises. The businesses will be protected by endless chances for litigation, lasting on the average three to five years.

The "imminent danger" clause of the law furnishes an example of the government's willingness to weaken the law. This clause was the strongest section of the original version of the law which was proposed in the House of Representatives.

This version allowed compliance officers to close down an industrial operation in which a danger existed which could be expected to cause death or serious injury to workers in the area—including "danger from substances or conditions which would cause irreversible harm even though the resulting physical disability might not manifest itself at once."

The present law requires, even in cases of emergency (imminent danger), that the compliance officer must go to federal court to stop the process causing danger. Because of this requirement, the clause has become meaningless. You can't save lives from an explosion by discussing it in court.

So far the imminent danger clause has only been applied once! In fact, even when 22 workers were blown up in the Port Huron Tunnel in Michigan on December 13, it took the government eleven days, until December 23, to post the notice of imminent danger at the tunnel site.

The imminent danger clause has been weakened further by the interpretation given it by the Department of Labor. What is an "imminent danger?" This question was raised by the Oil, Chemical and Atomic Workers (OCAW) in a test case on the clause.

OCAW asked if an obviously hazardous condition which will cause irreversible damage or illness to workers was an imminent danger. The union claimed that pools of mercury on the floor of the Allied Chemical Factory in Moundsville, West Virginia, represented an imminent danger—that is, a situation in which gradual toxic buildup (of mercury) occurred in the workers in the plant.

The union showed through its own investigation that at least twenty-five workers in the cell area of the plant had symptoms (tingling in the extremities, tremors, irritability, drowsiness, loss of memory and sore gums), and/or chemical evidence of mercury poisoning.

The Labor Department, however, stated that imminent danger only applied when there was a ". . . risk of sudden great physical harm . . . like a boiler explosion . . ." The Labor Department refused to consider that gradual illness, even from what is generally recognized as an obvious and serious hazard, was an "imminent danger."

(The company, whose annual profits are around $40 million, was fined $1,000 for a "serious hazard" and told to abate the hazard by June 2, two days after the citation was issued. A repeat inspection on June 18, however, still showed excessive mercury exposure in the plant.)

This clause which could have been an important defense against dangerous working conditions has thus been weakened so much by the government that it is irrelevant.

In other serious areas, the law is equally weak. Under the definitions of the law, willful negligence resulting in the death of a worker (read: murder), is subject to only a $10,000 fine and/or a year's imprisonment. In fact, those fines that have been imposed have been much less than $10,000 in most cases.

A $600 fine was imposed for a death which occurred in the U.S. Steel plant in Denver. A worker fell into an open hearth furnace because of an absent guard rail. A similar accident occurred last year in the same plant. Life is cheap—for giants like U.S. Steel.

BASIS FOR STRUGGLE

Even though the law cannot be relied upon by workers to prevent hazardous working conditions it can be used as a basis for struggle over working conditions. It purports to offer workers some new rights—which can be made real if they are fought for.

Since the law guarantees a safe and healthful workplace to all working people, it is now even more legitimate than before for workers to demand working conditions which will fullfil that guarantee. Any refusal by management to obey the law and to grant improved working conditions can be made a focus of local union and rank and file publicity and activity.

The law can also be used to win concrete improvements in working conditions, since most unpleasant working conditions are also in some way hazardous to health or safety. (Although the law covers nowhere near all the possible hazards found in industry.) Issues concerning working conditions and job safety and health can be powerful organizing tools for rank and file workers.

Also, use of the law's provisions can offer some protection to militants. There is a clause of the law which prohibits employers from discharging or otherwise discriminating against employees who are exercising their rights under the law. Alleged acts of discrimination against employees are entitled to rapid investigation by the Department of Labor. (Although this clause has not yet been tested, so its interpretation is not yet established.)

The actual process of filing a complaint is fairly simple. The Occupational Health and Safety Administration (OSHA) of the Department of Labor must be notified in writing of a "violation of a standard which threatens physical harm." (There are forms put out by OSHA for this purpose.) In the case of an "imminent danger" telephone notification of the hazard is acceptable.

However, the subsequent course of a complaint may involve long legal battles. Workers must be able to defend their own case, through lawyers, their own scientists and doctors, union representatives and/or by themselves.

If there is an inspection, either as the result of a complaint or initiated by the SHA, workers in the plant and their representatives have the right to accompany the compliance officer at no loss of pay, and to point out areas of possible violation.

A technically skilled representative of the workers may also accompany the inspector and point out the hazards and their implications for health and safety. Workers have a right to copies of any inspection reports or complaints concerning their workplace.

The law gives workers a number of additional rights: the right to have dangerous substances identified; the right to have records made and kept of his or her exposure to all dangerous substances; and the right of access to these records and any other company records concerning health or injuries on the job.

It is obvious that reliance on the law will not provide a safe and healthful workplace. Additional and alternative means will be needed to insure that goal. For one thing, collective bargaining agreements can be used to win protection from hazards.

An unusual contract of United Steel Workers Local 2698 with Wheeling Pittsburg Steel Corporation allowed workers to walk off the job and receive unemployment compensation. The contract allowed workers who believed conditions to be "unsafe or unhealthy beyond the normal hazard inherent in the operation" to either file a grievance or be relieved from the job without loss of pay. Workers who were relieved were to be reassigned to other jobs. The strike occurred when 63 workers were laid off instead of being reassigned.

Contracts can incorporate specific health and safety standards, either existing government standards, or more stringent levels. Contracts can provide for the right to have a plant safety committee with the power to monitor plant conditions; to take their own air samples and measurements; and if necessary to shut down plant operations which violate contract standards. Contracts can allow union members to bring in their own consultants to determine the safety of the plant.

So far, an important management weapon has been their ability to keep workers totally ignorant about the hazards of the processes with which they are involved. Workers in

most factories do not even know the names of the substances they are handling, much less the possible health effects. Neither the federal law nor contract provisions can be utilized effectively by workers who do not recognize the hazards around them.

One model program for the education of workers is being developed in New Jersey. A group of scientists and doctors called the Scientists Committee for Occupational Health has been teaching shop stewards and safety committee members from chemical factories, oil refineries, cosmetic and pharmaceutical plants about the hazards in their shops.

Forty-five workers, members of District 8 of Oil, Chemical and Atomic Workers, attended a 12-week course covering the chemical and physical hazards of their industries and the means of measuring and preventing these hazards. The workers are now attempting to bring instruments into their workplaces to monitor hazards.

The Scientists Committee is planning a similar course in March for metal workers in the UAW, USW, and other unions.

While workers can still use what few rights the law grants, there should be no illusions that the law itself will win any broad or lasting improvements in their working conditions. The Occupational Health and Safety Law does more to protect the "health and safety" of business profits than that of the working people who produce the goods of the country.

WORKERS' HEALTH—A DREAM DEFERRED

(By Stewart Udall and Jeff Stansbury)

Secretary of Labor James Hodgson chose bold words last December to mark the signing of the landmark Occupational Safety and Health Act. "From this day forward," he declared, "We plan to launch the administration of this act with all the vigor and momentum we can generate."

Now, four months later, Hodgson's speech has an equivocal ring. Both his Department of Labor (DOL) and the Department of Health, Education and Welfare (HEW) have moved with glacial slowness to enforce the new act, which covers 57 million workers. While these bureaucracies dawdle, the unions hear the metronome beat of tragedy: 50 American workers killed on the job each working day; 1,300 newly victimized by industrial disease; 95,000 seriously injured.

The industrial workplace remains, as it has always been, our most lethal and most neglected environment. Unlike the Taft-Hartley Act—weak legislation wisely enforced—the job safety law prescribes strong medicine that is being timidly administered. It has, says the United Automobile Workers' Frank Wallick, "fallen into the hands of weak and conniving administrators."

The unions' sense of betrayal stems from a whole series of delaying and obfuscating tactics on the part of DOL and HEW:

Until Hodgson issues the new health and safety standards that are the core of the act, industry must observe a set of "interim" standards lifted from existing law and voluntary agreements. These interim standards were to have been published on April 28. Now they will not be released until mid-May, *with enforcement delayed for another three to nine months*. Yet DOL has had since the first of the year to get these well-known standards into the hands of industry—and enforce them.

Congress intended to bar nearly all advance warnings of workplace inspections by Hodgson's compliance officers. New DOL regulations, however, permit such warnings to companies on a number of loosely defined grounds.

Though it needs thousands of compliance officers to enforce the act, DOL has recruited and trained less than 200. Only a handful have come from the ranks of workers most familiar with industrial hazards—and some excellent union nominees have been turned down.

No justification for the new act weighs more heavily than the abominable record of most states in protecting their workers' health. Yet, with great haste, DOL has shifted the enforcement burden back to the states, offering them juicy planning grants as bait. Hodgson has urged the 50 governors to avoid preemption by the new federal machinery and has asked them to file "letters of intent" to strengthen state safety codes. At least 33 governors or state agencies have done so. This federal-state ballet is a fraud—for no governor can dictate how his legislature will act on job safety. Many legislatures will not even meet until 1973. In this light, it is tragic that over half of DOL's meager budget has been turned over to the states.

In order to consult with the Agriculture Department, DOL has temporarily excluded millions of farmworkers from most protections under the act. They must continue to use pesticides, for instance, at their own risk.

—For decades the issue of workers' *health* was ignored while unions and state officials concentrated on the lesser crisis of on-the-job *injury*. Not until the Congress held hearings on the new act did it become clear that millions more men and women lose their lives to industrial disease than to workplace accidents. Nonetheless, Hodgson has given top priority only to reducing accidents and has postponed initial steps against most chronic health hazards until at least 1972. He calls this a "worst first" policy. In truth, it is a "worst last" policy.

—HEW Secretary Elliot Richardson has failed to name a director or choose an organizational slot for the National Institute for Occupational Safety and Health. Under the new act, the institute will set industrial health criteria, identify toxic substances, study the work environments of whole industries and train occupational health experts. The need for such work is acute. Less than 500 of the thousands of industrial chemicals now in use have safe exposure ratings. There is a national shortage of some 35,000 industrial health specialists. Each day that HEW marks time prolongs the threats to workers' lives.

The government's lackadaisical response to the plight of blue-collar workers is drawing close scrutiny by unions and some environmentalists. Increasingly vigilant to further betrayals, most unions have beefed up their occupational health programs. Rubber workers, for instance, have won the help of a leading school of public health in studying their cancerous job environment. The industrial unions of the AFL–CIO have just opened a new industrial health and safety department.

"Saving workers' lives should be a major concern of everyone," says rubber workers president Peter Bommarito. "This Administration had better wake up."

A CASE OF IMMINENT DANGER

(By Stewart Udall and Jeff Stansbury)

There are many ways to earn a living. Among the most spectacular is breathing mercury vapors and chlorine gas for Allied Chemical Corp.

Since March we have closely followed a series of disturbing events at Allied's chlorine plant in Moundsville, W. Va. Two workers there have become seriously ill, one from a disabling bout with chlorine gas, the other from what appears to be chronic mercury poisoning. At least 25 other workers show signs of excessive mercury exposure.

This is a story of imminent danger—and more than that, of a danger which has been denied by Allied, ignored by West Virginia health officials and handled with gross ineptitude by the U.S. Labor Department.

The early symptoms of mercury poisoning are irritability, loss of concentration, dowsiness. How unfair that these symptoms should afflict not only the men at Moundsville but their corporate managers far away in New York and the government officials sworn to protect them in Washington, D.C.!

"You've given us awful short notice," one Labor Department official complained in response to a request for an "imminent danger" inspection of the Moundsville plant. Through their union, however, the chlorine workers had been trying—and failed—to get the department's attention for six years.

George Guenther, chief enforcer of the new Occupational Safety and Health law, received the inspection request in stiff discomfort. He wished, he said, that it had been about a boiler explosion. Under Guenther, Labor Department agents are going after boiler eruptions hammer and tongs while they boggle at those more insidious, chemically induced explosions of cell tissue in the working man's liver, pancreas, kidneys, brains.

As early as 1965 the men in Allied's mercury cell room knew something was wrong. Preventive maintenance in the 11-year-old plant was slipping. The workers could smell chlorine—which meant the concentration of the gas in the air was at least three times higher than the national safety limit. Mercury vapor was leaking from gaskets. Liquid mercury was dripping to the floor and vaporizing at room temperatures.

One by one, the men began showing those subtle signs of chronic mercury poisoning that only a specialist can distinguish from everyday mental distress: a bad temper, shyness, fatigue, depression. In more advanced stages mercury poisoning causes tremors, brain damage and death. Robert L. Fisher, a mercury cell worker now hospitalized, has the tremors.

Allied cooled the workers' fears in the late 1960s by insisting that the plant was clean and that metallic mercury was safe. It gave the men more medical tests. The results of the tests were not disclosed.

"We were at the mercy of the company," recalls Thomas Riggle, president of the Moundsville local of the Oil, Chemical and Atomic Workers (OCAW). "The state agencies and the U.S. Labor Department just weren't interested, and the company told us again and again we had nothing to worry about."

Incredibly, during this period, Allied boasted about its policy of removing men from the cell when the mercury levels in their urine soared above the safety threshold, then sending them back in when they "recovered." This was billed as a health precaution, but if the plant was clean why did the urine samples show so much mercury? Sending the men back into the cell room (one worker went through this yo-yo routine 20 times) made sense only if one disregarded the *cumulative* buildup of mercury in many organs of the body. Allied's policy may prove to be homicidal.

The nationwide mercury scandals of 1970 provoked Riggle into determined action. Charging that Allied had taken more pains to keep mercury out of the Ohio River than out of its employees, he sought help from West Virginia's governor and two U.S. senators, Allied's top management, Labor Secretary George Shultz and the Washington, D.C., office of the OCAW.

Only the OCAW responded effectively. Despite stalling tactics by West Virginia's Bureau of Industrial Hygiene, it managed to get a government health team into the Moundsville plant and secure a copy of its report. The evidence was devastating. Nearly all the mercury cell workers had urine levels far above the safety threshold. Airborne concentrations of mercury were also extraordinarily high.

On May 14, OCAW legislative director Anthony Mazzocchi called for an "imminent

danger" investigation—the first to be sought under the new occupational health law. Mazzocchi told Labor Department officials that Allied had not cleaned up its mercury cell operation, that it had actually increased the workers' exposure to mercury, that their lives were at stake and that every hour counted.

Thus challenged, the Labor Department displayed the lethargic symptoms noted above. It took two weeks to inspect the plant, grow alarmed over conditions there and order Allied to remove the mercury hazards that were "causing or likely to cause death or serious harm to employees." All this could have been done in half the time.

During his surprise visit to the plant on May 19–20, the federal inspector found pools of mercury on the floor and learned that Fisher had been hospitalized. In one area of the plant the chlorine fumes were so thick the inspector had to wear a gas mask. But he failed to convey the full import of the mercury disaster to his dawdling overseers in Washington, and he did not report the lethal chlorine fumes at all. To this day, Guenther denies there is an "imminent danger" at Moundsville. He and his aides do not comprehend the urgency of the chronic health hazards in U.S. industry. Boiler explosions they can fathom.

Shortly before receiving his cleanup orders, T. H. Capps, manager of the Moundsville plant, issued a reassuring memo to all his workers. It began: "Allied Chemical Corp. employees who work in mercury cell plants manufacturing chlorine gas are protected from the hazards of mercury. . ."

THE POLITICS OF OCCUPATIONAL HEALTH

(By Stewart Udall and Jeff Stansbury)

Ten months ago Congress passed the landmark Occupational Safety and Health Act (OSHA), which rivaled the Clean Air Act as the boldest environmental legislation of 1970. Both laws sought to reverse the build-up of pollution in their respective environments—the work place and the atmosphere. But both laws have been weakly enforced by the Nixon Administration.

"It is now clear that many of our hopes and expectations are being frustrated," says Sen. Harrison A. Williams Jr., (D-N.J.) who co-authored OSHA with Rep. Dominick V. Daniels (D-N.J.). "The Administration has adopted the penny-pinching attitude that health and safety for workers is something this nation can barely afford."

Yet the cost of not caring for workers is immense. On an average day, 50 Americans are killed on the job, 1,300 contact an industrial disease and 95,000 are seriously injured. Vietnam never took such a toll of U.S. manpower.

The Administration's default on job safety and health is being consummated through new Department of Labor regulations which dump enforcement of OSHA into the unsteady hands of the states. Although state governors have no authority to guarantee that their legislatures will vote adequate job health laws and funds, or that their labor departments will set tough job health standards, they are being handed OSHA on a silver platter. States do not even have to submit enforcement plans to get jurisdiction and federal job safety funds.

Angry union leaders may take the Department of Labor (DOL) to court over this issue. It is not that they have a knee-jerk bias against the states—but they know from bitter experience that OSHA grew out of the states' utter failure to protect most workers' lives in recent decades.

In passing the buck back to the governors, moreover, the DOL has refused to demand a quid pro quo. Unequivocally, OSHA declares that state health standards, enforcement procedures and work place inspections must be "at least as effective" as those required of the federal government. Yet on each of these counts, DOL officials are letting the states get away with much weaker enforcement.

OSHA, for example, authorizes labor representatives to take part in all "walk arounds" of plants by DOL inspectors. No such workers' right is being required of the states.

OSHA also says that workers may ask DOL to set health standards for new chemicals and that labor representatives may be asked to help draw them up. No such workers' rights are being demanded of the states.

Clearly, then, DOL's abdication is not a high-minded gesture toward local government but a bid to ease up on industry. Says United Steelworkers official John Sheehan: "Contrary to the clear legislative intent of OSHA, a political decision has been made for management and against the workers."

And DOL's resourcefulness in thwarting OSHA doesn't stop there.

Since most advance warnings of work place inspections would undermine enforcement of the act, OSHA forbids them unless clearly warranted. Yet the DOL has given its regional officers broad leeway to tip off companies whenever this would "enhance" an inspection.

The new National Institute for Occupational Safety and Health in the Department of Health, Education and Welfare is setting exposure tolerances for less than 20 toxic agents in its first year—though fully 10,000 such substances already saturate U.S. work places. And while chronic exposure to chemicals foreshortens thousands of workers' lives, the DOL has yet to ask the institute to speed up its snail's-pace drafting of work place health criteria, monitoring standards and medical testing procedures.

The DOL plans to enforce OSHA during the next year with only 550 inspectors—one for every 7,200 work places. Less than 10 of these inspectors come from the ranks of labor. Indeed, from Asst. Secretary George Guenther and his deputy, Chain Robbins, on down, DOL's occupational health staff is dominated by former industry officials whose whole future lies with management. It's a strange way to run a Labor Department.

"The department's occupational health and safety people figure they owe industry a break," says George Taylor, executive secretary of the AFL–CIO's safety committee. "If things go on as they are, workers will lose everything through enforcement that they thought they won last year through legislation."

Job Environment Notes: The Nixon Administration persists in calling OSHA the "Williams-Steiger Act," though the credit should go to New Jersey's Sen. Williams and Rep. Daniels. While Rep. Bill Steiger, a Wisconsin Republican, is a White House favorite, the record shows he consistently worked to weaken the legislation. Daniels, however, sponsored and fought hard for a strong act.

A midsummer poll of Michigan steel and auto workers by the W. E. Upjohn Institute has produced eye-opening results. When asked to rank their most urgent on-the-job concerns, these blue-collar employees put work safety and health at the top of the list, followed by workmen's compensation, career advancement, nondiscrimination and adequate income, in that order. Similar priorities were revealed by a DOL national survey of workers in late 1969.

THIS IS MANAGEMENT'S RESPONSIBILITY

(By Stewart Udall and Jeff Stansbury)

PAULSBORO, N.J.—Within the fume-ridden reaches of a Mobil Oil refinery here, a struggle is being waged with profound consequences for the health of a thousand or more Mobil workers, the future of organized labor and the usefulness of the landmark 1970 Occupational Safety and Health Act.

The struggle pits the men of an Oil, Chemical and Atomic Workers (OCAW) local against the managers of this sprawling old refinery. Ironically, it also pits the union against the Department of Labor (DOL), which should be enforcing the job health act vigorously but isn't.

Two months ago, the 922-man OCAW affiliate at Paulsboro asked the Labor Department to launch a "imminent hazard" investigation of the refinery. The investigation began Oct. 15 and has continued, on and off, since then. Among the hazards the union wanted probed were its workers' exposure to asbestos, clay dust, caustics, aromatics and a witch's medly of acid, phenol and welding fumes.

What concerned the OCAW above all was the history of heart attacks, lung disorders, blackouts, early retirements and sick leaves which had emerged from three unusually "dirty" work areas. One was the ammonia compressor room where petroleum is de-waxed, often with a leakage of ammonia fumes. Another was the acid refining area where ammonia vapors and sulfuric acid fumes have made men dizzy and breathless. The third is the filter plant where oil is forced through fine clay; the clay is cleaned and burned amid clouds of dust and naptha.

"We could never get this company to clean up anything," says local OCAW President Richard Meyer. "Men have been working longer hours in dirty areas because Mobil has cut the workforce since the late 1950s and tried to boost production on overtime. Nearly half the men in our maintenance crews have doctor's restrictions. Some are dying in their 40s and 50s of heart attacks. And the company won't sit down with our health and safety committee to talk the situation over."

Denying that the plant has an extraordinary health problem, Mobil-Paulsboro's employee relations manager, Joseph Mouton, says: "We have a very fine medical staff here, dedicated to safety. Workers are given ample communication channels, so they don't need any health committee. We feel this health issue is management's responsibility."

Frank Leone, one of two local OCAW officials accompanying the federal inspectors on their "walkarounds," is deeply concerned about the predicament of the men who work in the ammonia compressor room. "When the inspectors were there," he says, "the company cut down its production to hold back the fumes. Later it worked the compressors so hard the ammonia nearly floored my supervisor. Four men used to work in there on separate shifts. Right now one of them is off sick with heart trouble, another has just come back after a year's sick leave, another may be on leave until he retires and the fourth recently had a blackout and didn't even know who carried him home."

During the first two visits by the DOL inspectors, Mobil and the union warily cooperated in the most wide-ranging recon mission ever held under the 1970 job health act. Steve Wodka, a work environmental specialist from the OCAW's Washington, D.C., headquarters, joined the walkarounds. Genuine progress seemed imminent.

Then, in a quick sequence, the facade of amity crumbled. The plant manager telephoned Wodka and said the company wanted him barred from the walkarounds. When Wodka showed up on Nov. 8, the inspectors refused to let him accompany them through the plant.

Meanwhile, 19 craftsmen had gone to New York City for examinations by Dr. Irving J. Selikoff at Mount Sinai school of medicine. Though they have work histories of exposure to asbestos and other hazards, and though Dr. Selikoff reports X-ray changes in their lungs, Mobil-Paulsboro refuses to send him their company medical records. The union

views this as a direct violation of medical ethics.

Finally, in a blow aimed at the vitals of the 1970 act, Mobil-Paulsboro has announced it will not pay wages to the two local OCAW representatives for the time they spend accompanying the inspectors and management officials on walkarounds. "They're not doing regular work," Mouton states. "Customarily workers do not get paid when they are not doing regular work."

Pointing out that many union stewards earn company wages (though not in the oil business), OCAW officials see Mobil's wage policy as an attempt to quell useful inspections throughout the industry. Consequently the union has lodged a strong protest with the Department of Labor. Says Meyer: "This is a very big case. Most workers in this country are unorganized or in very small unions that don't have the money to make up for lost wages. If workers can't afford to take part in walkarounds, health inspections will become an industry-governed charade. They'll be absolutely worthless."

There is ample evidence to back up Meyer's forecast. Recruited from the ranks of industry, the DOL inspectors at Mobil-Paulsboro have bent over backward not to offend the company. They have given Mobil advance notice of their tours into hazardous areas of the plant. While this in itself is no legal impropriety, the inspectors have blinked at several cases in which the forewarnings led Mobil to shut down or slow down dangerous operations—thereby preventing a fair measurement of the hazards. Regional DOL officials in New York refused to comment on these tactics, stating that "all the details have not been finalized yet."

Some labor experts think Mobil has pulled a prize boo-boo. Good organizing issues are scarce these days, and the company couldn't have handed workers a jucier one: *Join a union or you'll never be able to afford a decent health investigation.* "Looking at the long-range impact on labor and management," says the Industrial Union Department's work health director, Sheldon Samuels, "Mobil has taken a step of gross stupidity."

And so it appears to us. But no one in labor or the environmental community has lost sight of the main stake in this contest—the health of 922 union workers and many non-union employees at Mobil's big, aging Paulsboro refinery.

EARLY DEATHS FROM ASBESTOS

(By Stewart Udall and Jeff Stansbury)

TYLER, TEX.—Factories are the places where America does its dirty work. Men sicken by the millions there and die by the thousands each year, victims of accidents, chemicals and negligence. News of their fate reaches us, if at all, as from a great distance, and we may think it has nothing to do with our own lives.

This fiction will not trick anyone who knows the habits of big industrial entities like the Pittsburgh-Corning Corp. In a village near Tyler, Texas, PCC runs an 18-year-old asbestos insulation factory that has doomed many of its workers to an early death. Workers, however, are not its only casualties. Nearby residents and even people hundreds of miles away have been exposed to toxic fibers from the plant's insulation material, "amosite" asbestos.

Asbestos is a well-documented health hazard. Still, it may shock stripminers, construction hardhats, printers, insulators and others among the 5 million Americans who work near asbestos to learn that a few whiffs of the stuff can cause a rare cancer, mesothelioma. Repeated exposure makes mesothelioma much more likely, induces other forms of cancer and causes an often fatal scarring of the lungs known as asbestosis.

Three months ago Dr. Irving J. Selikoff of New York's Mt. Sinai School of Medicine completed a study of 230 men who had worked at a similar Paterson, N.J. amosite asbestos plant during the early 1940s. If these men had led average lives, fewer than 50 of them would have died by July, 1971. Instead 105 died, there were five times the expected deaths from cancer and five of the cancers were the rare, telltale mesotheliomas.

Three times, in 1967, 1970 and again last October, federal health inspectors warned Pittsburgh-Corning that it was subjecting its Tyler employees to very dangerous levels of asbestos dust. Nothing changed after the first two warnings and the investigators are outraged by what they found on their last visit.

Their report is studded with indictments: "Grossly inadequate ventilation . . . piles of (asbestos) dust around the machines . . . no medical facilities or first-aid room . . . Air samples yielded grossly excessive fiber concentrations. . . . Even without benefit of X rays, 7 of 18 workers with 10 or more years' employment at the Tyler plant meet at least 3 of 4 criteria for asbestosis."

The federal team did not see any of the workers' existing X rays for a very simple reason: The company doctor refused to release them. He also kept the wraps on indispensable lung tests and medical interviews. Other company executives were just as brazen. In August they asked the Labor Department for an exemption from the national asbestos exposure standard, arguing with great exaggeration that they had improved the ventilation system, briefed employees on asbestos hazards and handed out respirators.

This request is now moot. On appeal from the Oil, Chemical & Atomic Workers (OCAW) and the AFL-CIO, the Labor Department has issued an emergency standard for absestos exposure which is twice as rigorous as the old one. This mild act of defiance from a former ally stunned PCC into scheduling a Jan. 31 shutdown of its Tyler plant. Having made its money by exposing hundreds of workers to lethal concentrations of asbestos, Pittsburgh-Corning would now rather skulk away than invest in clean equipment.

It will leave behind a group of bitter men who never knew the risks they were taking. "We hoped to close the Tyler plant in November," says Tom Anania, chief of industrial hygiene for the National Institute of Occupational Safety and Health. "Some workers said it was too close to Christmas. 'How many more Christmases do you want to see?' we asked them. They couldn't get used to the idea that their lives were at stake. The company had misled them."

Left to their own resources, the Tyler men must now look for new work while many carry within them the tiny white time bombs of premature death. Their union, the OCAW, will fight to secure medical help and compensation for them. The Labor Department, still siting on the health inspectors' report, must be asked why it has done nothing to protect the Tyler employees during the five years it has known of this predicament.

And the rest of us? We had better look to our own health—for the men at Tyler may prove to be our canaries. Just outside their plant, the company has repeatedly dumped asbestos scraps on two open, windblown fields; the fibers are wafted far and wide.

The company has also made its men a threat to their own neighborhoods and families. At Tyler there are no laundry and shower facilities which would enable the men to scrub down at the end of each day and put on clean clothes. Instead they have carried asbestos dust homeward, marking some of their wives and children for disease. Medical studies undertaken in London and Pennsylvania clearly show that mesothelioma afflicts people who live with asbestos workers or near asbestos factories.

Finally, and incredibly, Pittsburgh-Corning has managed to broadcast its asbestos fibers into the wider U.S. environment. It buys some of its asbestos in burlap bags, empties them and sells them to Tyler's famous rose-garden nurseries. The nurseries wrap the burlap around their rose bushes before shipping them to retailers who, in turn, pass the asbestos-laden plants on to their customers.

All of which brings home a point. The men and women who work in the disease-prone environments of some factories suffer the worst of industry's exploitation. But sooner or later all of us are exposed to it, too.

STATEMENT OF ANTHONY MAZZOCCHI

When the Occupational Safety and Health Act (OSHA) was passed and signed into law in December, 1970, it was hailed, by the President on down, as one of the most important pieces of social welfare legislation ever to benefit the American working man and woman. President Nixon was, for once, quite accurate. For the first time a Federal law guaranteed that no matter what one's work experience, no worker would suffer diminished health, functional capacity or life expectancy as the result of his life's work.

If one reads on, he discovers that an intricate system of Federal regulations of the workplace environment has been established. And if one looks even closer, the reader finds that the Act is peppered with clauses that guarantee the public's access to the information held by the Federal agenices responsible for enforcement. The reader might even come to the conclusion that the Freedom of Information Act is not even needed in dealing with the various agencies under OSHA.

But like most pieces of progressive legislation, the administration of such law is another story. The enforcement of OSHA in its first months of operation has been nothing but a sham. And the public informaiton sections have suffered equally. Thus the tragedy at work continues.

Forty working Americans are still being murdered each day, 14,000 killed each year, and untold *millions* are injured or permanently maimed by industrial disease agents.

Unfortunately, this horror story rarely makes the headlines. The press seems more interested in following the antics of a jet set writer and how he fakes the biography of a recluse billionnaire. Will someone please tell me what importance this story has on the health and well being of millions of working Americans?

We submit to this Committee that when we discuss the subject of in-plant health and safety, we are dealing with literally the daily struggle of 55 million American citizens trying to keep their names from being another sorrowful government statistic. What could be of more importance.

As to the prominent public information provisions of OSHA that I spoke of earlier, they are Sections 6(e) and 9(a) of the Act.

Section 6(e) states that:

"Whenever the Secretary of Labor promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons of such action, which shall be published in the Federal Register."

Already Rep. Dominick Daniels of New Jersey, Chairman of the House Select Subcommittee on Labor, has cited the Secretary's failure to heed the requirements of this section. In a letter to Labor Secretary Hodgson, sent a day after Labor had submitted a glowing report on the progress of OSHA to Congress, Daniels charged:

"My research indicates that although thousands of citations for violation have been settled and mitigated, there has been no publication of the reasons for such mitigations in the Federal Register."

Neither has the Secretary published the

reasons for the hundreds of important decisions he has made for OSHA over the last eleven months. *Three* weeks ago, the Secretary ruled, for example, that workers who accompany a federal inspector on the walk-around survey of a plant can be denied payment of wages for the lost time. This decision has yet to be published in the Federal Register. Maybe the Secretary wishes to hide his tortured reasoning of this decision from the general public.

Of immediate concern to our Union are the requirements of Section 9(a) of the Act. This section requires the Labor Department to issue citations to employers if an inspector has found a violation of the various health and safety standards:

"Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated."

This provision of the Act has been implemented. However, there is much difference of opinion as to what really describes "with particularity" the nature of the violation.

In the oil and chemical industries, we are primarily concerned with the myriad of toxic substances that our members are being exposed to everyday. When our members call for a Federal inspection, the usual request is that the airborne contaminants in the plant be checked for violation of the standards. As the Labor Department has barely budged over the last eleven months to issue regulations on the monitoring of these substances, our members hope that the inspector in his survey can determine how high the levels of fumes, mist, gases and dust are in the plant.

In fact from last summer and into the fall, Federal inspectors were incorporating the results of their monitoring into their violations. But then suddenly, sometime around November, 1971, this practice stopped nationwide. We suspect an order emanated from Washington at this time, but we have no proof.

Let us for a moment look at this withholding of important health data from another perspective to see the absurdity in it. For instance, the OSHA Compliance Operations Manual (on page X–3) gives an example for a typical description:

"Flexible cord on 24 inch fan in the Mill Building has a splice approximately 2 feet from termination. Splice is wrapped with electrical tape."

To me, that is a pretty specific description of a violation.

However, when the inspector cites an employer for a toxic concentration of fumes that a worker breathes every day, all he writes is "excessive concentrations" and gives no results of his monitoring.

Moreover, on the safe page of the OSHA Compliance Operations Manual where I took the quote on the faulty splice, the instructions to inspectors state that all descriptions of violations shall include "all pertinent factual details."

We can only view this hypocritical practice of the Labor Department as part of their well established intent to ignore or downgrade the industrial hygiene aspect of the problem, which we feel poses the greatest potential for impact on the pocketbook of industry. To place guards on machines may cost a few hundred dollars in a plant. To install a new ventilation system for the plant to collect and treat toxic fumes may cost hundreds of thousands of dollars.

There are other public information problems in OSHA that I will attempt to cite briefly.

Beyond the issue of monitoring data, the whole process of the citation's development and the amount of fines levied should be a matter of public record. At least five forms are filed by the OSHA inspector in the development of a citation.

(a) Safety and Health Report—OSHA Form #1.

(b) Compliance Worksheet—OSHA Form #1–A.

(c) Safety and Health Program Evaluation—OSHA Form #1–B.

(d) Narrative Report—OSHA Form #1–C.

(e) Accident Investigation Report —OSHA Form #4.

These reports, particularly the Compliance Worksheet and the Narrative, truly reveal what the inspector saw, how serious he views the hazards, and what he thinks the employer is going to do to correct them. From here the inspector goes to a Penalty Assessment Worksheet where various manipulations are made for the employer in terms of his "good faith" and past "history." Up to this point, the public and the affected workers have been generally denied access to this information.

From here the various citation forms and a notice of proposed penalties are filled out and issued.

This kind of closed process allows for the following kind of incident. In October 1971, our Local at the Mobil Oil Refinery in Paulsboro, New Jersey, requested an inspection. Of the ten categories listed on their complaint, nine were concerned with industrial hygiene problems and only one with safety hazards. When the 72 pages of citations were issued a few months later, only 12 out of more than 260 items listed dealt with industrial hygiene problems. Only $7,350 in fines were levied altogether. Of course, the various health hazards still remain in the refinery. We have been denied access to the various reports of the inspectors.

This denial is not an isolated case. In OSHA enforcement actions against Reactive Metals in Ashtabula, Ohio, Kenrich Petrochemical in Bayonne, New Jersey, Pittsburgh Corning in Tyler, Texas, and Allied Chemical in Moundsville, West Virginia, all plants where OCAW represents the workforce, we have faced either downright refusal or inordinate delays in securing citations, notice of proposed penalties and inspector's reports. In the case of the Allied Chemical plant in Moundsville, West Virginia, it took six weeks of nearly open warfare before OSHA would hand over the inspector's reports.

Obviously the question arises about the number of requests that OSHA has denied and have never been challenged. It is not difficult for an International Union's legislative office to mount such a campaign to secure release of vital information. But what happens "in the field" so to speak, especially with groups of unorganized workers who neither have the staff nor the money, nor the time to fight for their rights?

One other agency should not escape the scrutiny of this Committee. The National Institute for Occupational Safety and Health of the Department of Health, Education and Welfare is the part of the Federal program under the Act responsible for conducting in-plant hazard evaluations. The quality of NIOSH's in-plant surveys have been of an excellent nature. NIOSH has been doing a good job of informing workers at various plants around the country about how well management is slowly killing them.

However, if the workers in these plants decide that they've had enough and call for an OSHA inspection, then the flow of NIOSH information abrutly stops because of an agreement between NIOSH and OSHA. That agreement orders the withholding from public information of all NIOSH data on a plant where an OSHA enforcement action on that hazard is in progress. Such enforcement, by the way, can take months, especially if the employer appeals to the Review Commission and the courts. In the meantime, the workers have little idea if the concentrations of dusts, gases or vapors are better, worse, or the same.

If the workers on the other hand decide to maintain the flow of NIOSH information, then they sit and suffer because they don't dare call for any OSHA enforcement action.

This incredible agreement between DOL and HEW is the catch-22 of America's occupational safety and health program.

In summary, the five OSHA reports as well as all NIOSH reports should be made public documents as soon as they are written. Our people need to know 1) in entirety, what hazards the inspector saw, 2) what hazards he decided not to cite, and 3) his justification for the size of the penalties. At least the opening up of the records will allow workers to gain a wider knowledge of all the hazards in their plant so they can take appropriate action to protect themselves. At most, public access to the records may prompt a more responsive and accountable Federal occupational health and safety program.

The one court fight that this Union has been involved under the Freedom of Information Act centered on the same kind of inspector's reports that were written by OSHA's predecessor, the Walsh-Healey Administration. On February 1, 1971, the U.S. District Court ruled in the case of *Wecksler et al. vs. Schultz* that the inspector's reports were to be made public. As late as August, 1971, high officials of the Labor Department were ignorant of the results of the case and still denied us access that the Court had granted us six months earlier. Anyhow, the *Wecksler* case should be enough precedent for OSHA. If not, we will have to go to court again.

The last public information problem in the OSHA inspection-citation process inevitably involves trade secrets. Under OSHA regulations, an employer can declare any part of his manufacturing process to be a trade secret. Once the declaration is made, the inspector will abide by the wishes of the employer. Employees are not given an oportunity to challenge management's contention. This kind of carte blanche for employers will lead to arbitary and capricious actions. For years, the Industrial Water Wastes Inventory was delayed because industry contended that trade secrets would be revealed if they had to describe the nature of the poisons being dumped into American rivers and streams. This same position can be fostered today under OSHA. An employer can declare the toxic air contaminants inside a plant to be a trade secret. The Labor Department will support him as the Office of Management and Budget supported the water polluters. Workers will never know what they are breathing it is much too late.

Lastly, we learned recently that OSHA is, in a sense, allowing employers to violate the Threshold Limit Values for toxic substances by allowing certain excursions above the TLV to be considered only as regular violations, in contrast to more serious violations. After having learned of some of the legal delineations made for various toxic concentrations, my associate, Steve Wodka, requested from George Guenther, Asst. Secretary of Labor for Occupational Safety and Health, the medical criteria on which these decisions were made. That was on February 2nd. After hearing nothing for a month, Wodka wrote to Guenther on March 2nd and asked for an indication as to when the information would be made available. No reply has been received as of today.

In conclusion, we should review the lofty stated aims of the Labor Department. At the beginning of the first meeting of the National Advisory Committee on Occupational Safety and Health, Asst. Secretary George Guenther stated:

"We assume that every document that we issue, every action that we take, every piece of writing that we do, is in the public domain, and with certain legal restrictions involving our regulatory activities that these

documents, these words, this language is public. . . ."

The question is, therefore for this Committee, what is a "legal restriction?" Is the policy that non-disclosure is the rule, rather than the exception, legal? Is the policy that once an investigatory file, always an investigatory file, legal?

And all too often when we are debating these points with the Labor Department, we are hit with this: "the Occupational Safety and Health Act is not an employee law, but a law for employers. Therefore, we don't have to show you any of this data." Is this policy, I ask, the intent of Congress?

BUDGET COMES FIRST—NIXON TURNS DEAF EAR TO NOISE POLLUTION

(By Don Barnes)

WASHINGTON.—The Nixon Administration is soft-peddling the long-awaited Environmental Protection Agency's report to the President and Congress on noise, say several EPA staff professionals who worry about what noise is doing to us mentally as well as physically.

There are some important findings and conclusions in the report which were highlighted in an early EPA draft but which were buried in the pages of the four-pound document that ended up as the final version, one EPA staffer says.

The blame for burying some of the more controversial conclusions was placed squarely on the White House Office of Management and the Budget (OMB), which tailors programs to fit in with its preconceived budget plans.

Budget problems probably made OMB apprehensive about taking on another fight for Federal controls, particularly during an election year and at a time when industry—which normally supports industry-minded Republicans—has been hit with numerous Federal air, water and waste controls, and even the prospects of a sulfur tax.

But industry gave no indication during Congressional hearings on noise last year that it opposed Federal noise controls. To the contrary, industry indicated it would prefer uniform controls to a mixed bag of state laws.

An example of what irritated some of the EPA staffers is the way the report, in its final form, handled an important chart showing average non-industry noise exposures and primary sources of hazardous noise, such as motorcycles, chain saws, motorboats, and home shop tools.

The data shows that approximately 22 to 44 million people have lost part of the utility of their dwellings and yards to noise from traffic and aircraft on a continuous basis, and another 31 million at any one time are similarly affected by noise from construction activity.

Roughly one-half of the total impact of noise represents a potential health hazard (in terms of hearing impairment potential alone), and the remaining half represents an infringement on the ability to converse in the home.

These conclusions, considered highly important, were tucked away on page 133 of chapter 2.

Physiological problems resulting from noise is another important area discussed in the report, but it appears in midchapter of chapter 1 without any notation to draw the reader's attention to this largely unexplored consequence of noise.

In that section, page 29, it is noted that animal research has revealed that high sound levels can interfere with sexual reproductive functions; it can interfere with resistance to viral diseases, and can also produce other pathological effects.

While admitting that evidence of serious psychological consequence from noise is thin, the report nonetheless stresses the annoyance aspects of excessive noise common to everyone.

Excessive noise disturbs sleep, adversely influences mood and disturbs relaxation, and interferes with the ability to perform complicated tasks and can disturb those tasks that demand speech communication of response to auditory signals.

SPECIALIST SAYS—ASBESTOS MAY HAVE CREATED MASSIVE JOB CANCER EPIDEMIC

(By Harry Conn)

WASHINGTON.—The City of Manville, New Jersey, population 15,000, is facing an environmental tragedy of frightening dimensions.

Medical authorities have concluded that perhaps thousands of persons in the Manville area have been exposed to toxic concentrations of asbestos—suffering from asbestosis, inflammation and scarring of the lungs due to abestos exposure.

Mortality due to asbestos may be expected to reach as high as 200 to 500 cases in excess of normal.

On April 10, Dr. Maxwell Borrow, a specialist, will report to the New York Academy of Medicine that 50 cases of a rare disease of cancer of the body cavity known as mesothelioma have been discovered in the area, too.

The source of the asbestos-related diseases is the Johns-Manville operation in Manville. Asbestos is carried out of the plant in clothes and in the hair and on the bodies of the workers into the community.

However, Manville is not considered an isolated case. Similar conditions may exist in hundreds of other communities. Dr. William Johnson, the investigating epidemiologist of the U.S. Public Health Service, said we face a situation which "may be only the tip of the iceberg. This may be the largest epidemic of occupational cancer recorded."

Affected are not just workers in asbestos plants like Johns-Manville but workers engaged in pipefitting, floor covering, construction, shipbuilding, power and utility industries and others.

Also, the studies show that many victims are not workers but people who consume asbestos dust in the environment. The diseases are hard to detect, even by specialists. Frequently, only an autopsy discloses them.

The story was outlined here at a press conference called by the AFL-CIO's Industrial Union Department and later presented in detail at a Labor Department hearing on asbestos standards for the Johns-Manville plant.

Representing workers at the plant is Local 800, United Papermakers and Paperworkers. Since 1963 officers of the local have been pleading for studies. Later studies by the Pacific Health Service were given to the company but not to the union or workers.

In addition, studies were made by Doctors Johnson and Borow as well as by Doctors I. T. Selikoff and William Nicholson at Mt. Sinai Hospital in New York.

An indication of the problem in the plant is that in 1969 Local 800 estimates the company paid nearly $900,000 to about 285 employees for asbestosis under Workmen's Compensation.

This is only an indication, says Dr. Borow, because asbestos diseases frequently do not show up for 20 to 40 years and the statute of limitations often negates any payments.

What the UPP and the IUD are asking for is a 2 fibre/cc over eight hours within six months and a 1 fibre/cc within two years. A one fibre is achievable, the IUD says.

Sheldon Samuels, health, safety and environmental director of the IUD, and Dr. Johnson point out that the safe limit can be reached with a minimum of cost in the product.

"It is important to state," IUD Administrative Director Jacob Clayman said, "that we are unaware that the Johns-Manville Corporation has broken any law or rule. We are not trying to paint a picture of an exceptionally perfidious corporation. Rather, the root of this tragedy lies in the recurrent lack of interest on the part of the Labor Department and of the appropriate state agencies to fulfill responsibilities which, if exercised, could have prevented this disaster."

IN-PLANT POLLUTION: DANGEROUS CHEMICALS ON-THE-JOB PRESENT A SERIOUS OCCUPATIONAL HEALTH HAZARD WHICH MUST BE DEALT WITH BY CONGRESS

I. THE PROBLEM

1. In 1969, millions of American workers were subjected to toxic chemicals, toxic gases, and airborne particulates without being able to protect themselves or to even be told about exposure until it is too late.

These exposures caused over one million new cases of occupational disease—last year alone. Among these one million victims were over 3,600 dead and over 800,000 cases of skin eruption, dermatitis, burns, lung and eye damage, and uncounted cases of brain damage from excess gases. The number is rising every year.

2. The most serious of these diseases, such as cancer from inhalation of toxic substances, are transmitted by polluted air in the working place. These diseases are neither the fault of the worker, nor within his control.

II. THE CAUSE

1. Damage from Organic Chemicals: There are over 100,000 chemical materials in the working environment. Many of these have unknown qualities and effects on humans. Some of them, like beta napthylamine, a textile dye, are known to result in extremely high cancer rates among workers exposed to them. In addition, over 600 new chemicals are placed in the working place every year without any knowledge by workers of the effects of the chemicals on them. At a minimum, these severe dangers are present in the working places of the 900,000 workers in chemicals and plastic products, and among the 460,000 employed in the rubber industry where chemicals of this nature are regularly used. In 1966, California had over 5,000 cases of skin burns and skin damage caused by chemicals and plastics.

2. Damage from Exposure to Toxic and Lethal Gases: The American Conference of Government Industrial Hygienists (ACGIH) has identified over 400 different airborne contaminants. More are spewed forth every day which can cause death, severe brain damage, corrosion of lungs and eyes, and can lead to cancer.

Some of these, as simple and prevalent as carbon monoxide, can be lethal in one half hour or less. Yet garage workers and warehouse men across the country operate without the benefit of an enforced law. Other gases can kill in ten minutes. The 2,000 berryllium workers are a typical example of how unsafe some industries still are. For example, in a 1968 study by HEW, over 50 percent of the air samples in one plant were found to be above the safe limit set by ACGIH.

Many of these gases, such as chloride, when present in excess amounts, can have cumulative effects on the workers' lungs. Other gases, such as sulfur dioxide (to which steel workers are exposed), are sufficiently irritating to cause workers to escape before concentrations become nigh enough to cause death. Other gases, like the fumes of chromium compounds, are not painful when inhaled and thus do not warn the workers (also glass, metal, cement, explosive, paints, etc.) when excess exposure is reached. Chromate workers however suffer from abnormally high bronchiogenic carcinoma. In 1966

employees in the State of California suffered the following known damage from toxic gases; over 550 verified cases of systemic occupational disease, 80 percent of which required hospitalization, another 650 cases of digestive disorders, and other symptoms, and 1,293 cases of serious respiratory illness.

3. Damage from Inhalation of Particles: The particles include the mineral dusts, such as silica, quartz, asbestos, Mica, Soapstone, Talc, trendite, Portland Cement, the solid form of many metals, and the inert or "Nuisance particulates." All of these can and do cause emphysema, pneumoconiosis (general lung deterioration); moreover, some of these dust particles, if inhaled in sufficient amounts, create a form of cancer such as asbestos. These particulates, less than 5 milcroms in size, and invisible to the naked eye are usually retained in the lung once inhaled. Thus many of these dusts, particularly those with chemical properties, have a latency period which postpones their serious effects until long after the original exposure. These dusts require environmental controls, rather than the use of respirators since their effects are cumulative and because most workers can't perform their jobs wearing such protective devices.

Over 2,000 cotton workers, suffer from byssinosis or white lung, from their exposure to cotton fibers in the air; but they have no means to protect themselves. Asbestos workers are known to have a lung cancer rate seven times higher than the rest of us. As of 1968, there were over 50,000 workers exposed to asbestos.

The size of the dust problem is also illustrated by disability records. For example, in the three years from 1959 to 1962, the only period for which the Federal Government has compiled complete record of recipients of federal disability awards, over 6,000 American males, none of whom were miners (and all of whom were under 65 years of age), were awarded disability payments for occupational pneumoconosis.

RIGHT TO BREATHE: CLOSE PLANTS WHICH POLLUTE

(By Paul Gainor)

ROCHESTER, MICH.—UAW president Walter P. Reuther has urged Congress to enact an "environmental bill of rights" and put consumer crusader Ralph Nader at the head of a "national environmental commission."

Reuther said he will petition Congress to put the measure, giving government broad powers over industry, into the U.S. Constitution.

Reuther addressed about 800 students at the start of a three-day environmental teach-in at Oakland University. He also called for nationalization of the oil industry if it does not pass a year-long "probation" period against polluting oceans and beaches.

Reuther suggested the proposed environmental commission:

Have "veto power" over where industry will locate, to avoid pollution of residential areas.

Insure that all products are "compatible with man's living environment." If a company's products cause pollution, Reuther said, the commission should have the power to shut down the company until it corrects the product.

Assess industry for the cost of cleaning up pollution their products create.

Reuther charged that industry "has failed to meet its public 'responsibility' and has been more concerned with 'the level of sales and profits than the level of human environment.'"

The union leader also called for a timetable for the auto industry to develop an engine that will not pollute the air.

"I do not believe we can live compatibly with the internal combustion engine," he said.

Reuther also demanded that the federal government immediately adopt California's regulations for exhaust emission control devices on cars. California's law is the most stringent in the 50 states.

The auto industry, other industries and government should combine to develop a modern mass transit system, he said.

"It is asinine to have hundreds of thousands of people all going to the same place at the same time for the same reason—and all carrying two tons of gadgets with them."

Traffic should be moved underground, he said, "so that man can begin to reassert his sovereignty on the face of the earth."

Reuther charged the oil industry is "exploiting our natural resources with total disregard for man's environment . . . I believe we've got to stop this reckless drilling along the (ocean's) continental shelf."—Detroit News.

OCCUPATIONAL ENVIRONMENTAL CRISIS—UAW ALERTS CONGRESS

American workers face "an environmental crisis on their job," according to Frank Wallick, UAW Washington Report managing editor and Washington legislative representative, in urging passage last week of a strong and comprehensive occupational safety and health bill.

"We know very little about the dangerous and deadly effects of 6,000 toxic substances which workers use on their jobs," he told a House labor subcommittee, asking if any heavy industry factory could pass a test for environmental quality which the U.S. Public Health Service makes for our outdoor environment.

"Every American worker has a right to expect that continuing, exhaustive research will be made on the direct and side effects of every substance to which his body or any part of it is exposed in the course of his work." Wallick said. "He does not have that guarantee today, and we fail to see that this guarantee is assured by any of the present drafts of the bills before the subcommittee."

Lloyd Utter, UAW safety director, accompanied Wallick in making the UAW's presentation on safety. The UAW urged a massive research program well-insulated from any taint of commercial influence. A New Jersey study of 16 industrial plants was included in the UAW statement which showed that air pollution quality criteria was far below in these plants for silica dust, zinc oxide, asbestos dust, and lead. Fifty per cent of the samples collected for sulfur dioxide exceeded air pollution criteria for some of the same plants.

"It would be a great mistake for Congress to approve safety legislation which locks in the consensus standard approach to determining safety and health standards for workers," Wallick told the subcommittee. "These are in some cases the only standards we have today, but we say you should not gamble with workers' lives by playing the consensus game. Any standard-producing establishment must be composed of impeccably disinterested personnel," he said. Wallick suggested a counterpart to the National Bureau of Standards "with some of the best brains of the country working on occupational safety and health standards, constantly testing and retesting the substances to which the human body is exposed."

He attacked the Nixon administration bill which calls for a super-safety board and reduces the powers of the Secretary of Labor in setting safety standards and enforcing those standards.

Wallick said that the O'Hara bill affords much more protection to workers because the Secretary of Labor would have the power to shut down unsafe operations and keep them shut down until unsafe conditions were staightened out.

He urged the House subcommittee "not to paper over any of the deep and far-reaching implications" of the occupational safety and health problem and "not to settle for timid compromises which only gloss over the potential for injury, disease and death to millions of fellow human beings."

GRASSROOTS HEARING LEARNS HOW NOISE, DUST, LACK OF SAFETY EQUIPMENT, AND FUMES SEND WORKERS TO AN EARLY DEATH

JERSEY CITY, N.J.—The grit, the grime, and the horror of modern industry were recounted during a recent day-long hearing of the Senate labor subcommittee headed by New Jersey's Sen. Harrison Williams.

A parade of grassroots labor union witnesses pleaded for passage of a strong occupational safety and health bill during the 91st Congress.

"I don't want to take up too much time because I could go on and on and on," said one witness. "There would be no end. When you talk about safety you are talking about a boring subject. It is hard to get to the people on what safety is all about. That is why, Senator, you have got your hands full, believe me."

The Jersey City hearings were conducted in the plain, nearly empty hall of the Ukrainian Community Center, a few blocks from the shores of the New York harbor where the Statue of Liberty and Ellis Island are clearly visible.

"The companies are covering up too much," said Steelworker Anthony Semeraro, safety chairman of the huge Fairless Works. "I just hope we can expose some of the shenanigans going on."

"Money is spent to increase productivity," complained UAW Local 1668 President Lou LaPlaca, "but how many people design a plant with safety in mind as well as productivity and efficiency?"

Witness after witness poured out a grim account of unsafe working conditions which not even the best collective bargaining can overcome and where only one out of four workers are union members. Congress was urged to settle for nothing less than strong legislation to close the safety gap which sends thousands upon thousands of workers to an early grave.

"I went to a 25 year dinner a few years ago with many retirees who had at least 25 years in the plant," told Steelworker Tony Casone. "The majority of the men there were persons who had been mechanics, who had the free range of the plant. But the men who were working in the production departments, there were very few of them amongst the retirees who were still alive, for whatever significance that is."

Testifying late last year, Consumer Crusader Ralph Nader urged that Congress conduct field hearings to get the views of rank-and-file working people. The Jersey City hearing was the first to be conducted outside of Washington. Others are scheduled for Pittsburgh and South Carolina later this month.

Fred Mann, a UAW local union president from a small factory with only 300 members said: "I think that if federal legislation were enacted, where everyone is treated the same, then a small company would just have to recognize that this is a cost of doing business, by running their plants in the same safe and healthy way as other people do, and however they meet this obligation would be their business. Anyway, they would not be competitively at a disadvantage if it were federally regulated."

Mann recently won a loss of hearing workmen's compensation case which he said forced his employer to begin a program to reduce noise levels at his plant. "They have

instructed their engineers to look into baffle plates to be hung from the ceilings to eliminate the noise, and so forth." He told the Senate subcommittee that "only economic pressure" will make employers do the right thing.

There was much ridicule made of the National Safety Council programs by many of the witnesses.

Steve Cadena, a Steelworkers staff representative, with tragic sarcasm, dismissed safety awards with these words:

"In our plant we had 2 million hours without a lost time accident. It was not really without lost time. I wouldn't accept the award. I wouldn't let anybody in the local accept the award, because we had people all over the place with broken arms, elbows out of commission, and everything else, and I never did write to the Steelworkers International and accept the plaque.

"I think it is wrong for the National Safety Council when they do decide to give an award not to see the union and to see if the union believes the plant should get a safety award.

"The Hudson plant had two million hours one time, but it is all walking wounded, and a few years back I said that the Hillside Can Company could be the Hillside Memorial Hospital. They are playing games with our safety reports, and something should be done."

Another steelworker echoed the same complaint about inaccurate safety reporting upon which the national statistics are based:

"In 1968 the company put a big push on for no disabling accidents for one year, to receive an award. They achieved their goal. I have a picture to prove it. I was right there to receive the award. They had a big testimonial dinner. We received a nice, beautiful plaque from the National Safety Council. They came out with all kinds of figures, less than 1.2 disabling injuries, one out of every 1 million man hours.

"Gentlemen, when we lose a hand in the Fairless Works, this is not a disabling injury. When we break a leg this is not a disabling injury. When we have people literally torn apart, receiving hundreds of stitches, and laying in the dispensary for three days, not to classify it as a lost time accident is a joke."

The House labor subcommittee last week began marking up a committee bill for approval. Safety and health bills were killed in the latter days of the 90th Congress. The Nixon administration, with the approval of the U.S. Chamber of Commerce, is supporting a bill which contains a five-man board to oversee safety standards. Critics contend the Nixon board would delay decisions which are life and death matters to 80 million workers.

"We hope you will not legislate a bad situation. Don't just legalize what we have. We want some improvements, substantial improvements, and if we don't get a good bill this year, the workers in this country are going to be back year after year until we do get one," is how Frank Wallick, UAW Washington legislative representative, put it to Sen. Williams.

"Everybody is talking about the environment. That is the greatest fad we have right now. It is a serious problem.

"But we have an environmental problem at the work place, and we have in-plant pollution which is as serious as anything people have in the out of doors.

"We have data running out of our ears on what is wrong with life outside, with smog, and carbon monoxide, and DDT. We don't have a great deal of information about what the problems are where people work, and we hope that any legislation which is written will make that kind of information available."

LaPlaca, who is president of a six plant amalgamated local, stressed the point that occupational safety and health "is something that involves the entire community. It involves the family at home."

He told of workers whose family life was ruined by job hazards, how the father of a worker killed on the job was driven to suicide and how difficult it is for workers to clean up after working on dirty jobs where dangerous chemicals seep into every pore of their body.

He said that young workers are more impatient with bad working conditions than some of the older workers:

"Most of the old timers are willing to stick to the old cliches that the conditions are conditions of employment or the nature of the beast, but the young people aren't satisfied with this. They want a better life in the plant as well as outside.

"They spend eight hours a day, one-third of their life, within the plant. For the average person, this would mean about half of their waking hours.

"The environment is important to them, because the pollutants in the air are much more concentrated, and I think that people have a right to know what they are being subjected to and what effects it will have upon them now or in future."

Fred Mann, from a smaller local, told Sen. Williams that his own plant had to threaten a strike before his management agreed to clean up certain operations which were causing skin boils. "It could have been accomplished 20 years ago as a matter of right. It shouldn't have had to come to the point of economic pressures."

He told the subcommittee hearing "a company always takes the position that if you can't do your job, get off it, you don't belong here, and it may sound rather harsh, but I feel the same way, that if a company can't run its business efficiently and safety, they don't belong in the business."

CLEANER AIR HEARING BRINGS NOISY CLASH

(By Ken Shuttleworth)

PHILADELPHIA.—In Pennsylvania, steel production, coal mining and chemical plants are among the key economic activities. Consequently, air pollution is a deadly serious matter in the Keystone State.

And its people have had it up to their red-rimmed eyeballs with the modern day scourge. They made the point clearly during two days of public hearings on the State Air Pollution Commission's proposed standards for controlling the problem.

Some said the criteria would, in effect, license industries to pollute the air. Other witnesses used more colorful phraseology—"environmental genocide," "legalized asphyxiation"—and said the commission should go back and work out tougher standards before granting final approval to the plan.

The 11-member Commission, weighted in favor of industry, has the ball and could—if it sees fit—revise its proposal in accordance with the overwhelming sentiment displayed by the Commonwealth citizenry. If it chooses to stick by its guns, however, the Commission may find itself in the embarrassing position of having to do it anyway. Only then it would be under the direction of the National Air Pollution Control Commission in Washington. Like all 50 states, Pennsylvania must submit a pollution control plan to the Federal commission by mid-November.

And it better be good. Otherwise the Federal commission can assume the responsibility of setting standards on its own.

That Federal agency, incidentally, has its own ideas on air pollution control. Much tighter than the Pennsylvania proposal, the Federal standards are based on the point at which there is enough pollution to constitute a health hazard. Such a hazard, the agency contends, exists when increases occur in death rates, hospital admissions and absenteeism from work on account of respiratory illness.

These symptoms occur, the Federal government says, when the annual average (determined from weekly and daily averages) of "particulates"—soot, dust and smoke—is 80 micrograms per cubic meter of air and the daily average amount of sulphur dioxide—pollutants emitted mainly through fuel burning—is .11 parts per million. Pennsylvania wants to set the standard at 100 micrograms and .25 parts per million respectively.

Most of the clean air advocates at the State commission's hearings in Philadelphia and Pittsburgh indicated the Federal figures might not be quite stringent enough. However, they are at least acceptable to virtually all the opponents of the Pennsylvania plan. "We can live with them," one man observed caustically.

Norman Childs, who, as executive director of the Delaware Valley Citizens Council for Clean Air, has been fighting pollution on a full-time basis for the past three years, put the case for tougher standards most succinctly: "If we are to err," he said, "let us err on the side of requiring too much control."

"We urge Pennsylvania," he said, "to adopt standards which will protect the people, not attempt to protect industry."

Childs was among more than 50 witnesses who came out to block the state plan. Many of the others represented various tuberculosis and health societies throughout the state. These people talked about the sharp increases in such respiratory ailments as tuberculosis and emphysema, and blamed much of the problem on dirty air.

Also among the witnesses were municipal health officers and a group of residents from Philadelphia's Bridesburg section, operational base for several chemical companies, who pathetically joked about how they could go about promoting a sporting event in their community. They said they could bill it "The Cesspool Bowl."

Among labor unions represented at the hearings, held Sept. 9 and 10, was the United Steelworkers of America, Julius Uehlein, of the USA Legislative Committee of Pennsylvania, spoke in behalf of the steelworkers. He called air pollution a "plague" that must be dealt with regardless of cost, then observed: "The proposed State standards allow no margin for safety . . . it is the workers and people in general who are forced to breathe the **dirty** air (coming from power plants, heavy industry, etc.) that bear the financial burden resulting from air polution."

"I realize," he added, "there are those who are saying: 'We cannot afford to meet proper standards.' To those I would say, that we cannot afford not to meet standards that will effectively cope with this problem and have as its goal, complete elimination."

TELEPHONE PRIVACY—XII

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr. ASPIN. Mr. Speaker, I have recently reintroduced the Telephone Privacy Act (H.R. 14097) with 28 cosponsors.

This bill would give to individuals the right to indicate to the telephone company if they do not wish to be commercially solicited over the telephone. Com-

mercial firms wanting to solicit business over the phone would then be required to obtain from the phone company a list of customers who opted for the commercial prohibition. The FCC would also be given the option to require the phone company, instead of supplying a list, to put an asterisk by the names of those individuals in the phonebook who have chosen to invoke the commercial solicitation ban.

Those not covered by the legislation would be charities and other nonprofit groups, political candidates and organizations and opinion poll takers. Also not covered would be debt collection agencies or any other individuals or companies with whom the individual has an existing contract or debt.

As I noted in a statement on March 9, I have received an enormous amount of correspondence on this legislation from all over the country. Today, I am placing a 10th sampling of these letters into the RECORD, since they describe far more vividly than I possibly could the need for this legislation.

These letters follow—the names have been omitted:

THE GEORGE W. HELMING AGENCY,
Bristol, Conn., March 27, 1972.

Rep. LES ASPIN,
Washington, D.C.

DEAR REPRESENTATIVE ASPIN: Just a brief note to offer "Congratulations" for your efforts in connection with your Telephone Privacy bill.

We have been annoyed many times by solicitors phone calls and it seems that most of them call during the several hours of the day when we are trying to relax from our busy day.

I have listened to ringing phones in my office for thirty years and I'm sure you can appreciate my disturbance when someone calls during the evening with a so-called "prize winning" phone call.

Please push for passage of your Bill.

Cordially yours,

———— ————.

OSHKOSH, WIS.,
March 27, 1972.

LES ASPIN,
Representative of Wisconsin,
Washington, D.C.

DEAR REPRESENTATIVE ASPIN: I just learned of "The Telephone Privacy Act" from The *Milwaukee Sentinel*, (March 27, 1972), p 11, and I must write to express my wholehearted approval before the opportunity passes.

My husband and I have been plagued by this invasion of privacy for years, but never knew to whom we could effectively direct our complaints.

Sincerely,

———— ————.

MORAGA, CALIF.,
March 28, 1972.

Hon. LES ASPIN,
Democrat of Wisconsin,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE ASPIN: We've read an article in the *Christian Science Monitor* of March 28, 1972—by staff correspondent R. P. Hey, entitled, "Can't a Family Eat in Peace?"

Apparently not! We say too. Yes we approve, encourage and support, (1) the idea of the bill you've proposed to stop telephone solicitation and (2) your seeing this through.

We'll send a letter to our Rep. Waldie stating the above and encouraging his support for you!

Thank you for everything you are doing to stop telephone solicitation.

———— ————.

SILVER SPRING, MD.,
March 21, 1972.

Representative LES ASPIN,
House of Representative,
Washington, D.C.

DEAR SIR: Thank you for introducing a bill about telephone soliciting! It's a small evil but such or needless annoyance and waste of time.

We have received dozens of calls from Parklawn Memorial Cemetery in the twenty years we have lived here, in spite of the fact that I always tell them immediately we are not interested. (I have let my family know that I do not wish to be buried there if anything else is possible.)

Sears Catalogue office calls repeatedly to see if I want to place an order. I always tell them I will call them. I have their number and am very able to call when I want to place an order. Nothing one can ever say seems to stop these persistent callers.

I would welcome such a law as you propose.

Sincerely

———— ————.

Please don't feel it necessary to answer this.

AKRON, OHIO, *April 1, 1972.*

Hon. LES ASPIN,
The House of Representatives,
Washington, D.C.

DEAR MR. ASPIN: We are delighted that at last some one is attempting to rescue us from the invasion of our privacy by businesses who freely use our private telephones for advertising purposes. Thousands will rise up and call you blessed.

I try to be polite in consideration of the caller who is a paid worker, but frankly tell him that his firm is now on my blacklist of businesses that I will not patronize under any circumstances.

Thank you.

Very truly yours,

———— ————.

MEDAL OF HONOR CONGRESSMEN

HON. JOHN G. DOW

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 13, 1972

Mr DOW. Mr. Speaker, it is an immense source of pride to me to learn that my congressional district is interwoven somewhat with the history of the winners of the Congressional Medal of Honor.

Mr. Rudolf J. Frederich, who is the national director of the Medal of Honor History Roundtable, resides in my district at Highland Mills, N.Y. By dint of extensive research, Mr. Frederich has compiled a list of Senators and Representatives who were winners of the Medal of Honor. I cannot fail to note that one of these, Thomas W. Bradley, a predecessor of mine from Orange County, N.Y., a resident of Walden, N.Y., earned the Medal of Honor for his bravery at the battle of Chancellorsville. Also, Philip S. Post, a representative from Illinois, was born in Florida, N.Y., and earned the Medal for Bravery in the Battle of Nashville. Mr. William H. Seward, the great Secretary of State in the Lincoln administration, was born in Florida, N.Y., and part of my congressional district.

I hope that my colleagues will scan this listing as Mr. Frederich has given it to me here on the outside chance that someone will find enough winners from his district to top the 27th Congressional District.

Of course, we have had many Medal of Honor winners over the years from the 27th Congressional District. The U.S. Military Academy at West Point is located in the district and we take the proud liberty of including them among these men who deserve so much, the honor of their country.

The listing of Medal of Honor Congressmen follows below:

MEDAL OF HONOR CONGRESSMEN

A. SENATORS OF THE UNITED STATES

The following men, each recipients of the Medal of Honor, further served their fellow Americans and country by serving in the United States Senate:

1. Adelbert Ames, Senator from the State of Mississippi, 1870, Governor of Mississippi, 1874. Earned Medal of Honor for valor at the 1st Battle of Bull Run, Virginia, July 21, 1861.

2. Henry A. Dupont, Senator from the State of Delaware, 1906, 2 terms. Earned the Medal of Honor for valor at the Battle of Cedar Creek, Virginia October 19, 1864.

3. Matthew S. Quay, Senator from Pennsylvania and the Legislature in the State of Pennsylvania, 1887. Earned Medal of Honor for valor at the Battle of Fredericksburg, Virginia, December 13, 1862.

4. William J. Sewell, Senator from the State of New Jersey, 1887 until his death in 1901. President of the New Jersey State Senate, 1880. Earned the Medal of Honor in the Battle of Chancellorsville, Virginia, May 3, 1863.

5. Francis E. Warren, First Senator from the new State of Wyoming, 1890 serving until his death in 1929 being 38 years becoming the 2d longest tenure. Territorial Governor of Wyoming until 1890 when he was elected the first governor of the state resigning that office to become U.S. Senator. Earned the Medal of Honor at the Battle of Port Hudson, Louisiana, May 27, 1863.

B. HOUSE OF REPRESENTATIVES OF THE UNITED STATES

1. Henry B. Bingham, Representative from Pennsylvania for 17 terms from 1879 until his death in 1912. Postmaster of Philadelphia, 1867. Earned the Medal of Honor in the Battle of the Wilderness, Virginia, May 6, 1864.

2. John C. Black, Representative from the State of Illinois, 1892, President of the U.S. Civil Service Commission. Earned the Medal of Honor at the Battle of Prairie Grove, Arkansas, December 7, 1862.

3. Thomas W. Bradley, Representative from the State of New York, 1903 for 3 terms, Member of the New York Assembly, 1876. Earned the Medal of Honor for gallantry at the Battle of Chancellorsville, Virginia, May 3, 1863.

4. Willis W. Bradley, Representative from the State of California, 1947. Member of the California Assembly, 1952. Earned the Medal of Honor while serving aboard the USS Pittsburgh, July 23, 1917.

5. Amos J. Cummings, Representative from the State of New York, 1887 & 1901. Earned the Medal of Honor for bravery at the Battle of Salem Heights, Virginia, May 4, 1863.

6. Newton M. Curtis, Representative from the State of New York, 1891 for 3 terms. Member of the New York Assembly, 1889. Author of From Bull Run to Chancellorsville, 1906. Earned the Medal of Honor at the Battle of Fort Fisher, January 15, 1865.

7. Byron M. Cutcheon, Representative from the State of Michigan, 1883 for 4 terms. Earned the Medal of Honor for gallantry at the Battle of Horseshoe Bend, Kentucky, May 10, 1863.

8. John M. Farquhar, Representative from the State of New York, 1885 for 3 terms. Earned the Medal of Honor for bravery at

the Battle of Stone River, Tennessee, December 31, 1862.

9. Richmond P. Hobson, Representative from the State of Alabama, 1907 for 4 terms. Organizer and President of the International Narcotic Education Association, 1923, Author of The Sinking of the Merrimac, 1899. Earned the Medal of Honor at Santiago de Cuba, Cuba, June 3, 1898 for gallantry in action.

10. Edward V. Izac (Isaacs), Representative from the State of California, 1937. Earned the Medal of Honor for bravery aboard the German submarine U–90 and while prisoner of war in Germany May 21, 1918. Author of book Prisoner of the U–90, 1919.

11. John H. Moffitt, Representative from the State of New York, 1887 for 2 terms. Earned the Medal of Honor at the Battle of Gaines Mills, Virginia, June 27, 1862. He was succeeded in office by Medal of Honor man Representative Newton M. Curtis (No. 6 above).

12. Charles E. Phelps, Representative from the State of Maryland, 1865 for 2 terms, Justice of Baltimore Supreme Court, 1882 to 1908. Earned the Medal of Honor for gallantry in the Battle of Laurel Hill, Virginia, May 8, 1864.

13. Philip S. Post, Representative from Illinois, 1887 for 5 terms until his death in 1895. Consul General to Austria-Hungary Empire, 1874 to 1879. Earned the Medal of Honor for bravery in the Battle of Nashville, Tennessee, December 15–16, 1864.

14. Daniel E. Sickles, Representative from the State of New York, 1857 to 1861. Member of the New York State Senate, 1856, Member of the New York Assembly, 1847. Minister to Spain, 1869–1875. Reelected to the House of Representatives from New York 1891. Earned the Medal of Honor for gallantry at the Battle of Gettysburg, Pennsylvania, July 2, 1863.

Research credits: Eugene V. McAndrews, Baltimore, Maryland, Jerry Erickson, Fullerton, CA and Rudolf J. Friederich, Highland Mills, NY. Compiled by Mr. Friederich, Editor, Medal of Honor Historical Notes.

SENATE—*Monday, April 17, 1972*

The Senate met at 10:30 a.m. and was called to order by the President pro tempore (Mr. ELLENDER).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, to whom "a thousand years are but as a day, and as a watch in the night when it is past," help us to find Thee not only in the mystic hour of prayer but in the processes of history. Enable us to do our work in the knowledge that the ultimate victory belongs to truth over falsehood and righteousness over evil, for Thou art the transcendent Sovereign Lord of all life and history—

"This is my Father's world,
O let me ne'er forget
That though the wrong
Seems oft so strong
God is the Ruler yet."
—M. B. BABCOCK.

Help us to keep our little needs and small concerns of each day under the perspective of the Eternal—to work as though everything depended upon us and to trust as though everything is in Thy keeping.

And to Thee shall be all praise and honor. Amen.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, April 13, 1972, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States, submitting nominations, were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of Senate proceedings.)

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the House had passed the joint resolution (S.J. Res. 117) asking the President of the United States to declare the fourth Saturday of each September "National Hunting and Fishing Day," with amendments, in which it requested the concurrence of the Senate.

WAIVER OF CALL OF THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar under rule VII may be waived.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar beginning with "New Reports."

There being no objection, the Senate proceeded to consider executive business.

The PRESIDENT pro tempore. The Secretary will state the first nomination.

THE DEPARTMENT OF TRANSPORTATION

The second assistant legislative clerk read the nomination of John L. Hazard, of Michigan, to be an Assistant Secretary of Transportation.

The PRESIDENT pro tempore. Without objection, the nomination will be considered and confirmed.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

The second assistant legislative clerk proceeded to read nominations placed on the Secretary's desk in the Coast Guard.

Mr. ROBERT C. BYRD. Mr. President I ask unanimous consent that those nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations will be considered and confirmed en bloc.

Mr. ROBERT C. BYRD. Mr. President I ask that the President be immediately notified of the confirmations of the nominations.

The PRESIDENT pro tempore. Without objection, the President will be so notified.

Without objection, the Senate will resume the transaction of legislative business.

TRIBUTE TO LAW ENFORCEMENT OFFICERS

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate the amendment of the House of Representatives to Senate Joint Resolution 169.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the joint resolution (S.J. Res. 169) to pay tribute to law enforcement officers of this country on Law Day, May 1, 1973, which was to strike out the preamble.

Mr. HOLLINGS. Mr. President, in 1961, Congress designated each May 1 as Law Day, and for the past 10 years this program has been marked by various programs centered on national freedom and rights under law.

This year it is particularly appropriate that we reflect upon the debt of gratitude we owe to the law enforcement personnel whose efforts make possible the perpetuation of our rights and our freedoms. Our police officers and related enforcement personnel are without peer. They have helped the Nation through many troubled times in the past, and they continue to do so today.