REPRESENTATIVE LONG'S ACTIVITIES IN BEHALF OF ISRAEL

HON. BENJAMIN S. ROSENTHAL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 4, 1972

Mr. ROSENTHAL. Mr. Speaker, during his 10 years in the House of Representatives, CLARENCE D. LONG has worked to strengthen Israel by supporting programs to improve agricultural and industrial development, to keep Israel strong militarily, and to aid the emigration of Soviet Jews to Israel.

As a member of the Foreign Operations Subcommittee of the House Appropriations Committee—which initiates congressional action on U.S. foreign aid programs—Dr. LONG has introduced and supported programs to aid Israeli educational institutions, including the Weismann Institute and the Feinberg Graduate School of Hebrew University; medical centers, such as the Hadassah-Hebrew University Medical Center; and homes for the aged, such as Zichron-Yaakov. In addition, the Maryland Representative has worked for the passage of legislation to express the sense of Congress with respect to peace in the Middle East, to urge the President to intercede with Soviet leaders to obtain better living conditions for Soviet Jewry, and to allow Soviet Jews to emigrate freely to Israel or to any other nation of their choice.

In 1967 and 1971, Dr. LONG visited Israel to consult with Levi Eshkol, Golda Meir, Abba Eban, David Horowitz, Finance Minister Phinhas Sapir and other Israeli leaders.

Following the 1971 trip, during which Congressman LONG also conferred with President Sadat of Egypt—the first American Congressman to do so—he reported his views to the House Foreign Affairs Subcommittee on the Near East.

Representative LONG pointed out that his principal conclusion—based on observations, conversations, and economic analysis—is that time is very much on Israel's side. That nation is producing about the same gross national product as Egypt, although it has only one-eleventh the population, and is moving ahead at one of the fastest rates economically of any country in the world.

Israel looks for a doubling of population in the next 20 years from natural growth and immigration. If Israel continues her 6-percent annual growth in real output per capita, this will mean a six-fold increase in total output in the next 20 years. Thus, in another two decades, there will be the economic equivalent of six Israels. In contrast, Egypt is growing slowly—barely keeping ahead of a population growth which is a hindrance rather than a help since Egypt is already bursting with unabsorbed labor.

The Maryland Congressman observed at the hearing which I attended, that the American people can take pride in Israel's progress, for they have given Israel nearly $8 billion in economic and military aid—through the U.S. Government and the American Jewish Community.

PASSING OF J. EDGAR HOOVER

HON. DON H. CLAUSEN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 3, 1972

Mr. DON H. CLAUSEN. Mr. Speaker, J. Edgar Hoover's passing at the age of 77 and after 48 unbroken years of public service, has deeply saddened those of us in America who had a deep and abiding respect for both the man and the law. I say this because, for as long as I can remember, the two have been accepted as one and the same by all Americans familiar with his extraordinary and unparalleled record of service.

I know of no citizen of this great country who has served his Nation so ably and so loyally, as has J. Edgar Hoover. Some have said that he was incorruptible, but that does not reflect the true measure of this great man. In the recorded history of the Federal Bureau of Investigation, there is not a single known instance of an FBI agent ever accepting a bribe or otherwise defaming the Bureau. That, in my judgment, is but one example of the greatness that was J. Edgar Hoover the leader, the Director, and the man that we all referred to as an institution unto himself.

From the lawlessness and corruption of the 1920's, the subversion and intrigue of the 1940's, to the bombers and dissenters of the 1960's—J. Edgar Hoover remained true to his profession, to enforcing the law, to upholding justice, and to the many Presidents he served along the way. And throughout it all, he remained above partisan politics, above revenge to his critics, and above reproach in directing the activities of what is recognized through the world as the epitome of a national crime-fighting organization—an organization that always supplemented and supported the State and local peace officers and their efforts—an organization that gave us more internal security and freedom than any country in the world.

I should like to conclude my remarks by quoting a line I read today by noted columnist David Lawrence about Mr. Hoover—

He died while in office, so it can be said he retired peacefully.

When you trust a man and respect him as much as we all trusted and respected J. Edgar Hoover, there can be no question that he is going to be missed. When a man remains in public office and at the same job for nearly half a century, there can be no doubt that his departure is going to leave a great void. As a boy he was my hero and as a man, he remained my hero. And he always will be.

A G-Man, when I was a boy was a man that gave me something to trust, something to cling to, as I sought assurances of security, something I could believe in.

J. Edgar Hoover projected an image of fairness and firmness and he directed and built the great organization we commonly accept and respectfully refer to as the FBI.

America desperately needs to recognize and adhere to the principles of honesty, integrity, and justice that this great man practiced each day of his life.

J. Edgar Hoover was truly a Christian soldier for peace in America.

Today he is resting in peace, but his memory and his name will linger on forever in the hearts and minds of all Americans privileged to live in his time and under his protective shield of service.

When we as individuals have accomplished our daily tasks, we can go to sleep in peace—knowing that God is always awake and aware.

J. Edgar Hoover, with a lifetime of fulfillment and accomplishments has earned his right to sleep in peace.

May the good Lord look kindly upon this man, my hero.

SENATE—*Friday, May 5, 1972*

The Senate met at 10 a.m. and was called to order by Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Our Father God, we thank Thee for Thy providential care over this Nation, for watching over us in peace and in war, in prosperity and adversity, and for leading us to this very hour. Guide us to a new high destiny of spiritual power, moral rectitude, and strength in the quest for peace and justice. Equip us in mind and nourish us in spirit.

"To serve the present age
Our calling to fulfill
O, may it all our powers engage,
To do the Master's will."

We pray in His name. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The assistant legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., May 5, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ADLAI E. STEVENSON III, a Senator from the State of Illinois, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. STEVENSON thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, May 4, 1972, be dispensed with.

The ACTING 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 ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PAYMENT OF JUDGMENTS IN FAVOR OF THE MIAMI TRIBE OF INDIANS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 745, H.R. 5199.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk proceeded to read as follows:

H.R. 5199, to provide for the disposition of funds appropriated to pay judgments in favor of the Miami Tribe of Oklahoma and the Miami Indians of Indiana in Indian Claims Commission dockets numbered 255 and 124–C, dockets numbered 256, 124–D, E, and F, and dockets numbered 131 and 253, and of funds appropriated to pay a judgment in favor of the Miami Tribe of Oklahoma in docket numbered 251-A, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Affairs with an amendment, on page 2, beginning with line 14, strike out "adding the names of children born to enrollees on or prior to and living on the date of this Act, (b) by adding the names of persons living on the date of this Act who were eligible for enrollment under said section 4 but were not enrolled, and the names of their children born on or prior to and living on the date of this Act, and (c) by deleting the names of persons who are deceased as of the date of this Act." and insert in lieu thereof "adding the names of persons living on the date of this Act who were eligible for enrollment under said section 4 but were not enrolled, (b) by adding the names of children born to enrollees on or prior to the date of this Act and who are living on said date, (c) by adding the names of children born to persons who were eligible for enrollment under said section 4 but who were not enrolled, regardless of whether such persons are living or deceased on the date of this Act, provided said children of such persons are living on the date of this Act, and (d) by deleting the names of persons who are deceased as of the date of this Act."

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the funds appropriated by the Acts of July 22, 1969 (83 Stat. 49), and January 8, 1971 (84 Stat. 1981), to pay judgments awarded to the Miami Tribe of Oklahoma and the Miami Indians of Indiana in Indian Claims Commission dockets numbered 255 and 124–C, dockets numbered 256, 124–D, E, and F, and dockets numbered 131 and 253, and to pay a judgment awarded to the Miami Tribe of Oklahoma in docket numbered 251–A, together with interest thereon, after payment of attorney fees and litigation expenses, shall be distributed as provided in this Act.

SEC. 2. The Secretary may make appropriate withdrawals from the judgment funds and interest thereon, using interest funds first, to pay costs incident to carrying out the provisions of this Act.

SEC. 3. The Secretary of the Interior shall bring current to the date of this Act the roll prepared pursuant to section 4 of the Act of October 14, 1966 (80 Stat. 909), by (a) adding the names of persons living on the date of this Act who were eligible for enrollment under said section 4 but were not enrolled, (b) by adding the names of children born to enrollees on or prior to the date of this Act and who are living on said date, (c) by adding the names of children born to persons who were eligible for enrollment under said section 4 but who were not enrolled, regardless of whether such persons are living or deceased on the date of this Act, provided said children of such persons are living on the date of this Act, and (d) by deleting the names of persons who are deceased as of the date of this Act.

SEC. 4. An application for addition of a name to the roll pursuant to section 3 of this Act must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Oklahoma, on forms prescribed for that purpose. The determination of the Secretary regarding the eligibility of an applicant shall be final.

SEC. 5. On completion of the roll by the Secretary of the Interior, the balance of the funds appropriated to satisfy the judgments in dockets numbered 255 and 124–C, dockets numbered 256, 124–D, E, and F, and dockets numbered 131 and 253, and interest accumulated thereon, shall be distributed equally to the individuals enrolled.

SEC. 6. The funds on deposit in the Treasury of the United States to the credit of the Miami Tribe of Oklahoma that were appropriated by the Act of July 22, 1969 (83 Stat. 49), to pay a judgment by the Indian Claims Commission in docket numbered 251–A, together with the interest thereon, after payment of attorney fees and expenses, may be advanced or expended for any purpose that is authorized by the tribal governing body of the Miami Tribe of Oklahoma, and approved by the Secretary of the Interior.

SEC. 7. (a) Except as provided in subsection (b) of this section, the Secretary of the Interior shall distribute a per capita share payable to a living enrollee directly to such enrollee, and shall distribute a per capita share payable to a deceased enrollee directly to his heirs or legatees upon proof of death and inheritance satisfactory to the Secretary, whose findings upon such proof shall be final and conclusive.

(b) Sums payable to enrollees or their heirs or legatees who are less than eighteen years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interest of such persons.

SEC. 8. None of the funds distributed under the provisions of this Act shall be subject to Federal or State income taxes.

SEC. 9. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act, including the establishment of deadlines.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the unfinished business is laid before the Senate today and the Chair has announced that the pending question is on adoption of the amendment of the Senator from Mississippi (Mr. STENNIS), immediately thereafter the Stennis amendment be temporarily laid aside for not to exceed 1 hour and 30 minutes; that the amendment by the Senator from California (Mr. TUNNEY) meanwhile, be temporarily laid before the Senate for disposition and that time on the Tunney amendment be equally divided between and controlled by the mover of the amendment (Mr. TUNNEY) and the manager of the bill; and that at the close of one hour and a half, or at such time as all time has been yielded back, a vote occur on the amendment by Mr. TUNNEY; and that immediately following disposition of that amendment, which would ordinarily be the case anyhow, the Stennis amendment again be announced as the pending question.

Mr. GRIFFIN. Mr. President, reserving the right to object, and I do not intend to object, it would be the understanding, I take it, that if there were any amendments to the Tunney amendment, discussion of such amendments would have to take place within the one hour and a half; is that correct?

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. Such amendments to the amendment could, conceivably, be offered so that the vote thereon would come at the end of the one hour and a half; is that correct?

Mr. ROBERT C. BYRD. The distinguished assistant Republican leader is correct.

Mr. GRIFFIN. The laying aside temporarily of the Stennis amendment and the likelihood of a rollcall vote may inconvenience some Senators today, but I know of no objection on this side to the consideration of this single amendment. Indeed, I will support the amendment. It restores funds budgeted and recommended by the administration for the Peace Corps. But I have been requested by other Senators on this side to object if further unanimous-consent requests are made today with respect to any other amendment. It appears that we can notify Senators there is likely to be a

rollcall vote on the Tunney amendment at about 12 noon today.

Mr. ROBERT C. BYRD. Mr. President, may I say in this regard that I shall cooperate with the distinguished assistant Republican leader in this instance, particularly, but I think it should be stated for the record that the leadership on this side of the aisle is not always going to willingly submit to the placing of blanket objections—to unanimous-consent requests to call up amendments—by Senators who are not here.

I do not know the identity of the Senators that the distinguished assistant Republican leader has in mind. If I were in his place, I would do precisely as he has done in honoring the requests, insofar as possible, of my colleagues. At least, if I gave my word that I would object, I would do so. But I think I should state that this is the President's legislation. It is not mine. I think it is in the interest of the administration, and it is our duty as Senators, that we get on with the business here. The leadership wishes to accommodate any Senator on either side of the aisle when it is possible to do so without delaying the business of the Senate, but the leadership does have a responsibility to do everything it can do to expedite the work of the Senate.

It has been said by someone high in the executive branch of the administration that Congress is stalling, that Congress is delaying action on the program of the President.

I would urge the administration to have its Members here so that we can act. I am not implying, or stating, that there are no Members on my side of the aisle who are not here. The record of attendance on both sides of the aisle is, from time to time, not to be boasted about, but I am disappointed this morning—having heard some statements expressed yesterday on the part of certain Senators who were not going to be here today—that overnight, the distinguished acting Republican leader has been asked to object in their stead.

I gave the distinguished assistant Republican leader and other Senators, including the distinguished Senator from Mississippi (Mr. STENNIS), my word yesterday in our off-the-floor conference, that we would not set the Stennis amendment aside today for any other amendment except by unanimous consent, and only then for relatively noncontroversial amendments. But we did reach an understanding to try to move forward to that extent. I intend to keep that word. So far as I am concerned, I cannot set the Stennis amendment aside except by unanimous consent today, but what I could also say is that it can be done by motion. Of course, that motion, if it comes, after the unfinished business is laid down, is debatable and if any Senator wants to hold up the business of the Senate, he can filibuster that motion.

But this business of objecting to a unanimous-consent request by proxy is not always going to work around here. The leadership has the responsibility and so far as I am concerned, I am going to carry out my responsibility. I am not always going to feel constrained against moving to call up a measure or an amendment if a unanimous consent to do so is objected to.

Again, what I am saying is not with any intent to cast any reflection whatsoever on the assistant minority leader, for whom I have the utmost respect. He is doing his job, and he does it well. But I have my job to do also. And I intend to do it to the best of my ability. I do not want the Senate's business to be stalled by a Senator who wants to go somewhere on Friday and does not want a vote to occur during his absence, and requests some other Senator to object in his stead. It may work this time. However, it will not always be successful.

Mr. GRIFFIN. Mr. President, now that the distinguished majority whip has completed his most eloquent and forceful statement, which he is of course entitled to make, I will observe that when the roll is called on the Tunney amendment, I think the number of Senators on this side of the aisle will look pretty good in comparison with the absentees on the other side of the aisle.

Mr. ROBERT C. BYRD. Mr. President, that may be true. However, no absent Senator on this side of the aisle has lodged a request for an objection to be made to a unanimous-consent request to set aside an amendment and to take up some noncontroversial amendment which may be offered. The objection is coming from the other side of the aisle. I say most respectfully that I honor the assistant minority leader for doing his job. But I have a job to do also.

Mr. GRIFFIN. Mr. President, I respect and honor the able majority whip for doing his job. He does it very well and very effectively.

Perhaps a mistake was made in agreeing that any other amendment could be taken up to displace the Stennis amendment. Of course, the pending business before the Senate is the amendment of the distinguished Senator from Mississippi. And we have been ready and willing to vote on the Stennis amendment for these past several days. We are ready and willing to vote today.

The delay has not come from this side of the aisle; or at least it has not come from this side of the issue. I say it that way because I realize that the issue involved is not a partisan matter. Obviously there are Senators on both sides of the political aisle with differences about the merits of the Stennis amendment.

I am inclined to say that perhaps we should keep the Stennis amendment as the pending business and agree to no unanimous-consent requests at all. Perhaps that is the way we should have dealt with the issue. We were merely trying to provide some accommodation.

The ACTING PRESIDENT pro tempore. Without objection, the unanimous-consent request of the Senator from West Virginia is agreed to.

SENATE RESOLUTION 299—SUBMISSION OF A RESOLUTION ESTABLISHING A SELECT COMMITTEE TO STUDY QUESTIONS RELATING TO SECRET AND CONFIDENTIAL GOVERNMENT DOCUMENTS

Mr. JAVITS. Mr. President, I send a resolution to the desk and ask unanimous consent for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will state the resolution.

The second assistant legislative clerk read as follows:

Resolved, that there is hereby established a special, ad hoc Select Committee of the Senate to be composed of ten members, five from the majority and five from the minority. The Majority Leader shall be the Chairman and the Minority Leader the Co-Chairman. Of the remaining eight members, four will be appointed by the Majority Leader and four by the Minority Leader. Any member appointed under the provisions of this resolution shall be exempt from the provisions of the Reorganization Act relating to limitations on Committee service.

The Committee shall conduct a study and report its findings and recommendations to the Senate, within sixty days of its establishment, on all questions relating to the secrecy, confidentiality and classification of government documents committed to the Senate, or any member thereof, and propose guidelines with respect thereof; and, the laws and rules relating to classification, declassification or reclassification of government documents, and the authority therefor.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from New York?

Mr. GRIFFIN. Mr. President, reserving the right to object, it is my understanding, if I may make an inquiry of the disinguished Senator from New York, the sponsor of this resolution, as to the parliamentary situation which he is pursuing, the way for him to get this on the calendar is to ask for unanimous consent that it be considered immediately. I do not think he really expected that it would be considered immediately today, and it is within the framework of his plans that it be put on the calendar and held over until next week.

Mr. JAVITS. Mr. President, may I say to the Senator that I would have been disappointed if this had not happened. It would not be my plan that we consider it today. I intend to make no comment of any kind on the resolution today except to ask that the clerk read the names of the cosponsors. I expect that it will be held on the calendar until Monday. We will then have both leaders here, and, at their disposition, it can either be discussed and considered if they wish then, or it can go on the calendar and be discussed and considered at an appropriate time.

Mr. GRIFFIN. Mr. President, I have not had any opportunity to consider the merits of the resolution. From listening to the wording of it for the first time, I think that the idea of the Senator to do something in the area of providing a more orderly procedure for declassifying or considering the subject of classification of documents is needed. However, in order to accommodate the situation, and because someone has to make an objection and I happen to be the leader on the floor, I object.

Mr. JAVITS. Mr. President, if I may be recognized, I appreciate that very much. That is exactly what I wanted to see occur. I am grateful to the Senator for his accommodating us in this way. I wish to make it clear myself that I in no way consider this an indication of the Senator's opinion as to what ought to be

done on this or any other similar legislation.

Mr. President, I ask unanimous consent that the clerk read the names of the cosponsors on the resolution.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the names of the cosponsors.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) submits a resolution for himself, the Senator from Massachusetts (Mr. BROOKE), the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from Kentucky (Mr. COOPER), the Senator from California (Mr. CRANSTON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. HUGHES), the Senator from Maryland (Mr. MATHIAS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Illinois (Mr. STEVENSON).

Mr. JAVITS. Mr. President, I ask unanimous consent that an analysis of the law relating to the confidentiality of documents prepared under the auspices of the Foreign Relations Committee may be made part of my remarks together with a compilation of basic documents on security classification of information from the Library of Congress.

There being no objection, the analysis and compilation were ordered to be printed in the RECORD, as follows:

SECURITY CLASSIFICATION AS A PROBLEM IN THE CONGRESSIONAL ROLE IN FOREIGN POLICY

PREFACE

The controversy generated by the Pentagon Papers is the most recent manifestation of the subterfuge which has undermined popular confidence in our leaders and in our institutions. The U–2 incident of 1960, the Bay of Pigs affair, the Dominican intervention, and the Executive branch's misrepresentations concerning the war in Southeast Asia have all contributed to the skepticism of the general public towards the actions and policies of our Government. Excessive secrecy tends to perpetuate mistaken policies, and undermines the democratic principles upon which this country was founded. For this reason, I requested a study by the Congressional Research Service of the Library of Congress of the security classification procedure and the problem it presents to Congress in the performance of its Constitutional role. I believe that this memorandum will be of interest to both my colleagues and to the general public.

The memorandum was prepared by the Foreign Affairs Division of the Congressional Research Service, to which I express my appreciation.

J. W. FULBRIGHT, *Chairman.*

I. INTRODUCTION

Security classification in this paper means the formal process in the Executive Branch of limiting access to or restricting distribution of information on the grounds of national security. The purpose of this paper is to survey the security classification process to determine how it affects the work of Congress on foreign policy and to explore proposals for changing the process. It does not deal with the related problems of loyalty or censorship, and it attempts to differentiate the problem of security classification from the problem of executive privilege, that is the withholding of either classified or unclassified information from Congress by the Executive Branch on the grounds that it is the right of the President to do so.[1]

First, as background for considering proposed changes, the study outlines the origin of the system, the legislation and regulations on which the Executive Branch bases its process of classification, and present practice. Second, it discusses the access of Congress to classified information and the relationship of classified information to the role of Congress in making foreign policy. Finally, it explores proposals for changing the present classification system.

Secrecy has been a factor in making foreign policy since the first days of the nation's history. At the Constitutional Convention the belief that negotiations with other countries might require secrecy was a major element in vesting the treaty power in the President and the Senate rather than in the entire Congress. Similarly, military secrecy in time of war is a long-standing practice. It is only in the period since the Second World War, however, that the problem of classified information has grown to its present dimensions. More formalized procedures, the greater United States involvement in world affairs, the concept of an all-pervading threat from the Soviet Union and other Communist countries, the growing size of the government, and vastly increasing amounts of information have all contributed to a tremendous increase in the amount of information treated as secret.

Classification practice today is based primarily on Executive Order 10501 and the manner in which it is interpreted and carried out throughout the Executive Branch. Although there is no legislation establishing a classification system, during the first ten post-war years Congress in effect cooperated or at least acquiesced in the Executive Branch's establishment of a classification system through such legislation as the Atomic Energy Act of 1946, the National Security Act of 1947, and the Internal Security Act of 1950. Since 1955, however, Congress has moved in the direction of preventing excessive withholding of information through amendment of some of the statutes which were being used to justify the classification system. Nevertheless the dimension of the problem of classified information does not appear to have been significantly reduced. There is general agreement that the quantity of classified information and documents remains huge and includes many documents which should no longer be classified. Moreover, many observers would say that much information never should have been classified in the first place.

There are two main ways in which the security classification of information affects the work of Congress in the foreign affairs field. First, it limits the kind and amount of information which Congress receives. Second, it circumscribes what Congress can do with information which it does receive, especially what it can pass on to the public to explain its position.

Members of Congress can frequently obtain classified information upon request. If requested information is withheld, it apparently is ultimately done so on the grounds of executive privilege rather than on the grounds that it is classified. However, the classification of information does prevent Congress from making it public. Moreover, it may prevent Congress from knowing that it exists and hence requesting it. Classification leaves the Executive Branch in fuller control over what information it will provide both Congress and the public since it bars journalists and scholars from access unless the Executive Branch wants to make it available (or "leak" it) to them.

Many of the proposals relating to the classification problem aim at cutting down the amount of classified information or making certain that information which would not jeopardize national security is not classified. Action in this direction might reduce the frequency of instances in which information in the foreign affairs field cannot be obtained even when it is unlikely that the information could in any way jeopardize the national security if it were made public. The problem for Congress in the foreign affairs field, however, goes beyond reducing unnecessary classification. It involves finding a way for Congress to make certain that it receives the full information necessary for exercising its war and foreign policy powers, including information which most people would agree should be kept secret from potential enemies. It may also involve finding a way for Congress to share in determining what information is classified and thus kept secret from the American people.

II. THE ORIGIN AND LEGAL BASIS OF PRESENT CLASSIFICATION PROCEDURES

A. Origin

Secrecy has been practiced to some degree in diplomatic and military affairs throughout the nation's history. For example, in 1790 President Washington presented to the Senate for its approval a secret article to be inserted in a treaty with the Creek Indians.[2] A formal and extensive classification system to keep certain information secret for purposes of national security did not develop until much later, however. According to one authority, "Measures and practices for the protection of official information in general long served to protect any defense information that needed protection without there having to be any clear distinction between defense information and other official information requiring protection."[3]

The use of markings such as "Confidential," "Secret," or "Private" on communications from military and naval or other public officials "can be traced back almost continuously into the War of 1812."[4] However, the roots of the present classification system appear to be found around the time of the First World War. A General Order of the War Department dated February 16, 1912, established a system for the protection of information relating to submarine mine projects, land defense plans, maps and charts showing locations of defense elements and the character of the armament, and data on numbers of guns and the supply of ammunition, although it prescribed no particular markings.[5] A General Order from the General Headquarters of the American Expeditionary Force dated November 21, 1917, established the classifications of "Confidential," "Secret," and "For Official Circulation Only."[6]

The classification system established during the First World War was continued after the war was over. Army Regulation 330–5 of 1921 stated:

"A document will be marked "Secret" only when the information it contains is of great importance and when the safeguarding of that information from actual or potential enemies is of prime necessity.

* * * * *

"A document will be marked "Confidential" when it is of less importance and of less secret a nature than one requiring the mark of "Secret" but which must, nevertheless, be guarded from hostile or indiscreet persons.

* * * * *

"A document will be marked "For official use only" when it contains information which is not to be communicated to the public or to the press but which may be communicated to any persons known to be in the service of the United States whose duty it concerns, or to persons of undoubted loyalty and discretion who are cooperating with Government work."[7]

In a 1935 revision the term "Restricted" was introduced as a fourth category, to be used when a document contained information regarding research work on the design, test, production, or use of a unit of military equipment or a component thereof which

Footnotes at end of article.

was to be kept secret. It also emerged in 1935 that documents on projects with restricted status were to be marked:

"Restricted; Notice—This document contains information affecting the national defense of the United States within the meaning of the Espionage Act (U.S.C. 50:31, 32). The transmission of this document or the revelation of its contents in any manner to any unauthorized person is prohibited." [8]

Executive Order No. 8381 issued March 22, 1940, by President Roosevelt, entitled "Defining Certain Military and Naval Installations and Equipment" gave recognition to the military classification system. In this order he cited as authority the act of January 12, 1938 (Sec. 795(a) of Title 18, part of the Espionage laws) which stated:

"Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installation or equipment without first obtaining permission of the commanding officer. . . ." [9]

In defining the installations or equipment requiring protection against the dissemination of information concerning them, the President named as one criterion the classification as "secret," "confidential," or "restricted" under the direction of either the Secretary of War or the Secretary of the Navy. In addition to military or naval installations, weapons, and equipment so classified or marked, included in the definition were:

"All official military or naval books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawing, photographs, contracts, or specifications, which are now marked under the authority or at the direction of the Secretary of War or the Secretary of the Navy as "secret," "confidential," or "restricted," and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President." [10]

That Executive Order was superceded by Executive Order 10104 issued by President Truman February 1, 1950. In addition to the three designations previously mentioned, the new Executive Order referred for the first time to "top secret," although this designation had been in use some years earlier. In place of the Secretary of War and the Secretary of the Navy, Executive Order 10104 described the President. the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force as being authorized to classify or direct to be classified the designated information.[11]

On September 24, 1951, President Truman issued an executive order which officially extended the classification system to nonmilitary agencies and to "security information—" Executive Order 10290, "Prescribing Regulations Establishing Minimum Standards for the Classification, Transmission, and Handling, by Departments and Agencies of the Executive Branch, of Official Information Which Requires Safeguarding in the Interest of the Security of the United States." It permitted any department or agency of the Executive Branch to classify and define "classified security information" to mean "official information the safeguarding of which is necessary in the interest of national security, and which is classified for such purposes by appropriate classifying authority." [12]

President Eisenhower replaced Executive Order 10290 with Executive Order 10501. "Safeguarding Official Information," on November 9, 1953. It narrowed the number of agencies authorized to classify and redefined the usage of the various security labels. Executive Order 10501, which will be described later, and its revisions, form the basis for the present system of classification of information.

B. Legal basis

Executive Order 10501 does not claim to be authorized by a specific statute. Unlike Executive Order 10104, "Definitions of Vital Military and Naval Installations and Equipment," which is linked to a specific provision of the statutes, Executive Order 10501 contains in its preface as to authority only the general statement, "Now, therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows. . . ." The Executive Branch apparently relies primarily on implied constitutional powers of the President and statutes which it claims afford a basis on which to justify the issuance of Executive Order 10501, acknowledging that there is no specific statutory authority for it. In 1970 when the Senate Foreign Relations Committee inquired of the State Department about the legal basis for the President's issuance of Executive Order 10501, the Legal Adviser of the State Department, John R. Stevenson, with the approval of the Department of Justice, referred to the Report of the Commission on Government Security of 1957 for a statement of the legal basis.[13] That Commission cited provisions of the Constitution and stated: "While there is no specific statutory authority for such an order or Executive Order 10501, various statutes do afford a basis upon which to justify the issuance of the order.[14]

1. Constitutional Provisions

The three constitutional provisions cited by the Commission are in article II on the Executive Branch: Section 1, "The executive power shall be vested in a President of the United States of America"; section 2, "The President shall be Commander in Chief of the Army and Navy of the United States"; and section 3, ". . . he shall take care that the laws be faithfully executed." The Commission said:

"When these provisions are considered in light of the existing Presidential authority to appoint and remove executive officers directly responsible to him, there is demonstrated the broad Presidential supervisory and regulatory authority over the internal operations of the executive branch. By issuing the proper Executive or administrative order he exercises this power of direction and supervision over his subordinates in the discharge of their duties. He thus "takes care" that the laws are being faithfully executed by those acting in his behalf; and in the instant case the pertinent laws would involve espionage, sabotage, and related statutes, should such Presidential authority not be predicated upon statutory authority or direction." [15]

The 1957 Commission report did not explicitly spell out the right of Congress to make laws affecting the classification system. However, recognition of this right was implicit in the Commission's conclusion that "in the absence of any law to the contrary, there is an adequate constitutional and statutory basis upon which to predicate the Presidential authority to issue Executive Order 10501," [16] and in the citation of various statutes as affording a basis upon which to justify the issuance of the order.

Among the provisions of Article I of the Constitution which might be cited as giving Congress powers to legislate in this field would be the following: Section 1, "All legislative powers herein granted shall be vested in a Congress of the United States . . .;" Section 8, "The Congress shall have power to . . . provide for the common defense and general welfare of the United States; . . . to make rules for the government and regulation of the land and naval forces; . . . and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

2. "Housekeeping" Act Prior to 1958 Amendment

Prior to 1958, 5 U.S.C. 22, now 5 U.S.C. 301, sometimes called the "Housekeeping" act, was frequently cited as justifying a system for withholding information on the basis of a security classilcation system. This was the first and earliest statute cited by the 1957 commission as at that time providing a basis for Executive Order 10501. This statute had been enacted in 1789 with the process of providing the authority for government officials to set up offices and file documents.[17] As early as 1877 and numerous times since then Section 22 of Title 5 of the U.S. code had been cited as authority to refuse information sought from the government.[18] However, in 1958 the housekeeping statute was amended by P.L. 85–619 to specify that it did "not authorize withholding information from the public or limiting the availability of records to the public." The Department of State 1970 memorandum pointed out that since the 1958 amendment this statute was no longer relevant to the justification of classification. It is mentioned in this report as a matter of historical interest and to note the legislation of 1951 specifying that it should not be used as authority for withholding information.

3. Espionage Laws

Perhaps the statutes now most frequently cited for justification of the security classification of information are the espionage laws generally. The 1957 Commission cited the espionage laws second only to the housekeeping statute discussed above. It said:

"The espionage laws have imposed upon the President a study to make determinations respecting the dissemination of informaton having a relationship to the national defense. For example, 18 U.S.C. 795(a) provides that "Whenever in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture. . . . etc." Proceeding under this statute the President issued Executive Order 10104 which covers information classified by the agencies of the military establishments.

"In 18 U.S.C. 798 there is specific reference to the unauthorized disclosure of 'classified information' pertaining to the cryptographic and communication systems and facilities. Furthermore, the term 'classified information' is defined as information which for reasons of national security has been specifically designated by the proper government agency for limited or restrictive dissemination or distribution." [19]

It might be questioned whether the first provision mentioned above is a basis on which to issue an executive order covering classification by non-defense agencies since it relates to information pertaining to vital military and naval installations and has already been used to justify Executive Order 10104 on military information classified by the military departments.

The second provision mentioned, section 798, does refer to classified information, thus acknowledging its existence. However, it provides penalties only for actions relating to communications intelligence and cryptography, specifying four specific categories of classified information: (1) concerning the nature or preparation of codes; (2) concerning the apparatus used for cryptographic or communication intelligence purposes; (3) concerning the communication intelligence

Footnotes at end of article.

activities: or (4) obtained by the process of communication intelligence from the foreign government, with knowledge that it was so obtained. Moreover, this section which was added by Public Law 248 of October 31, 1951, makes it clear that its objective is to prevent the use of classified information relating to communication intelligence activities in a manner prejudicial to the safety of the United States, and not to prevent congressional access to it. Sec. 798(c) states:

"Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof." [20]

Executive Order 10501 itself does not refer to Section 795 or 798 but instead refers to Sections 793 and 794 of Title 18 U.S.C. Section 5(j) of Executive Order 10501 states that when classified material affecting defense is furnished to persons outside the executive branch, the material should carry the statement, whenever practicable, "This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Sections 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law." [21]

Section 793, "Gathering, transmitting or losing defense information," provides penalties of a fine or imprisonment for (a) going into defense installations or in other ways obtaining information "respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation"; (b) copying or obtaining sketches, documents, or anything connected with the national defense; (c) receiving or obtaining from any source any document, writing, or anything connected with the national defense, knowing that it has been obtained contrary to the provisions of that chapter of law; (d) willfully transmitting to a person not entitled to receive it a document, etc., which a person either lawfully or without authorization possesses and has reason to believe could be used to the injury of the United States or the advantage of a foreign nation; or (e) when entrusted with any document or information relating to the national defense "through gross negligence" permitting it to be removed from its proper place "or to be lost, stolen, abstracted, or destroyed" or failing to report such loss, theft, abstraction, or destruction.

Section 794 provides for imprisonment or the death penalty for (a) communicating or transmitting a document or information relating to the national defense to any foreign government, faction, citizen, etc. "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation"; or (b) "in time of war, with intent that the same shall be communicated to the enemy," collecting, publishing, communicating, or attempting to elicit any information with respect to the movement, numbers, or disposition of armed forces, ships, aircraft, or war materials or military operation plans or defenses "or any other information relating to the public defense, which might be useful to the enemy." In 1953 the provisions of this section in addition to coming into effect in time of war were extended to remain "in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 or such earlier date as may be prescribed by concurrent resolution of the Congress." [22]

The espionage laws may make it sensible to have some kind of system for marking information which it would be a crime to transmit, but history does not indicate that the classification system developed directly from the Espionage Act of 1917 or that the Espionage Act was intended to authorize such a system. One student of the history of classification has observed:

"There is no indication at this time [in 1917] that difficulties could arise in enforcing the Espionage Act if official information relating to the national defense was not marked as such, insofar as it was intended to be protected from unauthorized dissemination. Violation of the first three subsections of Section I, Title I, of the act depended upon intent, but violation of the other two subsections depended in the one case on material relating to the national defense having been turned over to someone "not entitled to receive it" and in the other case on such material having been lost or compromised through "gross negligence." Since the expression "relating to the national defense" was nowhere defined, the possibility of the public being permitted to have any knowledge whatever relating to the national defense, even the fact that Congress has passed certain legislation relating thereto, depended on application of the expressions "not entitled to receive it" and "gross negligence."

"In any prosecution for violation of either of the last two subsections the burden of proving that one or the other key expressions had application in the case would rest on the prosecution, and proof would be difficult unless clear evidence could be adduced that authority had communicated its intention that the specific material involved should be protected or unless that material was of such a nature that common sense would indicate that it should be protected. For purposes of administering these two subsections of the Espionage Act the marking of defense information that is to be protected is almost essential, and its marking can also be of great assistance for purposes of administering the preceding three subsections.

"It would be logical to suppose that the markings of defense information began out of the legal necessities for administering the Espionage Act, but the indications are that such was not the case. The establishment of three grades of official information to be protected by markings was apparently something copied from the A.E.F., which had borrowed the use of such markings from the French and British." [23]

It apparently was not until 1935 that the link between classification and the espionage act was made. Then, under the army regulation of February 12, 1935, it was specified that material on projects with restricted status would be marked: "Restricted: Notice—this document contains information affecting the national defense of the United States within the meaning of the Espionage Act (U.S.C. 50:31, 32). The transmission of this document or the revelation of its contents in any manner to any unauthorized person is prohibited." [24]

4. National Security Act

The 1957 Commission on Government Security report, referred to by the State Department in 1970 as citing the legal basis for a classification system, described the National Security Act of 1947 as the "most significant legislation, which set into motion the current document classification programs." It said:

"The most significant legislation, which set into motion the current document classification program, was enacted in 1947, when the Congress passed the National Security Act in order to provide an adequate and comprehensive program designed to protect the future security of our country. To accomplish this avowed purpose the act provided for the creation of a National Security Council within the executive branch subject to Presidential direction. Its job is to consider and to make appropriate recommendations to the President. Within the framework of this program, the Interdepartmental Committee on Internal Security (ICIS) came into being, and the activity of this committee was responsible for the issuance in 1951 of Executive Order 10290, which established the original document classification program. Thus it would appear that a document classification program is within the scope of the activities sought to be coordinated by the National Security Act of 1947, and that the issuance of an appropriate Executive order establishing such a program is consistent with the policy of the act." [25]

As has been pointed out, the roots of classification systems within individual Departments go back many years before the National Security Act was passed. However, efforts made after the National Security Act appear to have led to the new government-wide directive on classification which was embodied in Executive Order 10290. Coordination of classification systems in the military department had already been provided to some degree in Executive Order 8381 which was superseded by Executive Order 10104.

The Commission on Government Security contended that the National Security Act "set into motion" the current classification program; that the classification program "is within the scope of the activities sought to be coordinated by the National Security Act of 1947"; and that "the issuance of an appropriate Executive order establishing such a program is consistent with the policy of the act." [22] It did not contend that the National Security Act actually authorized the system.

One authorization which was made by the National Security Act is pertinent, however. After establishing the Central Intelligence Agency and giving it the purpose of coordinating intelligence activities, the National Security Act provided that the Director of Central Intelligence "shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." [27] This would appear to provide adequate authorization for a system of protection of certain types of information, namely intelligence sources and methods.

5. Internal Security Act

The final statute cited by the 1957 Commission on Government Security under the assertion that "various statutes do afford a basis upon which to justify the issuance" of Executive Order 10501 was the Internal Security Act of 1950. The Commission report stated:

"Prior to issuance of Executive Order 10290, Congress had apparently recognized the existing Presidential authority to classify information within the executive branch when it passed the Internal Security Act of 1950. Contained therein were provisions defining two new criminal offenses involving classified information.

"Section 4(b) of the act makes it a crime for any Federal officer or employee to give security information classified by the President, or by the head of any department, agency, or corporation with the approval of the President, to any foreign agent or member of a Communist organization, and section 4(c) makes it a crime for any foreign agent or member of a Communist organization to receive such classified security information from a Federal employee." [28]

Section 4(b) of the Internal Security Act states:

"It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in para-

Footnotes at end of article.

graph (5) of section 782 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information." [29]

This provision of the Internal Security Act appears to come the closest to sanctioning a system for the classification of information "as affecting the security of the United States" rather than the narrower concept of "relating to the national defense" or the still narrower categories of cryptographic or intelligence information.

There has been one case in which a foreign service officer convicted under this provision appealed his case and the Court of Appeals, in affirming the verdict, held that under the statute and Executive Order 10501 an Ambassador did have authority to classify foreign service dispatches and the dispatches as classified and certified by him were within the scope of the statute. Moreover, it held that in prosecution of the officer for communication of classified information to a foreign government, the government was not required to prove that the documents involved were properly classified "as affecting the security of the United States." [30]

6. Atomic Energy Act

In addition to the above statutes listed by the 1957 Commission on Government Security, the Department of State memorandum of 1970 said "there are other statutory provisions that contemplate and assume a system of classification of information." [31] The first example it cites is section 142 of the Atomic Energy Act of 1954 (42 U.S.C. section 2162(c). The entire Chapter 12 of the act (Sections 141 through 146) is on the control of information with section 142 providing for the classification and declassification of "Restricted Data."

"Restricted Data" is defined in the Atomic Energy Act as follows:

"The term 'Restricted Data' means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142." [32]

Section 142 requires that the Atomic Energy Commission from time to time determine the data within the definition of Restricted Data which can be published "without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data."

With "Restricted Data" so defined as to include all data in certain categories, Sec. 142 proceeds on the assumption that all information in these categories is classified "Restricted Data" and is concerned mainly with setting up procedures for declassifying information in these categories. It requires that the Atomic Energy Commission from time to time determine the data within the definition of Restricted Data which can be published "without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data." It provides that in the case of Restricted Data which the Commission determines jointly with the Department of Defense to be related primarily to the military utilization of atomic weapons, the determination that it could be published is to be made jointly by the Commission and the Department of Defense, with the President deciding in case of disagreement.

In Section 142 the Atomic Energy Act also recognizes the existence of "defense information" and intelligence information. Giving recognition to "defense information" Section 142d states:

"The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with subsection 144b." [33]

Giving recognition to intelligence information and its treatment as "defense information" Section 142e. states:

"The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 102 (d) of the National Security Act of 1947, as amended, and can be adequately safeguarded as defense information." [34]

The act provided a channel for transmitting information to Congress rather than a barrier, however. It established the Joint Committee on Atomic Energy (sec. 201), required that the Atomic Energy Commission and the Department of Defense keep the Joint Committee fully and currently informed on matters relating to development and application of atomic energy and required that any government agency furnish any information requested by the Joint Committee relating to its responsibilities in the field of atomic energy (sec. 202), and authorized the Joint Committee to "classify information originating within the committee in accordance with standards used generally by the executive branch for classifying Restricted Data or defense information" (sec. 206).

7. Freedom of Information Act Amending the Administrative Procedure Act

The second example the 1970 State Department memorandum cited of a statutory provision which assumed a system of classification was the Freedom of Information Act (P.L. 89–487, approved July 4, 1966). The Freedom of Information Act was an amendment and rewriting of Section 3 of the Administrative Procedure Act which had been passed in 1946. Both the original act and the amendment dealt with disclosure of information by Federal agencies, requiring them to publish procedures in the Federal Register and make available to the public final opinions, staff manuals and instructions, and statements of policy.

However the 1946 provisions had permitted material "required for good cause to be held confidential" to be withheld from disclosure. This had provided a loophole which Congress attempted to close in the 1966 Freedom of Information by exempting from its provision only nine specific kinds of information. The first of these exceptions was for matters "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." Accordingly, although the Freedom of Information Act was designed to make more government information available, it did not apply to classified information and even could be used, as it was by the State Department in 1970, as an example of a statutory provision that contemplated and assumed a system of security classification.

While the exceptions in the Freedom of Information Act may permit withholding information from the public on grounds that it needs to be held secret in the interest of national defense and foreign policy, however, they clearly do not apply to Congress. Section 3(f) states:

(f) Limitation of Exemptions—

"Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress." [35]

8. Legislation on Foreign Relations

The Department of State 1970 memorandum did not mention any other legislation on foreign relations. However, there are some provisions in legislation directly relating to foreign affairs which also might be said to assume a system of classification or in effect sanction the withholding of some information of the grounds of national security.

One example is the Foreign Assistance Act of 1961, as amended. Section 634 (b) provides that in the annual report on operations required and in response to requests from Members of Congress or the public the President shall "make public all information concerning operations under this Act not deemed by him to be incompatible with the security of the United States." This section would provide a basis for the President not to make public certain information concerning aid operations. The next section, 634 (c), in effect limits any material which might be withheld from Congress to that which the President certifies he has forbidden furnishing with his reasons for doing so. Otherwise, funds are to be cut off if information or documents are not furnished by thirty-five days after a written request has been made by the General Accounting Office or by a congressional committee considering legislation or appropriations for the program.

Section 414 on munitions control of the Mutual Security Act of 1954, as amended, authorized the President to control the export and import of arms and technical data relating thereto. It also authorized him "to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section." [36]

The Arms Control and Disarmament Act of 1961, as amended, assumes a system of classification in Sec. 45 on Security Requirements. Section 45 (a) provides for investigations of all employees and states:

"No person shall be permitted to enter on duty as such as officer, employee, consultant, or member of advisory committee or board, or pursuant to any such detail, and no contractor or subcontractor, or officer or employee thereof shall be permitted to have access to any classified information, until he shall have been investigated in accordance with this subsection. . . ."

Section 45(b) states:

" . . . The Director may also grant access for information classified no higher than "confidential" to contractors or subcontractors and their officers and employees, actual or prospective, on the basis of reports on less than full-field investigations: Provided, That such investigations shall each include a current national agency check."

Section 45(c) discusses access to Restricted Data under the Atomic Energy Commission.

Through legislation such as this Congress has on occasion given recognition to the classification system although it has made no overall attempt to regulate it. To this extent it has sanctioned keeping information secret in the interest of national defense or foreign policy. At the same time, however, on a number of occasions (particularly the "disclosure of classified information" legislation relating to cryptographic intelligence passed in 1951, and the Freedom of Information Act of 1966), Congress has made clear its intention that provisions to keep security infor-

Footnotes at end of article.

mation secret were not to constitute authority to withhold information from Congress.

III. THE CLASSIFICATION SYSTEM IN PRACTICE—EXECUTIVE ORDER 10501 AND AGENCY REGULATIONS

A. Handling defense information

Executive Order 10501 of December 15, 1953, "Safeguarding Official Information in the Interests of the Defense of the United States," is the basic regulation describing the security classification system to be applied to information bearing on the defense of the United States. The order, as subsequently amended, is quite comprehensive, setting forth guidelines for such matters as (1) material to be classified and categories of classification (i.e., Top Secret, Secret, etc.), (2) agencies and officials authorized to classify, (3) use of classification, (4) handling, marking, transmittal and destruction of classified material, (5) downgrading and declassifying, (6) access to classified material for historical research, and (7) enforcement procedures. For the purposes of this paper, it may be useful to look into some of these points more closely.

1. Categories of Classified Material

Section 1 of the order provides that "official information which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations: Top Secret, Secret, or Confidential. No other designation shall be used to classify defense information, including military information, as requiring protection in the interests of national defense, except as expressly provided by statute."

These three categories are defined as follows:

(a) *Top Secret.*—Material the defense aspect of which is paramount and requiring the highest degree of protection. Unauthorized disclosure could result in "exceptionally grave damage to the Nation, such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense."

(b) *Secret.*—"Material the unauthorized disclosure of which could result in serious damage to the Nation, such as jeopardizing the international relations of the United States, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense or information revealing important intelligence operations."

(c) *Confidential.*—"Material the authorized disclosure of which could be prejudicial to the defense interests of the Nation."

2. Authority to Classify

The order specifies over thirty federal departments and agencies, such as State,[37] Defense, CIA, etc., "having primary responsibility for matters pertaining to national defense" in which the authority to classify may be delegated to such responsible officers or employees as the principal officer may designate. However, "such authority to classify shall be limited as severely as is consistent with the orderly and expeditious transaction of government business."

The order also names several other departments, such as Interior, Agriculture, and HEW, whose concern with national defense matters is "partial" rather than primary. In these cases, "the authority for original classification of information or material . . . shall be exercised only by the head of the department or agency . . ." Government agencies or units not specifically named do not have the authority to originate classified material. (Section 2)

3. Guidelines for Classification

Those authorized to classify material are responsible for adhering to the definitions of the three categories listed above. "Unnecessary classification and over-classification shall be scrupulously avoided", and the classification of documents is to be based upon their content, not their relationship to other papers or the fact that they contain references to highly classified material. (Section 3)

4. Declassification and Downgrading

Classified material is to be downgraded or declassified when it "no longer requires its present level of protection in the defense interest. . . . Heads of departments or agencies . . . shall designate persons to be responsible for continuing review of such classified information or material on a document-by-document, category, project, program or other systematic basis, for the purpose of declassifying or downgrading whenever national defense considerations permit, and for receiving requests for such review from all sources."

To give greater effect to this provision, a system was instituted in 1961 which provided for automatic downgrading of certain material at 3-year intervals. The system called for drafting officers to categorize classified material into groups as follows:

Group 1.—Information or material originated by foreign governments or international organizations and over which the United States Government has no jurisdiction, information or material provided for by statutes such as the Atomic Energy Act . . . and information or material requiring special handling, such as intelligence and cryptography. This information and material is excluded from automatic downgrading and declassification.

Group 2.—Extremely sensitive information or material which the head of the agency or his designees exempt, on an individual basis, from automatic downgrading and declassification.

Group 3.—Information or material which warrants some degree of classification for an indefinite period. Such information or material shall become automatically downgraded at 12-year intervals until the lowest classification is reached, but shall not become automatically declassified.

Group 4.—Information or material which does not qualify for, or is not assigned to, one of the first three groups. Such information or material shall become automatically downgraded at three-year intervals until the lowest classification is reached, and shall be automatically declassified twelve years after date of issuance.

There is, of course, no bar to downgrading or declassifying more rapidly if circumstances warrant, but each such action requires the approval of the "appropriate classifying authority," i.e., the person or office originating the document in question. The downgrading of extracts from or paraphrases of documents also requires the consent of the appropriate classifying authority "unless the agency making such extracts knows positively that they warrant a classification lower than that of the document from which extracted. . . ." (Section 4)

5. Limitations on Dissemination

There are two basic requirements for access to classified information: the need-to-know and personal security clearance or proof of trustworthiness. The Executive Order covers both points in a single sentence:

"Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy."

Distribution of classified material is strictly controlled, and rigid accountability is required, especially for the more highly classified documents and materials. Furthermore, each agency retains ultimate control over the dissemination of all such material originating in that agency. Thus, the State Department cannot release to other agencies or to the Congress material originating in the Defense Department without prior approval by the latter. This is the so-called third agency rule, which has on occasion contributed to difficulties and delays in providing classified materials to the Congress.[38]

6. Special Classifications for Atomic Energy, Intelligence, and Cryptographic Information

The Atomic Energy Act of 1954, as amended, established special requirements for the classification of information on nuclear weapons and their technology. Such information is classified as "Restricted Data" and, more recently, "Former Restricted Data," and a special clearance, known as a "Q" clearance, is required by the AEC for access to this information. The intelligence community likewise has special designations and special clearances for certain intelligence information in order to protect sensitive sources, and communications people protect their codes by extra security precautions (COMSEC) as well.[39] These special categories are acknowledged by the terms of Executive Order 10501. (Section 13)

7. Historical Research

Access to classified material by persons outside the Executive Branch for historical research projects may be permitted if the researcher is trustworthy and if such access is "clearly consistent with the interests of national defense." But the material must not be published or otherwise compromised. (Section 15)

8. Review

The order requires various types of review to ensure (a) that information is not improperly withheld which the people have a right to know, (b) that proper safeguards are employed to protect classified information, and (c) that agencies are in full compliance with the order. The President is charged with designating "a member of his staff who shall receive, consider and take action upon suggestions or complaints from non-Governmental sources relating to the operation of this Order." (Sections 16–18)

B. Information provided to contractors and industry

Executive Order 10501 applies also to information given to the Congress or to private persons outside the Executive Branch. In such cases, the material must be marked with the following notation in addition to its security classification:

"This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Sections 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law." [40]

Such release cannot be made to persons who have not been cleared and briefed following security investigation. In this connection, President Eisenhower in February 1960 issued Executive Order No. 10865, "Safeguarding Classified Information within Industry." The latter, in effect, defines Executive Order 10501 in terms of non-governmental application. It establishes the rules for granting security clearances to civilians and the means of redress should clearance be denied. Once granted clearance, a person outside of government is required to observe the same rules for the protection of classified material as his military or federally-employed counterpart, and this includes individuals working with classified material in both the "hardware" and "software" organizations. An example of the former would be information provided to such government contractors as General Electric and Westinghouse by the Atomic Energy Commission. An example of the latter would

Footnotes at end of article.

be government documents provided to RAND or other contractors doing research for the government. This has led to a substantial diffusion of classified information. One commentator on government classification practices noted that:

"The inexorable advance of the technology of war generates classified documents by the millions. One expert made the estimate four years ago that there were, in the defense industry, something like 100 million documents classified Top Secret and Secret." [41]

But it has also led to some difficulties. Scientific developments that emanate from classified data may sometimes be classified if bearing directly on important defense programs. Furthermore, certain developments that have their origins in unclassified data may be classified as well. For example, the AEC proposed that all new developments in the purification of weapons grade radioactive materials be subject to review by the Commission, no matter what the source of these developments. The Commission justified its actions on grounds of national security.

"Unless there are controls on the dissemination of classified information concerning atomic weapons, and concerning centrifuges and gaseous diffusion plants (which can be used for the production of the special nuclear material used in weapons), the efficacy of all non-proliferation efforts is seriously weakened. In this light, the question of whether that data are developed for private commercial purposes or pursuant to a Government contract is irrelevant—it is the content of the data which necessitates the control." [42]

This type of control, however, is difficult to administer. Assuming that American scientists recognize and abide by these requirements, the writ of the United States does not extend to other scientifically modern nations. Indeed, three European nations (England, Germany and the Netherlands) have formed subsequently a consortium to develop gas centrifuge technology.[43]

The State Department usually does not deal in scientific hardware. Rather its classified materials are concerned with the conduct of foreign policy.[44] As in the case of other government agencies, studies performed by outside contractors are reviewed by relevant desk officers to ensure that all classified information is so marked. Often specifically "sanitized" versions are prepared for dissemination on an unclassified basis.

C. Foreign policy information

The security regulations issued by the Department of State and other agencies concerned with foreign policy (e.g., USIA, AID, and ACDA) take a somewhat broader view of "defense information," extending it to include international operations and programs as well. According to the State Department regulations:

"The Attorney General of the United States on April 17, 1954, advised that defense classification may be interpreted, in proper instances, to include the safeguarding of information and material developed in the course of conduct of foreign relations of the United States whenever it appears that the effect of the unauthorized disclosure of such information or material upon international relations or upon policies being pursued through diplomatic channels could result in serious damage to the Nation. The Attorney General further noted that it is a fact that there exists an interrelation between the foreign relations of the United States and the national defense of the United States, which fact is recognized in section 1." [45]

State's regulation goes on to cite examples, including the following:

"Political and economic reports containing information the unauthorized disclosure of which may jeopardize the international relations of the United States or may otherwise affect the national defense.

"Information received in confidence from officials of a foreign government whenever it appears that the breach of such confidence might have serious consequences affecting the national defense or foreign relations."

The rules and regulations applicable to defense information acknowledge the need to establish a balance between the protection of such material and freedom of information. The State Department's security regulations in implementation of Executive Order 10501 include the following caveat:

"The requirement to safeguard information in the national defense interest and in order to protect sources of privileged information in no way implies an indiscriminate license to restrict information from the public. It is important that the citizens of the United States have the fullest possible access, consistent with security and integrity, to information concerning the policies and programs of their Government." [46]

D. Handling of controlled information by executive branch

1. Limiting the Distribution of Sensitive Material

The application of a security classification to papers and materials is not the only method by which government agencies safeguard sensitive information. In some respects an even more effective method is to limit drastically the distribution of a particular document. Distribution of telegrams concerning the arrangements for Dr. Kissinger's secret visit to Communist China, for example, must have been so limited in number that only a few Cabinet members and a very select group of key officials in State, Defense, and CIA were privy to the operation.

A government-wide system governs the distribution of telegrams, staff studies, and memoranda of conversion. Those papers deemed to require something less than standard distribution are marked "LIMDIS" (limited distribution) by the drafting officers. In such cases, the number of copies circulated is reduced by perhaps 50 percent, with all interested bureau offices taking a proportionate reduction.

In the case of exceptionally sensitive matters, the material is designated "EXDIS" (exclusive distribution), and the number of copies is curtailed much more drastically to, say, one or two copies for each assistant secretary of State and Defense with a legitimate need to know. Key staff members are allowed to read but not retain EXDIS messages, which are kept in a central registry within each geographic or functional bureau.

But the Kissinger trip must have received even more restricted treatment. In this case the documents would have been "NODIS," meaning, of course, no distribution beyond the principal officer of an agency or department with a need to know.

Highly classified documents are generally given rather limited distribution, but many NODIS and EXDIS papers are classified no higher than SECRET. The most sensitive documents, including all Top Secret and all NODIS AND EXDIS material, are serialized, i.e., each copy is numbered and must be registered and accounted for at all times, including when destroyed. The very process of serializing requires the originating office to exercise care and restraint in drawing up a list of those to whom the material is to be sent.

2. Administratively Controlled Information

Some types of information are controlled not in the interests of national defense but for administrative reasons. Thus, personnel records, medical reports, commercials and investigative data are considered privileged information and treated as confidential. In the Defense Department this type of material is marked "For Official Use Only"; in State it is designated "Limited Official Use." In either case, although the material is "non-classified," i.e., not related to the national defense, it is protected from indiscriminate disclosure.

E. Compliance with regulations

1. Overprotection

In actual practice, however, there is wide agreement that the great bulk of defense material is usually over protected—too highly classified for too long a time. Arthur Goldberg former Ambassador to the U.N. recently had this to say to the House Foreign Operations and Government Information Subcommittee:

"I do not mean to suggest to this Committee, which has given thoughtful consideration to this entire subject, that the government does not require secrecy in the conduct of its vital operations, that each day's collection of confidential messages with foreign governments should be broadcast on the six o'clock news, or that the engineering details of advanced weapons systems must be published in the Congressional Record.

* * * * *

"Anyone who has ever served our government has struggled with the problem of classifying documents to protect national security and delicate diplomatic confidence. I would be less than candid if I did not say that our present classification system does not deal adequately with this problem despite the significant advances made under the leadership of the Committee and Congress in the Freedom of Information Act of 1966. I have read and prepared countless thousands of classified documents and participated in classifying some of them. In my experience, 75 percent of these never should have been classified in the first place; another 15 percent quickly outlived the need for secrecy; and only about ten percent genuinely required restricted access over any significant period of time." [47]

For obvious reasons there are strong incentives for staff officers to err on the side of over-classifying material on which they are working. There are no penalties for this, whereas the penalties for violating security regulations, even inadvertently, can be severe and costly in terms of career prospects, especially if one has a series of such offenses. Very often material is classified or overclassified largely through inadvertence or failure to apply critical judgment. Mr. William G. Florence, formerly with Headquarters, U.S. Air Force, had this to say to the House Subcommittee:

"The majority of people with whom I worked in the past few years reflected the belief that information is born classified and that declassification would be permitted only if someone could show that the informaion would not be of interest to a foreign nation." [48]

Florence also referred to the practice of assigning a classification to material merely on the basis of association or reference to other classified material:

"Some time ago, one of the service chiefs of staff wrote a note to the other chiefs of staff stating briefly that too many papers were being circulated with the top secret classification. He suggested that use of the classification should be reduced. Believe it or not, that note was marked top secret." [49]

According to a recent editorial in the Christian Science Monitor:

"The classic case of overclassification of government documents was Queen Frederika's menu. The former Queen of Greece was given a moderately elaborate dinner at an American military base during her official tour of the United States. A thoughtful officer stamped "classified" on the menu to avoid the comments which some reporter might otherwise have made on what might have been called a non-democratic event." [50]

The purpose of the classifying officer in this case was no doubt to avoid any potential embarrassment to the United States. There are many occasions when the avoidance of embarrassment is more closely re-

---

Footnotes at end of article.

lated to activities potentially affecting the national defense. One example, related to military security demands that certain aspects of weapons capabilities be classified, follows:

"In Vietnam, the Army stamped 'secret' on reports of field malfunctions of the controversial M16 rifle, which was jamming, until corrective action was taken. 'The evaluation reports were bad,' says a man who found out what was in them. He asserts the Army simply wanted to avoid embarrassment, since the enemy was obviously aware of the rifle's weaknesses." [51]

Individuals may overclassify a document hoping to augment the importance of the contents or to appear more important themselves:

"There's what a former federal official calls the 'ego-building angle.' Some bureaucrats, he says, classify a document confidential or secret to indicate that 'the stuff is important—that it should be moved up the chain of command promptly instead of getting stuck in someone's "in" basket." [52]

Such individuals evidently consider that the power to classify increases the personal prestige of the classifier. William Florence testified that:

". . . numerous individuals in the Department of Defense, including myself, have attempted to the best of our ability to limit the use of defense classifications to the purpose for which they were intended. Various officials from the Secretary of Defense down have initiated measures designed to restrict the use of defense classifications. But hundreds of thousands of individuals at all echelons in the Department of Defense practice classification as a way of life." [53]

Once a paper has been classified secret or top secret, bureaucratic inertia adds to the already strong propensity to "protect" the national security by maintaining that classification for an unnecessarily long period of time. Richard J. Levine, writing in the Wall Street Journal of June 25, 1971, pointed out that:

"Today almost 26 years after the end of World War II, U.S. archives still hold some 100 million pages of classified war records. . . . The government process of declassification is haphazard and cumbersome. . . ."

According to Levine, the "group" system for automatic downgrading and ultimate declassification of defense information has not provided an answer to the problem. The turnover in personnel within State and Defense, with career officers moving on to new assignments and with many top policy makers taking other jobs after a year or two, militates against the continuous review of classified material called for by the executive order. Even more important, perhaps, is the fact that the officers who originate classified material continue to be involved in substantive matters and feel that they have more important things to do than review their work of yesteryear to see if it can now be downgraded or declassified. Thus, quite apart from the legitimate concern of the Executive to protect sensitive information, there are a number of factors in the present situation which reinforce the tendency to maintain secrecy to a higher degree and for a longer period than is necessary.

Among the World War II documents which are still classified Top Secret are those on Operation Keelhaul, which was the U.S.-U.K. name for the forcible repatriation to the Soviet Union of displaced Soviet citizens after the war. An American historian, Julius Epstein, has attempted without success to obtain access to these files in connection with his studies on forced repatriation of anti-communist prisoners of war and displaced persons during and after World War II. Epstein went to court under the Freedom of Information Act but lost the case on the grounds that the Act does not apply to documents classified "in the interest of the national defense or foreign policy." [54] Writing in the New York Times, Epstein related his continuing efforts to have the file declassified:

"On October 22, 1970, the White House informed me that President Nixon has removed the main obstacle for declassification of the Keelhaul files. The letter states: 'The U.S. Government has absolutely no objections (based on the contents of the files) to the declassification and release of the "Operation Keelhaul" files. However, given the joint origin of the documents, British concurrence is necessary before they can be released and this concurrence has not been received. Thus, we have no alternative but to deny your request.' . . ." [55]

2. Leaks by Government Officials

On the other hand, Levine points out that government agencies permit "deliberate leaks which tend to make a mockery of the system," and he cites several instances of news men who were given classified information by high-level government officials as a matter of public policy. Both the New York Times and the Washington Post filed affidavits to this effect in their legal fight against the government's injunction which sought to stop publication of the Pentagon papers.

On behalf of the Times, Mr. Max Frankel, Washington bureau chief, argued that without the use of classified material:

"There could be no adequate diplomatic, military, and political reporting of the kind our people take for granted, either abroad or in Washington, and there could be no mature system of communication between the government and the people. . . .

"Presidents make 'secret' decisions only to reveal them for the purposes of frightening an adversary nation, wooing a friendly electorate, protecting their reputations. The military services conduct 'secret' research in weaponry only to reveal it for the purpose of enhancing their budgets, appearing superior or inferior to a foreign army, gaining the vote of a Congressman or the favor of a contractor.

"In the field of foreign affairs, only rarely does our government give full public information to the press for the direct purpose of simply informing the people. For the most part, the press obtains significant information . . . only because it has managed to make itself a party to confidential materials, and of value in transmitting these materials . . . to other branches and offices of government as well as to the public at large. This is why the press has been wisely and correctly called the Fourth Branch of Government." [56]

Mr. Benjamin C. Bradlee, executive order of the Washington Post, stressed in his affidavit that:

"The executive branch . . . normally, regularly, routinely, and purposefully makes classified information available to reporters and editors in Washington. This is [done] in private conversations . . . and in the infamous backgrounders normally, but not exclusively, originated by the government." [57]

It may be done to "test the climate of public opinion on certain options under deliberation by the government" or "to influence the reporter's story in a manner which the government official believes is in the best interest of his country, his particular branch of government, or his particular point of view."

Mr. Bradlee cited specific instances when he had been given highly classified information by President Kennedy (concerning his 1961 encounter with Khrushchev in Vienna) and by President Johnson (on the Vietnam war in 1968). He also pointed out that Congress sometimes follows the same practice:

"Legislators request and obtain classified information from the executive branch of the government for the purpose of helping them draft legislation. They do not always use it for that purpose. They often use it to defeat legislation they don't like, and they often try to enlist the assistance of the press in their private battle. . . ." [58]

The agency most frequently charged with leaking classified information is the Department of Defense. This fact is scarcely surprising. It is due in part to the sheer size of the department and the vast amount of defense material in its custody. However, some contend that the incidence of deliberate leaks tends to be related to the national budget cycle as defense officials seek to persuade Congress and the public of the validity of their budget requests. But as was pointed out two years ago by George Ashworth of the Christian Science Montor, perhaps the most important factor is the man at the top:

"Government secrets come in many sizes and styles. At one end of the spectrum are piddling little secrets, and at the other there are secrets, that are so secret their security classifications are secret. And there are critically important secrets as well as ones that are embarrassing and nothing more.

"Secretary of Defense Melvin R. Laird loosed a few secrets of middling size upon the Senate and the public recently. Before the secret-telling was over, everybody knew a great deal more about the strategic strengths of the superpowers. Sen. Stuart Symington (D) of Missouri and Mr. Laird had reached the I-know-what-you-know-and-you-know-what-I-know-and-neither-of-us-can-tell stage of discussion.

"Telling a great deal without telling all is nothing new for high defense officials. A secret told at the right time can shock, arouse, surprise, stymie opposition, and gain advantage. Or it can be a dreadful mistake. A secretary has to know the difference and act accordingly. If a secret is not properly handled, it can accomplish little through the telling and do incomparable damage.

"The Defense Department has been much freer with its secrets in recent times. Former Secretary of Defense Robert S. McNamara was not averse to dropping secrets from time to time. The only time the secretary showed an avid interest in keeping a specific matter completely under wraps was the case of the so-called McNamara line.

"During his 11-month tenure, former Secretary of Defense Clark M. Clifford generally stayed away from heavy public involvement in strategic armaments affairs, preferring to devote his energies to efforts to bring about successful negotiations on Vietnam. Many of the Pentagon's deepest secrets are in specifics on the strategic arsenals of both nations, and Mr. Clifford spent little effort on the learning of specifics. Thus, in a sense, he was somewhat limited as to juicy secrets to tell.

"Mr. Clifford's periodic frankness on the subject of relations with South Vietnam were, however, often spellbinding. Although many secrets probably were not divulged as the former Secretary discussed the maneuvering prior to the complete halt, the material he gave forth was obviously of the sort normally considered privileged.

"Now, with the stage set by Mr. Laird's revelations about specifics of missiles and megatonnage in the Soviet nuclear arsenal, chances are good that the administration will be releasing still more information of a nature that would have been considered classified at earlier times," [59]

Obviously, the Secretary of Defense is concerned with the state of the country's defenses and the overall threat as he sees it. Secretary Laird assumed office at a time when the U.S.S.R. was overtaking the United States in the number of land-based ICBM's deployed, and he foresaw the prospect of their catching up also in the number of antisubmarine-based launchers in a few years. Still another cause for concern was the megaton-

Footnotes at end of article.

nage of the biggest Soviet ICBM, the SS-9, and the possibility that it would be fitted with multiple war heads capable of destroying the U.S. Minuteman missile in a preemptive strike. These and other considerations led him to make public a great deal more information about Soviet strategic programs, actual and anticipated, than had either of his predecessors.

As Ashworth remarked:

"The approach to strategic secrecy has indeed changed since 1960, when the Republican managers of the Defense Department refused to declassify information to refute Democratic charges of a "missile gap." Upon taking office, Mr. McNamara himself refuted the charge made by his party.

"The 1968 election failed to feature any real controversy over strategic strength. Consequently, it was marked by few Pentagon revelations. The same was not true in 1964 when Republican charges caused the Pentagon to declassify profuse quantities of classified information.

"In 1967, when the Republican challenge was brewing, Deputy Secretary of Defense Paul H. Nitze was most forthright on warhead sizes, yields and effects, as well as reliability, when the nation's deterrent was questioned by Rep. Craig Hosner (R) of California.

"Slightly earlier, Mr. McNamara had mentioned multiple independently targetable warheads for the first time publicly. He used the medium of an article in Life magazine to discuss the antiballistic missile defense system and multiple warheads. Earlier, the warheads, MIRVs, had been so tightly classified that the Pentagon would say nothing about them. Mr. McNamara wanted, however, to reaffirm public faith in a U.S. lead.[60]

Still another current practice in declassification is that of former government officials who take advantage of personal files to write the bureaucratic battles of the past. Commenting on this, Herbert Feis, who spent many years in the State Department, has drawn ironic attention to the contrast between public policy (to keep official papers classified for years) and private practice:

"If we turn to the problem of writing the history of the crucial events in our foreign relations during the short term of office of the gallant John F. Kennedy, the divergence of the restrictions becomes glaring. There is, I presume, no chance that the historian would at present be able to consult the pertinent official records or memos of conferences, instructions to our embassies, and correspondence with foreign statesmen during the period of his presidency. But what an admirable series of privileged and candid narratives and memoirs tell us what may be found in them! What elaborately detailed accounts have appeared in the weekly magazines of how the rout of the Bay of Pigs came about, and what happened in the critical crisis when President Kennedy challenged the Russian installations of missiles in Cuba!

"Can the historian be blamed if he is struck by the contrast between the scope and contents of the published official records and the disclosures of participants, confidants or a few favored journalists? This places a very high premium on securing and diffusing information before anyone else, and perhaps exclusively. Men may be drawn into office as the corridor to future careers as historians. Warm the Boswells inside the gates, envious the Boswells left outside!" [61]

The high incidence of leaks of classified information which appear to be approved by some one in authority serves to conceal the fact that many disclosures occur which are completely unauthorized. In most cases, it is difficult if not impossible to track down the guilty party because the information is so widely disseminated within the government and because reporters are unwilling to reveal the sources of their information.

IV. THE EFFECT OF THE CLASSIFICATION SYSTEM ON THE CONGRESSIONAL ROLE IN FOREIGN POLICY

A. The congressional need to know

Under the Constitution both the foreign policy powers and the war powers are shared by the President and the Congress. The need of Congress for information on defense and foreign relations stems primarily from specific responsibilities of Congress which are enumerated in the Constitution.

Aside from the general mandate provided by Article I, Section 1, "All legislative Powers herein granted shall be vested in a Congress of the United States. . . ." the Constitution provides that Congress shall have power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States. . . ." [Article I, Section 8 (1)]; "to regulate commerce with foreign nations. . . ." [Article I, Section 8(3)]; "to define and punish . . . offenses against the law of nations." [Article I, Section 8(10)]; "to declare war . . ."; [Article I, Section 8 (11)]; "to raise and support armies . . ." [Article I, Section 8(12)]; "to provide and maintain a navy;" [Article I, Section 8(13)]; "to make rules for the government and regulation of the land and naval Forces;" [Article I, Section 8(14)]; and finally, "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;" [Article I, Section 8(15)]. Article II, Section 2(2) provides the Senate with two additional responsibilities, stating that the President "shall have the power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls,, . . ." In addition to these specific responsibilities, the Constitution provides further that the Congress "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." [Article I, Section 8(18)].

Congress frequently needs to have information which is classified in order to carry out specific defense and foreign policy responsibilities assigned to it under the Constitution. For example, Congress needs to know what are the threats to the country's security and what are current military capabilities if it is to provide for the common defense. It needs to know the precise facts involving hostilities when there is a queston of whether or not war should be declared. The Senate needs to know the history of negotiations leading to a treaty before it decides whether to advise and consent to the ratification of that treaty.

Because of the congressional "need to know," the first aspect of the problem of classified information is how classification affects the efforts of Congress to get the information necessary to carry out its duties in the foreign and defense policy fields. A comprehensive survey of individual Members of Congress and committees would be necessary to ascertain the extent to which the information they need is classified and the extent to which they are given the classified information which they seek. Similarly, access to the classified information would be necessary to determine if the information given out to Congress was the whole truth. Nevertheless the outlines of the situation can be traced without such comprehensive information.

B. Access of Congress to classified information

The classification of information does not automatically mean that Members of Congress cannot obtain it. Long ago, before the classification system, President Washington recognized the right of the Senate to access of secret information when he placed before that body information which he had kept from the public and the House of Representatives regarding the Jay Treaty in 1796. Similarly today the Executive Branch appears to recognize the general right of Congress to be given classified information. Although there is nothing in Executive Order 10501 covering the specific subject of providing classified information to Congress, a Department of Defense directive makes it clear that classified information may be given upon request from Members of Congress and that it may be discussed with congressional committees in closed hearings. The directive states as policy that information not available to the public because of classification "will be made available to Congress, in confidence" in accordance with certain procedures.[62]

The Department of State regulations contain a recognition that classified information may be sent to Members of Congress in the statement "Classified or administratively controlled material may be sent to other Federal departments or agencies or to officials and committees of Congress or to individuals therein only through established liaison or distribution channels." [63] Further policy on this matter apparently does not appear in writing. However, according to one State Department official, by virtue of their office Members of Congress may be shown classified information even though they have not received formal clearances as individuals. Classified information is not ordinarily left with individual members, however, because of the lack of approved storage facilities for security material.[64]

Committees often do have facilities and procedures for safeguarding classified material, and the congressional committees chiefly concerned with foreign and defense policy have been given sizeable amounts of classified information, usually through closed hearings. When the transcripts of the closed hearings are printed, the classified information is deleted unless the executive branch officials concerned declassify the information so that it can be made public.

The fact that Congress obtains a considerable amount of classified information does not mean that members of committees get all the classified information they request or need, however. The Department of Defense directive acknowledges that there may be "rare" instances in which there is a question whether information should be shown to a Member of Congress even in confidence. The directive specifies that a final refusal of information to a Member should be made only with the approval of the Head of the Department of Defense component concerned or the Secretary of Defense, and that a final refusal to a committee of Congress should be made only with the concurrence of the Assistant to the Secretary of Defense for Legislative Affairs. The latter is responsible for insuring compliance with any procedural requirements imposed by the President:

"In the rare case where there is a question as to whether particular information may be furnished to a Member or Committee of Congress, even in confidence, it will normally be possible to satisfy the request through some alternate means acceptable to both the requester and the DOD. In the event that an alternate reply is not acceptable, no final refusal to furnish such information to a Member of Congress shall be made, except with the express approval of the Head of the DOD Component concerned, or of the Secretary of Defense. The Assistant to the Secretary of Defense (Legislative Affairs) shall be informed of any such submissions to the Head of a DOD Component or to the Secretary of Defense. A final refusal to a Committee of Congress may be made only with the concurrence of the Assistant to the Secretary of Defense (Legislative Affairs), who shall be responsible for insuring compliance with all

Footnotes at end of article.

procedural requirements imposed by the President or pursuant to his direction." [65]

Instances in which members were not given information they believed they needed date back for many years. A survey conducted by the Subcommittee on Constitutional Rights of the Committee on the Judiciary in 1960 revealed several cases relating to foreign policy in which specific information or documents being sought were not transmitted or were transmitted only in part to members of Congress.

One case in that record involved Senator Humphrey in his capacity as Chairman of the Disarmament Subcommittee in 1960. In 1959, President Eisenhower announced a full review of United States disarmament policy under the chairmanship of Charles Coolidge. In January of 1960, Coolidge reported to the Secretaries of State and Defense and Senator Humphrey subsequently attempted to obtain the report. In response to a letter from Senator Humphrey, the Secretary of State said that the report was in the form of a working paper and was not being made public. The State Department also answered negatively the Senator's second letter requesting that the report be made available on an executive basis. When Senator Humphrey's third letter asked on what ground and under what authority the information was being denied, the Secretary replied that the study was prepared for internal use of the Secretaries of State and Defense only.

Similarly, Senator Fulbright, in response to the survey, related that he was denied a complete copy of the report of General Carroll on black market activities in Turkey in 1959. After exchanges of correspondence with the Secretary of Defense and the General Counsel of the Department of Defense, the Senator was given the first 15 pages but the General's conclusions were withheld and never made available.[66]

When a Member or committee of Congress attempts to obtain a specific piece of classified information and is denied it, the problem merges with that of executive privilege. For though the information sought may be classified, withholding it from Congress apparently is more likely to be based on executive privilege than on the basis of classification. To deny it on the grounds of classification might imply either that the member of Congress seeking it did not have a need to know or that he was not trustworthy. The Committee on Government Operations reported in 1960:

"It should be borne in mind that none of the information withheld from this subcommittee has been withheld on the basis that it is classified; that is, that its release to a congressional committee would imperil the national security. . . .

"On a number of occasions, when the question was raised, the subcommittee has been directly told by executive branch officials that particular documents withheld were not being withheld on ground of security, but on the grounds of 'executive privilege.' " [67]

Although the doctrine of executive privilege is controversial, as a practical matter when information is in the hands of the executive branch the President is physically or administratively able to withhold it if he deems it advisable.

More recently, the work of the Subcommittee on Security Agreements and Commitments Abroad demonstrates that committees can obtain a great deal of, but not all, classified information on a subject if they know it exists and are persistent.

The Subcommittee on Security Agreements and Commitments Abroad stated in its final report of December 21, 1979:

"The record of the Subcommittee is replete with a variety of instances in which we failed to obtain information without which the Congress cannot deal seriously, and as an equal, with the Executive Branch on matters of foreign policy.

"One of the more important of these was an understanding of the relationship which exists between the United States and the Royal Government in Laos. . . .

"When our initial Congressional effort was made to get the truth about Laos, we were either blocked, or the responses were misleading. . . .

"The details of agreements with Thailand, Korea, the Philippines, Ethiopia, Spain and other countries, which details remain classified, have been obtained during the Subcommittee investigation and discussed during country-by-country hearings. Few facts were volunteered in the first instance." [68]

Classification of information appears to present more of a problem to Congress when it prevents Congress from knowing enough about policies to raise questions about them or to ask to see the classified information which exists, and thus from participating in formulating policies. This is not a new problem. In the 1960 survey conducted by the Subcommittee on Constitutional Rights Senator Anderson, Chairman of the Joint Committee on Atomic Energy, responded with a list of instances in which the Joint Committee on Atomic Energy was not kept fully and currently informed by the Department of Defense as required by the Atomic Energy Act of 1954. One of the Senator's examples related that the Committee was informed of a proposed arrangement with an allied nation for the use and custody of an American air-to-air nuclear weapon by a special assistant to the Secretary of Defense in November of 1959, only after the planned arrangements had been discussed with the allied nation some time earlier in 1958 and the recommendation for the arrangement made by the Joint Chiefs of Staff in April 1959. The Defense Department in June of 1959 proposed that such an arrangement be entered into by the State Department. None of these dealings had been brought to the attention of the Joint Committee until November.[69]

The Symington Subcommittee report, discussing the growth of the United States commitments involving defense of other countries, said:

"One secret agreement or activity [regarding Southeast Asia] led to another, until the involvement of the United States was raised to a level of magnitude far greater than originally intended.

"All of this occurred, not only without the knowledge of the American people, but without the full knowledge of their representatives or the proper committees of the Congress.

"Whether or not each of these expensive and at times clearly unnecessary adventures would have run its course if the Congress and/or the people had been informed, there would have been greater subsequent national unity, often a vital prerequisite to any truly successful outcome." [70]

The Senate Foreign Relations Committee hearings on Laos released in October 1969, six months after they were held, revealed that for five years the United States had been waging a secret war in northern Laos. In his testimony, the United States Ambassador to Laos told the committee that the United States had no military training and advisory organization in Laos; that there were no U.S. advisors with the Laotians; and that Air America carried equipment only for the AID program and was not involved in combat operations. The Ambassador neglected to acknowledge the significant role of the U.S. Air Force which had been bombing northern Laos for years. When confronted at later hearings by the committee, the former ambassador said that he did not discuss the bombing because he was not asked any direct questions about United States operations in northern Laos. Senator Fulbright went to the heart of the problem when he answered:

"We do not know enough to ask you these questions unless you are willing to volunteer the information. There is no way for us to ask you questions about things we don't know you are doing." [71]

Senator Symington pointed out that the secrecy imposed by the executive "prevented any objective review by the Congress of our policy. . . .," but that when details of the heavily stepped-up bombing were finally disclosed to the Members, Congress took action by adopting an amendment which prohibited the sending of ground combat troops into Laos.[72]

C. Congress, classified information, and public opinion

In addition to the foreign policy functions of Congress set by the Constitution, Congress plays a role as a link with public opinion. Its hearings and debates help keep the public informed of the various sides of foreign policy issues and reflect the diverse views of the American people. President Nixon recognized this role for Congress when he wrote in the conclusion of his Second Annual Review of United States Foreign Policy.

"Charged with constitutional responsibilities in foreign policy, the Congress can give perspective to the national debate and serve as a bridge between the Executive and the people." [73]

A number of Members of Congress have also seen the informing and reflecting of public opinion as one of the most important current roles of Congress in the foreign policy field. Senator Javits in an article in Foreign Affairs last year wrote:

"A major function of the Congress with respect to the great issues of foreign policy and national security is that of shaping as well as articulating public opinion. In a democracy such as ours, governmental action is possible only within parameters defined by public attitudes and opinions. In the major Senate foreign policy debates of the very recent past—Viet Nam and ABM—we have learned that the development and public presentation of new information and interpretations bearing on the great issues is a vital Congressional function as well as a potent instrumentality in asserting legislative prerogatives and responsibilities." [74]

Senator Fulbright in The Arrogance of Power expressed the view that:

"Congress has a traditional responsibility, in keeping with the spirit if not the precise words of the Constitution, to serve as a forum of diverse opinions and as a channel of communication between the American people and their government." [75]

Classification of information has been a major problem to Congress in fulfilling this role. As long as the information remains classified, Congress cannot publicly debate it to inform the people or to inform other Members voting on legislation. The frustrations inherent in this were expressed by Senator Fulbright in hearings on United States commitments in Morocco. Senator Fulbright contended that it was Congress' responsibility to be concerned with the funding of United States installations in Spain and Morocco and told executive branch officers, "But then you said, it is classified, it would not do to talk about it. Therefore, we cannot even discuss it on the Senate floor." [76]

To meet this problem, Congress has played an important part in getting information declassified to make it available to all. A process of negotiation has been used by congressional committees to make testimony given in secret or in closed hearings by executive branch representatives a matter of public record. The transcripts of the hearings given in executive session are submitted to the executive agency involved for review. The agency marks those portions of the testimony which, in its opinion, should remain classified. When the agency gives reasons for classifying a certain portion other than security, the committee attempts to persuade the officials to declassify

Footnotes at end of article.

more information. Walter Pincus, former chief consultant to the Symington Subcommittee on United States Security Agreements and Commitments Abroad of the Senate Foreign Relations Committee, discovered that "the declassification of some security information and almost all the political material—at any level of classification, even top secret—was negotiable." [77] In one particular hearing, Pincus relates, the Administration deleted 60 to 70 percent for reasons of "security." After negotiation with the subcommittee, almost 80 percent of the hearings were made public. Pincus concluded that the amount of "secret" material was sharply reduced, not for any reason other than it probably did not deserve to be classified in the first instance.[78]

One problem associated with this declassification through negotiation procedure is that various committees may have different practices on classified information. One committee might be treating information as secret which another committee published with the agreement of the Executive Branch that it could be declassified.

Related to the problem of congressional efforts to get classified material declassified is the issue regarding the type of material which finds itself labeled with a security classification and therefore generally withheld from Congress. Reference has already been made to Walter Pincus, former consultant to the Symington subcommittee, who stated that much of the information should not have been classified from the start. Much credence must be given also to the former chief civilian classification officer in the Department of Defense, William G. Florence, who in testimony before the Foreign Operations and Government Information Subcommittee of the House Committee on Government Operations in June 1971 stated that, ". . . the disclosure of information in at least 99½ percent of those classified documents could not be prejudicial to the defense interests of the nation." [79]

Some time earlier, Senator Humphrey made a statement entitled, "The Experience of the Senate Subcommitte on Disarmament on the Declassification of Government Documents and Testimony" before the Moss Subcommittee on Government Operations in 1959 to illustrate that "information is withheld for reasons that cannot be justified in the name of national security. . . ." Humphrey gave as his example the Department of the Army's restoring over 90 percent of the testimony of then Army Chief of Staff, General Maxwell Taylor, when challenged on the classification of the officer's testimony.[80]

One of the factors in this case as in many others involving classified information is that much of the data is classified mainly to keep policy decisions from being made public. Walter Pincus wrote that in the Symington subcommittee hearings on the Philippines, the Administration's deletions, amounting to from 60 to 70 percent of the transcript, fell into two categories: security and political. The subcommittee was able to enter into negotiations with the Administration to declassify the political testimony only after a threat of public subcommittee hearings on the subject.[81] Without such efforts, declassification decisions would be entirely in the hands of the Executive Branch and the knowledge made available to the public would depend on what the Executive Branch alone wanted the public to know.

V. PROPOSALS FOR CHANGING THE CLASSIFICATION SYSTEM

A. Past efforts

Many of the problems involved in the classification system have long been recognized and there have been many proposals for changing the system. Some of these proposals have resulted in changes but others have not. A brief survey of some of the major studies of the classification system in the past and their recommendations demonstrates that such problems as overclassification are not new. A few examples follow.

1. Coolidge Committee

A Committee on Classified Information was appointed by Secretary of Defense Charles E. Wilson on August 13, 1956, because of the latter's concern about unauthorized disclosures of information. Headed by Charles A. Coolidge, the committee reported on November 8, 1956, that while the classification system under Executive Order 10501 seemed "beyond reasonable criticism as a matter or theory", the system in practice could justifiably be criticized both for withholding too much information and for harmful leaks of information.[82] The recommendations of this Committee included (1) making a determined attack on overclassification; (2) cutting down the number of persons authorized to classify documents as top secret; (3) making clear that classification was not to be used for information not affecting the national security and specifically not for administrative matters; (4) establishing within the Office of the Secretary of Defense an official responsible for establishing, directing, and monitoring an active declassification program, the official to be separated from the direct influence of both security and public information officials in order to bring an unbiased judgment to the field of classification; and (6) supplying more specific guidelines on classification criteria.

2. Commission on Government Security

Another group which concerned itself with the defense classification system was the Commission on Government Security established pursuant to P.L. 84-304, approved August 9, 1955. The Commission consisted of several Members of Congress as well as private citizens with Loyd Wright as chairman and Senator Stennis as Vice Chairman. The Commission, which also examined other aspects of the effort to protect national security including the Federal Civilian Loyalty Program, the Atomic Energy Program, and the immigration and nationality program, expressed its conviction that "an adequate and realistic program for control over information or material of concern to national defense or security is vitally important to the objectives of our national security program.[83] The reason behind document classification, the Commission stated, was the necessity for balancing the need to insure that hostile eyes did not gain access to information the country wished to safeguard against the need to make certain that the American people and friends had access to all information which would help in the achievement of peace and security. The problem was how best to achieve this balance.

The Commission recommended the establishment of a "Central Security Office having review and advisory functions with respect to the Federal document classification program and to make recommendations for its improvement as needed." [84] The Central Security Office was also to have other functions such as hearing cases on government employees whose loyalty was questioned. The Commission concluded that the problem of the classification program was not a matter of the criteria established by Executive Order 10501. However, it recommended a few modifications, particularly the abolition of the "confidential" classification on defense information in the future. It expressed the belief that the document classification program should be embodied in an executive order, with the exception of the review and advisory functions of the proposed Central Security Office which it stated required legislation.[85]

3. Special government information subcommittee proposals

The House Committee on Government Operations has recommended various changes in Executive Order 10501 since its Special Government Information Subcommittee (Moss Subcommittee) was formed in 1955. It reported in 1962 in a study on the status of that executive order that as the committee had made various recommendations there had been gradual progress toward resolving the conflict between the necessity for an informed public and the necessity for protecting defense information. Its 1962 report stated:

"There has been a gradual recognition of the fact that the ideal information security system is one which defines very carefully those secrets which are imperative to the Nation's defense and then protects them as carefully as possible. Thus, Executive Order 10501 has evolved from a sort of catchall system permitting scores of Government agencies and more than a million Government employees to stamp permanent security designations on all kinds of documents, to a system permitting only those officials directly involved in security problems to place on limited numbers of documents security classifications which are to be removed with the passage of time." [86]

Nevertheless, the committee reported, two of the most important problems remained to be solved. One of these problems was the lack of penalties for abuse of the classification system by withholding all kinds of administrative documents in the name of security. The report stated:

"A security system which carries no penalties for using secrecy stamps to hide errors in judgment, waste, inefficiency, or worse, is is a perversion of true security. The praiseworthy slogan of Defense Secretary McNamara—"when in doubt, underclassify"—has little effect when there is absolutely no penalty to prevent secrecy from being used to insure individual job security rather than national military security," [87]

To meet this problem, the committee urged the Defense Department to establish administrative penalties for misuse of the security system until set penalties could be established.

The other problem it noted on which progress had not been made was the lack of an effective procedure for appeals against abuse of the classification system. To meet this problem, the committee urged that the appeals section of Executive Order 10501 be implemented in an effective manner. It stated that "until a responsible individual in the White House is charged with the primary duty of receiving and acting upon complaints against abuse of the classification system—until a full operating appeals system is set up and widely publicized—the most important safety valve in the information security system is completely useless." [88]

B. Current study in executive branch

The Administration has launched two new efforts this year relating to the classification problem. On August 3, 1971, President Nixon asked Congress to approve a supplemental appropriation for fiscal 1972 of $636,000 for the General Services Administration to begin an immediate and systematic effort to declassify by the documents of World War II. In his message he stated that representatives of the National Archives, the General Services Administration, and the Department of State and Defense had agreed that 90 to 95 percent of the classified documents of World War II, involving 160 million pages, 48,000 cubic feet of record storage space, and 18,500 rolls of microfilm, could be declassified if funds were available.[89]

In addition, on January 15, 1971, President Nixon directed that a study be made of the classification procedure. William H. Rehnquist, an Assistant Attorney General and Director of the Office of Legal Counsel in the Department of Justice, was named chairman of the working group comprised of representatives from the executive departments affected. The study has not yet been completed. However, on August 12, 1971, John D. Ehrlichman, Assistant to the President for Domestic Affairs, and John Dean, Counsel to

Footnotes at end of article.

the President, gave a progress report on the study in a press conference.

Mr. Ehrlichman said the final recommendations are expected to cover both the classification and declassification systems, proceeding on the "basic principle that we are going to be classifiying fewer documents in the future, but classifying them better," and that there should be limits on distribution to persons which clearance on a strict need-to-know basis. The direction thus far indicated, he said, that there would be new limits on the right to duplicate and disseminate documents.

Mr. Ehrlichman said the President had decided he would expand his request for appropriations to speed the declassification process and has asked for a special study of methods by which first priority could be given to declassifying information relating to events of special historical incidents, particularly the Korean War, the action in Lebanon under President Eisenhower, and the Cuban action under President Kennedy. The criteria for declassification would be (1) that the release of the documents would not jeopardize current intelligence sources and (2) that release could not imperil current relations with other governments or seriously and unnecessarily embarrass foreign citizens. Finally, Mr. Ehrlichman said:

"The recommendations of the committee will undoubtedly be in the direction of a system which will impose a presumption, after passage of a certain period of time, that a document should be declassified, which presumption could be rebutted by a showing that it would be contrary to the national interest to declassify it at that time.

"The presumption now runs in the other direction; that a document will remain classified unless someone can move forward and sustain the burden that it should be declassified." [90]

C. Other recent proposals

Several proposals for legislation have been made in the 92nd Congress to deal with the problem of classification of materials by the executive branch. Some of these deal only with information from a single agency, such as the proposal by Senator Cooper in S. 2224 to make it the duty of the Central Intelligence Agency to keep fully and currently informed the Committees on Foreign Relations and Armed Services, with the intelligence information thus acquired to be made available to any Member of Congress under rules prescribed by the committees. This study will discuss only proposals dealing with the problem of classified information throughout the Executive Branch. While most have been introduced since the release of the Pentagon papers, some have a history which goes back several Congresses.

1. Temporary Study Commission or Committee

One approach which has been suggested is the establishment of a temporary commission or joint congressional committee to make a study of the specific problem of classification of information and to make recommendations for legislation or other governmental action. For example, S. J. Res. 119 introduced by Senator Roth and others on June 24, 1971, would set up a commission of seven members (two Senators, two Representatives, and three private citizens including one representative of the press). The commission would be called upon to study all laws, regulations, and procedures relating to classification and make recommendations and a report by February 1, 1972.

A similar proposal would establish a select joint committee of Congress known as the "Committee on Freedom of Information" to make a study of the problem. This has been proposed by Rep. Harrington and others in H. Con. Res. 348 introduced June 24, 1971. The select committee would "conduct a full and complete investigation and study as to whether the policies and procedures followed by the agencies, departments, and instrumentalities of the Federal Government, with respect to the classification and dissemination of information, are adequate to insure the free flow of information that is necessary for the intelligent and responsible exercise of constitutional rights, duties, and powers by Members of the Congress, the Congress, and the people of the United States."

The establishment of a temporary study commission or committee would have the advantage of assuring a thorough preliminary study prior to making changes in the existing system. Whether it would have meaningful results would depend upon the degree to which further action were taken upon the basis of its study and recommendation.

2. An Independent Review Board or Commission

Another suggestion which has been made is for a permanent commission or independent review board to review classification policies or decisions or to declassify documents at its discretion. Senator Muskie, for example, has said he intended to propose legislation for the creation by Congress and the President of an independent board which would be responsible for declassifying documents.[91] It would be enabled to make a document public after a two year waiting period or to send relevant documents at any time to the appropriate committee of Congress.

Senator Muskie has stated that the establishment of an independent review board would give the President and the Departments a strong incentive to be frank about the facts since they would be revealed soon anyway. His view is that such a board would protect national security without allowing security classification to hide blunders or launch covert actions.[92] The board would be bipartisan and composed of one member from the Government, one from the press, and five from the public, with non-renewable terms.

Representative Hébert introduced an amendment to the National Security Act of 1947 on July 15, 1971, which would establish a Commission on the Classification and Protection of Information (H.R. 9853). The Commission would have a total of twelve members, two from the Senate, two from the House of Representatives, and four each appointed by the President and the Chief Justice. Its purpose would be to make a continuing study and review of the classification rules and practices. Similarly, one of the possibilities to be explored by the proposed study commission under S.J. Res. 119 introduced by Senator Roth would be the feasibility of establishing an independent agency to ensure the full disclosure of information while protecting the security of the United States. A number of other bills have been introduced which would have the effect of creating an independent board or commission on classification.

As has been noted, a Central Security Office was suggested by the Commission on Government Security in 1957. However, the recent proposals for an independent board or commission appear to differ from the earlier proposal in several ways. First, the Central Security Office would have had several other functions; any relating to classification would have been only a segment of its responsibilities. Second, the Central Security Office would have been part of the Executive Branch although independent of any department. Third, the Central Security Office would not have had power to review individual documents for the purpose of determining whether or not they were properly classified. It would have been limited to considering policies and procedures expediting declassification, and suggesting recommendations to make the security programs of various agencies uniform, consistent, and effective.[93]

The feasibility and effectiveness of an independent commission or board could vary according to the purpose sought and the functions assigned to such a group.

If it had the confidence of both the Congress and the Executive, an independent board or commission might be able to arbitrate differences of opinion between the two branches as to whether specific data should be made public. At the present time the Executive Branch is usually permitted the final decision by Congress and only rarely does a Member defy the classification stamp and make public a classified document without the consent of the Executive Branch. Under some proposals for a Joint Congressional Committee on classified information, however, apparently the final decision on a dispute over the classification of a document in dispute might be made by the Joint Committee, an arm of Congress.

If one of the functions of the commission was to oversee the classification process and review classified documents in general, one problem would be to ensure that it was given or had access to all classified documents so that it could review them. In view of the time necessary to read and understand the significance of documents and the large number of documents which would apparently be involved, any comprehensive review of classified information could be extremely time consuming. President Nixon has estimated that it will require 100 people five years to review the 160 million pages of documents from World War II which are still secret.[94] General review functions, therefore, might require a commission or board with a rather large staff.

In establishing the duties of the commission, however, methods might be found by which the review commission did not attempt to review all classified documents but only certain ones. For example, if it were provided that all documents would be automatically declassified within a certain period unless the review board determined that they should not be, the burden of initiating an exception and proving the need of continued classification would rest on the agency desiring to keep a document secret. Or, as has been suggested in one proposal, documents would be reviewed at the time they were first classified and each classification would have to be justified at that point.[95] The problem would remain, however, of whether the board would know if any agency had withheld documents from the review process.

3. Permanent Joint Congressional Committee on Security Information

Another approach is the establishment of a permanent joint congressional committee to serve as a watchdog on classification policies. This offers a direct way to give Congress a more active role in determining classification policy. In addition, since the membership of Congress reflects a wide range of opinion on how much and what kind of information should be made public, it might offer a way to find a good balance between that information which should be available to all and that which should be kept secret in the interests of national security.

Several bills have been introduced in the 92nd Congress calling for the establishment of a Joint Congressional Committee on Classified Information. These are quite similar in the functions they provide for the committee but vary in the size and composition of the membership. The joint committee would be responsible for continuing investigation of practices and methods used in the executive branch to classify information for defense and security purposes, and of suspected misuse of such classification for purposes con-

Footnotes at end of article.

trary to the public welfare. Upon findings of such misuse the committee could initate such action as it deemed necessary to prohibit such misuse, sometimes including making any classified information which it considered ought not to be classified available to the public. The joint committee would also be responsible for assuring that classified information was available to Congress unless it agreed otherwise.

As an example of the way the joint committee might be composed, H.J. Res. 745, introduced by Congressman Addabbo on June 24, 1971, and in the 91st Congress as H.J. Res. 1131, would create a committee of 18 members to be composed of the chairman and ranking minority members of the House and Senate Armed Services Committee, the Foreign Relations and Foreign Affairs Committees, the Defense Appropriations Committees of the House and Senate, three other members of the Senate appointed by the President of the Senate, and three other members of the House appointed by the Speaker of the House.

S. 2290, introduced by Senator Humphrey on July 15, 1971 would establish a joint committee of 25 members, including the Speaker of the House; Majority and Minority leaders of the Senate and the House; Chairman and ranking minority members of the following committees of both houses. Appropriations, Armed Service, Foreign Affairs/Foreign Relations; three additional members of the House and Senate; and two members of the Joint Committee on Atomic Energy.

4. Legislation Revising Classification Procedures

Another approach is to establish through legislation the regulations and procedure for classification as Executive Order 10501 now does or to supplement that order to remedy the weaknesses which have appeared in its implementation. Rep. Gibbons has recommended that Congress pass legislation which, in addition to establishing a congressional oversight committee, would provide a clear definition of national security matters which could be classified and the circumstances under which such classification could be imposed. He proposed that each agency be required to number classified documents chronologically and provide to Congress annually a list of its classified documents identified by number. The list would be required to contain also an indication of the number of classified documents from the preceding year, a listing of the documents which had been declassified, and an indication of how long the remaining documents had been classified. The departments and agencies, under his proposal, would be required to review classification annually and the continued classification of any document for three or more years would require the authorization of the head of the agency or department.[96]

Senator Mansfield has said:

"Perhaps the need is for a 20th Century Stamp Act, which would define more precisely who has the right to stamp the various classifications, and under what circumstances, and to require a justification by originator of the classification as to his selection and how public dissemination would compromise national security." [97]

The proposal has also been made that Executive Order 10501 should be rescinded so that there would be no authority for a large number of people throughout government to classify information. Mr. William Florence, a retired civilian official of the Air Force who had extensive experience with the classification system, has suggested the rescinding of Executive Order 10501 (as necessary to root out the classification habits which have developed) and its replacement with legislation controlling defense information. He stated in testimony before the Government Operations Committee on June 24, 1971:

"I respectfully suggest the enactment of legislation for controlling "defense information" or "defense data" similar to that which covers "restricted data" under the Atomic Energy Act of 1954. The Congress could decide upon appropriate language, sufficiently precise, that would include only those elements of military information which warrant and must be accorded effective protection against disclosure. We could easily amend the existing order, but we cannot amend people. The use of so-called classifications or other similar labels should be avoided. Any proposed disclosure not authorized by the statute could be stopped, and any unlawful disclosure could be the basis for penalty. The degree of punishment should be made commensurate with the seriousness of the violation, not necessarily a severe penalty." [98]

5. Legislation providing for automatic declassification

As an alternative approach, instead of addressing itself to classification procedures legislation might be directed toward facilitating declassification. For example, a law might be passed after a certain period of time all documents would be automatically declassified unless some positive determination were made that a document should remain classified, thus making it easier to declassify documents than to keep them classified. The time period might be set as low as one year or as high as fifty years. Dr. Edward Teller, for example, has suggested that the United States declassify all secret documents after a year because "That is the period of time during which we can keep secrets. In a longer period, we cannot." [99] At the other extreme, a fifty-year limit, which the British Official Secrets Act sets, after which all official documents must be made public, has been criticized as being too long and as inhibiting the publication of documents before that time. [100] However, even a long time-limit assures that all documents would eventually be declassified without a time-consuming and expensive review. Apparently the Administration is considering this general approach, although not necessarily through legislation.[101]

6. Study by qualified historians

The recent controversy over the unauthorized publication of a classified Department of Defense history of the Vietnam war, the "Pentagon Papers," focused attention on the importance to historians of declassifying documents relating to past events. In addition to arguing that there is a need for the data to make wise foreign policy decisions on current problems, some historians have attempted to gain recognition of the needs of historians in compiling accurate factual histories of U.S. foreign policy. Currently the time lag between the occurrence of an event and its publication in the "Foreign Relations of the United States. Diplomatic Papers" volume is 25 years, and the delay continues to grow longer. Some historians have gone so far as the judicial system to force the release of specific information, as in Operation Keelhaul mentioned earlier, without success.

An editorial in the Washington Post of July 7, 1971, by Henry Owen outlines a proposal suggested in recent years by historians. This would call for the opening up of all historical records, with a few exceptions, to qualified, professional historians after a specified amount of time. These historians would then compile histories of U.S. foreign policy under the sponsorship of University or Foundation grants. This was done by the government in the late 1940's for two historians whose work on the Second World War has become an important historical source.

7. Congressional vigilance

Whether or not new laws relating to classified information are enacted or new machinery for classification and declassification is established, there may be a considerable amount that can be done to minimize the impediments which classified information places on the work of Congress in the field of foreign affairs. For example, reporting provisions in legislation can require that certain information be transmitted to Congress. Resolutions can be passed requesting the release of specified information if enough members believe that the information should be released. New legislation can be reviewed to ascertain whether it sanctions classification of information by such means as requiring clearances for access to certain information, and if so whether the legislation also provides safeguards against withholding information from Congress. Congressional review and oversight activities can be intensified over the areas and agencies in which large amounts of classified information render inadequate the amount of information available to the general public.

The power of the purse can be utilized by specific provisions such as Sections 624(d)(7) and 634(c) of the Foreign Assistance Act of 1961 as amended, and Section 502 of the Foreign Assistance and Related Programs Appropriation Act, 1971, relating the release of funds to the provision of information requested by a committee or subcommittee of Congress. These particular provisions permit information to be withheld upon a personal certification by the President that he has forbidden the furnishing of the specified information. Such a personal certification was made by the President on August 30, 1971, to prevent a suspension of Military Assistance Program funds after the Secretary of Defense had refused to supply the Senate Foreign Relations Committee with a requested five-year plan for military assistance. The withholding of information was done on the grounds of executive privilege and the need for "privacy of preliminary exchange of views between personnel of the Executive Branch" rather than security classification. It appears to have been facilitated, however, by the provision of the law permitting a waiver upon the President's personal certification. In its 1960 report: "Executive Branch Practices in Withholding Information From Congressional Committees," The House Committee on Government Operations endorsed the use of the power of the purse for the purpose of obtaining information necessary for Congress to perform its functions, stating as its concluding paragraph:

"Utilizing the power of the purse, the Congress can and should provide in authorizing and appropriating legislation, that the continued availability of appropriated funds is contingent upon the furnishing of complete and accurate information relating to the expenditure of such funds to the General Accounting Office and to the appropriate committees, if any, at their request." [102]

Congress can survey its own policies and practices in handling classified information and revise them if they seem to be either a barrier to the declassification of information or a barrier to obtaining or debating secret information. For example, if the lack of proper storage facilities has been used as a reason for not leaving classified material with Members of Congress, consideration could be given to providing the necessary facilities. Similarly, Congress could survey its own sources of information in the foreign affairs field and, if the Executive Branch does not cooperate in supplying the information it gathers, consider expanding or utilizing its own investigative resources more fully. For information which remains classified, it could make more frequent use of closed sessions of the Senate, as in the debate on Laos on June 7, 1971.

In any event, the many proposals which have been introduced in Congress indicate that a new attitude toward classified information is developing. A greater awareness of the hazards in Executive Branch secrecy is

Footnotes at end of article.

leading to a greater vigilance on the part of Congress against misuse of the classification system. A new determination by Congress to play its full constitutional role in the making of foreign policy may be bringing an end to an era in which persons without access to classified information were often made to feel that they could not debate foreign policy issues on a par with officials in the Executive Branch.

FOOTNOTES

[1] For an examination of the question of executive privilege, see the Congressional Research Service report, "Executive Privilege, a Brief Survey," by Majorie Browne, July 23, 1971. C.R.S. Multilith 71–238F.

[2] U.S. Congress, Senate, Executive Journal, vol. I, p. 55 (Aug. 4, 1790).

[3] National Archives, "Origin of Defense-Information Markings in the Army and Former War Department," prepared by Dallas Irvine, Dec. 23, 1964, p. 2.

[4] Ibid.

[5] Ibid., p. 7.

[6] Ibid., p. 16.

[7] Ibid., p. 21.

[8] Ibid., p. 24. Change No. 3 in Army Regulation No. 850, Feb. 12, 1935.

[9] Sec. 795 of title 18, United States Code.

[10] Par. 3, Executive Order 8381, Federal Register, Mar. 26. 1940, vol. 5, p. 1147–1148.

[11] Executive Order No. 10104, "Basic Documents," op. cit. p. 14.

[12] Pt. II, par. 4, Executive Order 10290, Federal Register, Sept. 27, 1951, vol. 16, p. 9797.

[13] U.S. Congress, Senate, Committee on Foreign Relations, Subcommittee on United States Security Agreements and Commitments Abroad, 91st Cong., hearings, vol. II, pp. 2008–2010, Washington, U.S. Government Printing Office, 1971. Hereinafter cited as "Security Agreements and Commitments Abroad Hearings."

[14] Ibid., p. 2010.

[15] Ibid.

[16] Ibid., p. 2011.

[17] U.S. Congress, House, Committee on Government Operations, "Amending Sec. 161 of the Revised Statutes With Respect to the Authority of Federal Officers and Agencies To Withhold Information and Limit the Availability of Records." H. Rept. 1461, 85th Cong., 2d sess., p. 1.

[18] Ibid.

[19] Hearing on U.S. security agreements and commitments abroad, op. cit. p. 2010.

[20] Congressional Research Service, "Basic Documents on Security Classification of Information for National Security Purposes," Multilith 71–172 F, hereinafter cited as "Basic Documents," p. 15.

[21] "Basic Documents," op. cit. p. 4.

[22] Title 18, United States Code, sec. 798, "Basic Documents," op. cit. p. 15.

[23] National Archives, op. cit., p. 20.

[24] Ibid., p. 24.

[25] "Security Agreements and Commitments Abroad Hearings," op. cit., p. 2011.

[26] Ibid.

[27] Sec. 102(d)(3), Public Law 253, 80th Cong., July 26, 1947, as amended. U.S. Senate. Committee on Armed Services, National Security Act of 1947 as amended through Dec. 31, 1969. Committee print, pp. 4–5.

[28] "Security Agreements and Commitments Abroad Hearings," op. cit., p. 2011.

[29] Title 50, United States Code, sec. 783.

[30] *Scarbeck* v. *U.S.*, 1962, 317 F. 2d 546.

[31] "Security Agreements and Commitments Abroad Hearings," op. cit., p. 2008.

[32] Atomic Energy Act of 1954, Public Law 83–703, as amended, sec. 11y.

[33] U.S. Congress, Joint Committee on Atomic Energy, "Atomic Energy Legislation Through 90th Cong., 2d sess.," December 1968, p. 42.

[34] Ibid., p. 43.

[35] Public Law 89–487, sec. 3(f), "Basic Documents," op. cit., p. 25.

[36] U.S. Congress, Senate, Committee on Foreign Relations, House, Committee on Foreign Affairs, "Legislation on Foreign Relations With Explanatory Notes," 92d Cong., 1st sess. Joint committee print, April 1971, p. 137.

[37] For an explanation of the relationship of defense information to diplomacy and foreign policy, see p. 18.

[38] See U.S. Congress, House, Committee on Government Operations, 25th report, "Executive Branch Practices in Withholding Information From Congressional Committees," 86th Cong., 2d sess. H. Rept. No. 2207. Washington, U.S. Government Printing Office, 1960, 14 pages.

[39] See 18 U.S.C. 798.

[40] Executive Order 10501, sec. 5(j).

[41] Ikenberry, Kenneth, "U.S. Security Classification a Maze of Rules," The Sunday Star, Washington, Nov. 9, 1969.

[42] 32 Federal Register 250, Dec. 28, 1967.

[43] Nuclear Industry, March 1970, pp. 59–61.

[44] The Arms Control and Disarmament Agency (ACDA) is probably a major exception to this rule in its concern over hardware as well as policy.

[45] U.S. Department of State, "Uniform State/AID/USIA Security Regulations, Physical and procedural," Washington, U.S. Government Printing Office, 1969. Sec. 911.2.

[46] Ibid., sec. 901.4.

[47] Testimony of Arthur J. Goldberg before the Foreign Operations and Government Information Subcommittee of the Committee on Government Operations of the House of Representatives, June 23, 1971. Mimeographed statement.

[48] Statement by Mr. William G. Florence, retired civilian security classification policy expert, submitted to the Foreign Operations and Government Information Subcommittee of the U.S. House of Representatives Committee on Government Operations, June 24, 1971, Mimeographed prepared statement.

[49] Ibid.

[50] "The Duty of Print," Christian Science Monitor, June 23, 1971.

[51] The Wall Street Journal, June 25, 1971.

[52] Ibid.

[53] Florence, op. cit.

[54] Harvard Law Review, Cambridge, Mass., February 1970, p. 928.

[55] Epstein, Julius, "A Case for Suppression," New York Times, Dec. 18, 1970, p. 39.

[56] Affidavit by Frankel, New York Times, June 19, 1971, p. 10.

[57] Affidavit submitted by Washington Post Executive Editor Benjamin C. Bradlee to the U.S. District Court for the District of Columbia, Boston Globe, June 27, 1971, p. 5.

[58] Ibid.

[59] Ashworth, George W., "U.S. Secrets and How They Grow," Christian Science Monitor, Mar. 31, 1969, p. 1.

[60] Ibid., p. 6.

[61] Feis, Herbert, "The Shackled Historian," Foreign Affairs, January 1967, p. 337.

[62] Department of Defense Directive No. 5400.4, "Provision of Information to Congress," Feb. 20, 1971, sec. III.B.

[63] Uniform State/AID/USIA Regulations, sec. 943.1.

[64] Based on telephone conversation with Alexander Schnee, legislative officer, Bureau of Congressional Relations, Department of State, July 30, 1971.

[65] Department of Defense Directive 5400.4, Sec. IV.B.2.

[66] U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, "Withholding of Information From the Congress," 86th Cong., 2d sess., Washington, Government Printing Office, 1961, pp. 18–19.

[67] U.S. Congress, House, Committee on Government Operations, 25th report, "Executive Branch Practices in Withholding Information From Congressional Committees," 86th Cong. 2d sess., H. Rept. No. 2207, Aug. 30, 1960, p. 6.

[68] U.S. Congress, Senate, Committee on Foreign Relations, Subcommittee on Security Agreements and Commitments Abroad, "Security Agreements and Commitments Abroad," report 91st Cong. 2d sess., Dec. 21, 1970, p. 26.

[69] U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Constitutional Rights, op. cit., p. 2.

[70] U.S. Congress, Senate, Committee on Foreign Relations, Subcommittee on U.S. Security Agreements and Commitments Abroad, op. cit., p. 3.

[71] Symington, Stuart, "Congress's Right To Know," New York Times Magazine, Aug. 9, 1970, p. 62.

[72] Ibid., p. 63.

[73] Message from the President of the United States transmitting his Second Annual Review of U.S. Foreign Policy, H. Doc. 92–53, 92d Cong., 1st sess., Feb. 25, 1971, p. 179.

[74] Javits, Jacob K., "The Congressional Presence in Foreign Relations," Foreign Affairs, January 1970, p. 244.

[75] Fulbright, James W., "The Arrogance of Power," New York, Random House, 1966, pp. 44–45.

[76] U.S. Congress, Senate, Committee on Foreign Relations, "Hearings on U.S. Security Agreements and Commitments Abroad," pt. 9, "Morocco and Libya," July 20, 1970, p. 1972.

[77] Pincus, Walter, "Congress Negotiates with the Executive Branch," Washington Post, June 30, 1971, p. B6.

[78] Ibid.

[79] Florence, William G., op. cit.

[80] U.S. Congress, Senate, Committee on the Judiciary, "Withholding of Information From the Congress," committee print, 1961, p. 35.

[81] Pincus, op. cit.

[82] Report to the Secretary of Defense by the Committee on Classified Information, Nov. 8, 1956, U.S. Congress, House, Committee on Government Operations, "Availability of Information From Federal Departments and Agencies," hearings, pt. 7, Washington, U.S. Government Printing Office, 1957, p. 2134.

[83] Commission on Government Security, Loyd Wright, Chairman, report pursuant to Public Law 304, 84th Cong., as amended, June 21, 1957, p. 172.

[84] Ibid., p. 181.

[85] Ibid., p. 183–184.

[86] U.S. Congress, House, Committee on Government Operations, 25th report, "Safeguarding Official Information in the Interests of the Defense of the United States (The Status of Executive Order 10501)." H. Rept. No. 2456. 87th Cong., 2d sess., Washington, Government Printing Office, 1962, p. 13.

[87] Ibid.

[88] Ibid.

[89] Weekly Compilation of Presidential Documents, p. 1117.

[90] White House press release, Aug. 12, 1971.

[91] Remarks by Senator Edmund S. Muskie, Garden City, N.Y., June 20, 1971, Congressional Record, July 19, 1971, p. E7889.

[92] Ibid., p. E7890.

[93] Commission on Government Security, op. cit., pp. 89 and 182.

[94] Washington Post, Aug. 4, 1971.

[95] Hudson, Richard, "Let's Declassify," New York Times, July 1, 1971, p. C47.

[96] Testimony of Representative Sam Gibbons before the House Government Operations Committee, June 24, 1971.

[97] Congressional Record, vol. 117, pt. 17, p. 22272.

[98] Congressional Record, vol. 117, pt. 17, p. 22511.

[99] Dallas Morning News, Aug. 20, 1971, p. 9F.

[100] Worsnop, Richard L., "Secrecy in Government," Editorial Research Reports, 1971, vol. II, Aug. 18, No. 7, p. 641.

[101] See above sec. B., "Current Study in Executive Branch."

[102] U.S. Congress, House, Committee on Government Operations, 25th report, "Executive Branch Practices in Withholding Information From Congressional Committees," 86th Cong., 2d sess., H. Rept. No. 2207, Aug 30, 1960, p 14.

BASIC DOCUMENTS ON SECURITY CLASSIFICATION OF INFORMATION FOR NATIONAL SECURITY PURPOSES

(Weston Burnett, research assistant, foreign affairs division, July 15, 1971)

EXCUTIVE ORDER 10501—SAFEGUARDING OFFICIAL INFORMATION

Nov. 9, 1953, 18 F.R. 7049, as amended by Ex. Ord. No. 10816, May 8, 1959, 24 F.R. 3777; Ex. Ord. No. 10901, Jan. 11, 1961, 26 F.R. 217; Ex. Ord. No. 10964, Sept. 20, 1961, 26 F.R. 8932; Ex. Ord. No. 10985, Jan. 15, 1962, 27 F.R. 439; Ex. Ord. No. 11097, Mar. 6, 1963, 28 F.R. 2225; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247.

SOURCE: U.S. Laws, Statutes, etc., United States Code Annotated. St. Paul, Minnesota; West Publishing Company, 1927—(Title 50, War and National Defense, Section 401, pages 35–45).

Section 1. Classification Categories. Official information which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations; Top Secret, Secret, or Confidential. No other designation shall be used to classify defense information, including military information, as requiring protection in the interests of national defense, except as expressly provided by statute. These categories are defined as follows:

(a) Top Secret. Except as may be expressly provided by statute, the use of the classification Top Secret shall be authorized, by appropriate authority, only for defense information or material which requires the highest degree of protection. The Top Secret Classification shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense.

(b) Secret. Except as may be expressly provided by statute, the use of the classification Secret shall be authorized, by appropriate authority, only for defense information or material the unauthorized disclosure of which could result in serious damage to the Nation, such as by jeopardizing the international relations of the United States, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense, or information revealing important intelligence operations.

(c) Confidential. Except as may be expressly provided by statute, the use of the classification Confidential shall be authorized, by appropriate authority, only for defense information or material the unauthorized disclosure of which could be prejudicial to the defense interests of the nation.

Sec. 2. Limitation of authority to classify. The authority to classify defense information or material under this order shall be limited in the departments, agencies, and other units of the executive branch as hereinafter specified.

(a) In the following departments, agencies, and Governmental units, having primary responsibility for matters pertaining to national defense, the authority for original classification of information or material under this order may be exercised by the head of the department, agency, or Governmental unit concerned or by such responsible offices or employees as he, or his representative, may designate for that purpose. The delegation of such authority to classify shall be limited as severely as is consistent with the orderly and expeditious transaction of Government business.

The White House Office.
President's Science Advisory Committee.
Bureau of the Budget.
Council of Economic Advisers.
National Security Council.
Central Intelligence Agency.
Department of State.
Department of the Treasury.
Department of Defense.
Department of the Army.
Department of the Navy.
Department of the Air Force.
Department of Justice.
Department of Commerce.
Department of Labor.
Department of Transportation.
Atomic Energy Commission.
Canal Zone Government.
Federal Communications Commission.
Federal Radiation Council.
General Services Administration.
Interstate Commerce Commission.
National Aeronautics and Space Administration.
National Aeronautics and Space Council.
United States Civil Service Commission.
United States Information Agency.
Agency for International Development.
Office of Emergency Planning.
Peace Corps.
President's Foreign Intelligence Advisory Board.
United States Arms Control and Disarmament Agency.
Export-Import Bank of Washington.
Office of Science and Technology.
The Special Representative for Trade Negotiations.

(b) In the following departments, agencies, and Government units, having partial but not primary responsibility for matters pertaining to national defense, the authority for original classification of information or material under this order shall be exercised only by the head of the department, agency, or Governmental unit without delegation:

Post Office Department.
Department of the Interior.
Department of Agriculture.
Department of Health, Education, and Welfare.
Civil Aeronautics Board.
Federal Power Commission.
National Science Foundation.
Panama Canal Company.
Renegotiation Board.
Small Business Administration.
Subversive Activities Control Board.
Tennessee Valley Authority.
Federal Maritime Commission.
Subversive Activities Control Board.

(c) Any agency or unit of the executive branch not named herein, and any such agency or unit which may be established hereafter, shall be deemed not to have authority for original classification of information or material under this order, except as such authority may be specifically conferred upon any such agency or unit hereafter.

Sec. 3. Classification. Persons designated to have authority for original classification of information or material which requires protection in the interests of national defense under this order shall be held responsible for its proper classification in accordance with the definitions of the three categories in section 1, hereof. Unnecessary be scrupulously avoided. The following special rules shall be observed in classification of defense information or material:

(a) Documents in General. Documents shall be classified according to their own content and not necessarily according to their relationship to other documents. References to classified material which do not reveal classified defense information shall not be classified.

(b) Physically Connected Documents. The classification of a file or group of physically connected documents shall be at least as high as that of the most highly classified document therein. Documents separated from the file or group shall be handled in accordance with their individual defense classification.

(c) Multiple Classification. A document, product, or substance shall bear a classification at least as high as that of its highest classified component. The document, product, or substance shall bear only one over-all classification, notwithstanding that pages, paragraphs, sections, or components thereof bear different classifications.

(d) Transmittal Letters. A letter transmitting defense information shall be classified at least as high as its highest classified enclosure.

(e) Information Originated by a Foreign Government or Organization. Defense information of a classified nature furnished to the United States by a foreign government or international organization shall be assigned a classification which will assure a degree of protection equivalent to or greater than that required by the government or international organization which furnished the information.

Sec. 4. Declassification, Downgrading, or Upgrading. When classified information or material no longer requires its present level of protection in the defense interest, it shall be downgraded or declassified in order to preserve the effectiveness and integrity of the classification system and to eliminate classifications of information or material which no longer require classification protection. Heads of departments or agencies originating classified information or material shall designate persons to be responsible for continuing review of such classified information or material on a document-by-document, category, project, program, or other systematic basis, for the purpose of declassifying or downgrading whenever national defense considerations permit, and for receiving requests for such review from all sources. However, Restricted Data and material formerly designated as Restricted Data shall be handled only in accordance with subparagarph 4(a) (1) below and section 13 of this order. The following special rules shall be observed with respect to changes of classification of defense information or material, including information or material heretofore classified:

(a) Automatic Changes. In order to insure uniform procedures for automatic changes, heads of departments and agencies having authority for original classification of information or material as set forth in section 2 shall categorize such classified information or material into the following groups:

(1) Group 1. Information or material originated by foreign governments or international organizations and over which the United States Government has no jurisdiction information or material provided for by statutes such as the Atomic Energy Act [section 201] et seq. of Title 42. The Public Health and Welfare and information or material requiring special handling, such as intelligence and cryptography. This information and material is excluded from automatic downgrading or declassification.

(2) Group 2. Extremely sensitive information or material which the head of the agency or his designers exempt on an individual basis, from automatic downgrading and declassification.

(3) Group 3. Information or material which warrants some degree of classification for an indefinite period. Such information or material shall become automatically downgraded at 12-year intervals until the lowest classification is reached, but shall not become automatically declassified.

(4) Group 4. Information or material which does not qualify for, or is not assigned to, one of the first three groups. Such information or material shall become automatically downgraded at three-year intervals until the lowest classification is reached, and shall be

automatically declassified twelve years after date of issuance.

To the fullest extent practicable. the classifying authority shall indicate on the information or material at the time of original classification if it can be downgraded or declassified at an earlier date, or if it can be downgraded or declassified after a specified event, or upon the removal of classified attachments or enclosures. The heads, or their designees, of departments and agencies in possession of defense information or material classified pursuant to this order, but not bearing markings for automatic downgrading or declassification, are hereby authorized to mark or designate for automatic downgrading or declassification such information or material in accordance with the rules or regulations established by the department or agency that originally classified such information or material.

(b) Non-Automatic Changes. The person designated to receive requests for review of classified material may downgrade or declassify such material when circumstances no longer warrant its retention in its original classification provided the consent of the appropriate classifying authority has been obtained. The downgrading or declassification of extracts from or paraphrases of classified documents shall also require the consent of the appropriate classifying authority unless the agency making such extracts knows positively that they warrant a classification lower than that of the document from which extracted, or that they are not classified.

(c) Material Officially Transferred. In the case of material transferred by or pursuant to statute or Executive order from one statute or Executive order from one department or agency to another for the latter's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, the receiving department or agency shall be deemed to be the classifying authority for all purposes under this order, including declassification and downgrading.

(d) Material Not Officially Transferred. When any department or agency has in its possession any classified material which has become five years old, and it appears (1) that such material originated in an agency which has since become defunct and whose files and other property have not been officially transferred to another department or agency within the meaning of subsection (c), above, or (2) that it is impossible for the possessing department or agency to identify the originating agency, and (3) a review of the material indicates that it should be downgraded or declassified, the said possessing department or agency shall have power to declassify or downgrade such material. If it appears probable that another department or agency may have a substantial interest in whether the classification of any particular information should be maintained. the possessing department or agency shall not exercise the power conferred upon it by this subsection, except with the consent of the other department or agency, until thirty days after it has notified such other department or agency of the nature of the material and of its intention to declassify or downgrade the same. During such thirty-day period the other department or agency may, if it so desires, express its objections to declassifying or downgrading the particular material, but the power to make the ultimate decision shall reside in the possessing department or agency.

(e) Information or Material Transmitted by Electrical Means. The downgrading or declassification of classified information or material transmitted by electrical means shall be accomplished in accordance with the procedures described above unless specifically prohibited by the originating department or agency. Unclassified information or material which is transmitted in encrypted form shall be safeguarded and handled in accordance with the regulations of the originating department or agency.

(f) Downgrading. If the recipient of classified material believes that it has been classified too highly, he may make a request to the reviewing official who may downgrade or declassify the material after obtaining the consent of the appropriate classifying authority.

(g) Upgrading. If the recipient of unclassified information or material believes that it should be classified, or if the recipient of classified information or material believes that its classification is not sufficiently protective, it shall be safeguarded in accordance with the classification deemed appropriate and a request made to the reviewing official, who may classify the information or material or upgrade the classification after obtaining the consent of the appropriate classifying authority. The date of this action shall constitute a new date of origin insofar as the downgrading or declassification schedule (paragraph (a) above) is concerned.

(h) Departments and Agencies Which Do Not Have Authority for Original Classification. The provisions of this section relating to the declassification of defense information or material shall apply to departments or agencies which do not, under the terms of this order, have authority for original classification of information or material, but which have formerly classified information or material pursuant to Executive Order No. 10290 of September 24, 1951.

(i) Notification of Change in Classification. In all cases in which action is taken by the reviewing official to downgrade or declassify earlier than called for by the automatic downgrading declassification stamp, the reviewing official shall promptly notify all addressees to whom the information or material was originally transmitted. Recipients of original information or material, upon receipt of notification of change in classification, shall notify addressees to whom they have transmitted the classified information or material.

Sec. 5. Marking of Classified Material. After a determination of the proper defense classification to be assigned has been made in accordance with the provisions of this order the classified material shall be marked as follows:

(a) Downgrading-Declassification Markings. At the time of origination, all classified information or material shall be marked to indicate the downgrading-declassification schedule to be followed in accordance with paragraph (a) of section 4 of this order.

(b) Bound Documents. The assigned defense classification on bound documents, such as books or pamphlets, the pages of which are permanently and securely fastened together, shall be conspicuously marked or stamped on the outside of the front cover, on the title page, on the first page, on the back page and on the outside of the back cover. In each case the markings shall be applied to the top and bottom of the page or cover.

(c) Unbound Documents. The assigned defense classification on unbound documents, such as letters, memoranda, reports, telegrams, and other similar documents, the pages of which are not permanently and securely fastened together, shall be conspicuously marked or stamped at the top and bottom of each page, in such manner that the marking will be clearly visible when the pages are clipped or stapled together.

(d) Charts, Maps and Drawings. Classified charts, maps, and drawings shall carry the defense classification marking under the legend, title block, or scale in such manner that it will be reproduced on all copies made therefrom. Such classification shall also be marked at the top and bottom in each instance.

(e) Photographs, Films and Recordings. Classified photographs, films, and recordings, and their containers, shall be conspicuously and appropriately marked with the assigned defense classification.

(f) Products or Substances. The assigned defense classification shall be conspicuously marked on classified products or substances, if possible, and on their containers, if possible, or, if the article or container cannot be marked, written notification of such classification shall be furnished to recipients of such products or substances.

(g) Reproductions. All copies or reproductions of classified material shall be appropriately marked or stamped in the same manner as the original thereof.

(h) Unclassified Material. Normally, unclassified material shall not be marked or stamped Unclassified unless it is essential to convey to a recipient of such material that it has been examined specifically with a view to imposing a defense classification and has been determined not to require such classification.

(i) Change or Removal of Classification. Whenever classified material is declassified, downgraded, or upgraded, the material shall be marked or stamped in a prominent place to reflect the change in classification, the authority for the action, the date of action, and the identity of the person or unit taking the action. In addition, the old classification marking shall be cancelled and the new classification (if any) substituted therefor. Automatic change in classification shall be indicated by the appropriate classifying authority through marking or stamping in a prominent place to reflect information specified in subsection 4 (n) hereof.

(j) Material Furnished Persons not in the Executive Branch of the Government. When classified material affecting the national defense is furnished authorized persons, in or out of Federal service, other than those in the executive branch, the following notation, in addition to the assigned classification marking, shall whenever practicable be placed on the material, on its container, or on the written notification of its assigned classification:

This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 703 and 704, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

Use of alternative marking concerning "Restricted Data" as defined by the Atomic Energy Act [sections 1801–1810 of Title 42] is authorized when appropriate.

Sec. 6. Custody and Safekeeping. The possession or use of classified defense information or material shall be limited to locations where facilities for secure storage or protection thereof are available by means of which unauthorized persons are prevented from gaining access thereto. Whenever such information or material is not under the personal supervision of its custodian, whether during or outside of working hours, the following means shall be taken to protect it:

(a) Storage of Top Secret Information and Material. As a minimum, Top Secret defense information and material shall be stored in a safe or safe-type steel file container having a three-position dialtype combination lock, and being of such weight, size, construction, or installation as to minimize the possibility of unauthorized access to, or the physical theft of such information and material. The head of a department or agency may approve other storage facilities which afford equal protection, such as an alarmed area, a vault, a vault-type room, or an area under continuous surveillance.

(b) Storage of Secret and Confidential Information and Material. As a minimum, Secret and Confidential defense information and material may be stored in a manner authorized for Top Secret information and material, or in steel file cabinets equipped

with steel lockbar and a changeable three-combination dial-type padlock or in other storage facilities which afford equal protection and which are authorized by the head of the department or agency.

(c) Storage or Protection Equipment. Whenever new security storage equipment is procured, it should, to the maximum extent practicable, be of the type designated as security filing cabinets on the Federal Supply Schedule of the General Services Administration.

(d) Other Classified Material. Heads of departments and agencies shall prescribe such protective facilities as may be necessary in their departments or agencies for material originating under statutory provisions requiring protection of certain information.

(e) Changes of Lock Combinations. Combinations on locks of safekeeping equipment shall be changed, only by persons having appropriate security clearance, whenever such equipment is placed in use after procurement from the manufacturer or other sources, whenever a person knowing the combination is transferred from the office to which the equipment is assigned, or whenever the combination has been subjected to compromise, and at least once every year. Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest category of classified defense material authorized for storage in the safekeeping equipment concerned.

(f) Custodian's Responsibilities. Custodians of classified defense material shall be responsible for providing the best possible protection and accountability for such material at all times and particularly for securely locking classified material in approved safekeeping equipment whenever it is not in use or under direct supervision of authorized employees. Custodians shall follow procedures which insure that unauthorized persons do not gain access to classified defense information or material by sight or sound, and classified information shall not be discussed with or in the presence of unauthorized persons.

(g) Telephone Conversations. Defense information classified in the three categories under the provisions of this order shall not be revealed in telephone conversations, except as may be authorized under section 8 hereof with respect to the transmission of Secret and Confidential material over certain military communications circuits.

(h) Loss or Subjection to Compromise. Any person in the executive branch who has knowledge of the loss or possible subjection to compromise of classified defense information shall promptly report the circumstances to a designated official of his agency, and the latter shall take appropriate action forthwith, including advice to the originating department or agency.

Sec. 7. Accountability and Dissemination. Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy. Proper control of dissemination of classified defense information shall be maintained at all times, including good accountability records of classified defense information documents, and severe limitation on the number of such documents originated as well as the number of copies of classified defense information documents shall be kept to a minimum to decrease the risk of compromise of the information contained in such documents and the financial burden on the Government in protecting such documents. The following special rules shall be observed in connection with accountability for and dissemination of defense information or material:

(a) Accountability Procedures Heads of departments and agencies shall prescribe such accountability procedures as are necessary to control effectively the dissemination of classified defense information, with particularly severe control on material classified Top Secret under this order. Top Secret Control Officers shall be designated, as required, to receive, maintain accountability registers of, and dispatch Top Secret material.

(b) Dissemination Outside the Executive Branch. Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.

(c) Information Originating in Another Department or Agency. Except as otherwise provided by section 102 of the National Security Act of July 26, 1947, c. 343, 61 Stat. 498, as amended, [section 403 of this title], classified defense information originating in another department or agency shall not be disseminated outside the receiving department or agency without the consent of the originating department or agency. Documents and material containing defense information which are classified Top Secret or Secret shall not be reproduced without the consent of the originating department or agency.

Sec. 8. Transmission. For transmission outside of a department or agency, classified defense material of the three categories originated under the provisions of this order shall be prepared and transmitted as follows:

(a) Preparation for Transmission. Such material shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and address. The outer cover shall be sealed and addressed with no indication of the classification of its contents. A receipt form shall be attached to or enclosed in the inner cover, except that Confidential material shall require a receipt only if the sender deems it necessary. The receipt form shall identify the addressor, addressee, and the document, but shall contain no classified information. It shall be signed by the proper recipient and returned to the sender.

(b) Transmitting Top Secret Material. The transmission of Top Secret material shall be effected preferably by direct contact of officials concerned, or, alternatively, by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system especially created for that purpose, or by electric means in encrypted form; or in the case of information transmitted by the Federal Bureau of Investigation, such means of transmission may be used as are currently approved by the Director, Federal Bureau of Investigation, unless express reservation to the contrary is made in exceptional cases by the originating agency.

(c) Transmitting Secret Information and Material. Secret information and material shall be transmitted within and between the forty-eight contiguous States and the District of Columbia, or wholly within Alaska, Hawaii, the Commonwealth of Puerto Rico, or a United States possession, by one of the means established for Top Secret information and material, by authorized courier, by United States registered mail, or by the use of protective services provided by commercial carriers, air or surface, under such conditions as may be prescribed by the head of the department or agency concerned. Secret information and material may be transmitted outside those areas by one of the means established for Top Secret information and material, by commanders or masters of vessels of United States registry, or by the United States registered mail through Army, Navy, Air Force, or United States civil postal facilities; provided that the information or material does not at any time pass out of United States Government control and does not pass through a foreign postal system. For the purposes of this section registered mail in the custody of a transporting agency of the United States Post Office is considered within United States Government control unless the transporting agent is foreign controlled or operated. Secret information and material may, however, be transmitted between United States Government or Canadian Government installations, or both, in the forty-eight contiguous States, the District of Columbia, Alaska, and Canada by United States and Canadian registered mail with registered mail receipt. Secret information and material may also be transmitted over communications circuits in accordance with regulations promulgated for such purpose by the Secretary of Defense.

(d) Transmitting Confidential Information and Material. Confidential information and material shall be transmitted within the forty-eight contiguous States with the District of Columbia, or wholly within Alaska, Hawaii, the Commonwealth of Puerto Rico, or a United States possession, by one of the means established for higher classifications, or by certified or first-class mail. Outside those areas Confidential information and material shall be transmitted in the same manner as authorized for higher classifications.

(e) Within an Agency. Preparation of classified defense material for transmission, and transmission of it, within a department or agency shall be governed by regulations, issued by the head of the department or agency, insuring a degree of security equivalent to that outlined above for transmission outside a department or agency.

Sec. 9. Disposal and Destruction. Documentary record material made or received by a department or agency in connection with transaction of public business and preserved as evidence of the organization, functions, policies, operations, decisions, procedures or other activities of any department or agency of the Government, or because of the informational value of the data contained therein, may be destroyed only in accordance with the act of July 7, 1943, p. 192, 57 Stat. 380, as amended (sections 366–380 of Title 44). Nonrecord classified material, consisting of extra copies and duplicates including shorthand notes, preliminary drafts, used carbon paper, and other material of similar temporary nature, may be destroyed, under procedures established by the head of the department or agency which meet the following requirements, as soon as it has served its purpose:

(a) Methods of Destruction. Classified defense material shall be destroyed by burning in the presence of an appropriate official or by other methods authorized by the head of an agency provided the resulting destruction is equally complete.

(b) Records of Destruction. Appropriate accountability records maintained in the department or agency shall reflect the destruction of classified defense material.

Sec. 10. Orientation and Inspection. To promote the basic purposes of this order, heads of those departments and agencies originating or handling classified defense information shall designate experienced persons to coordinate and supervise the activities applicable to their departments or agencies under this order. Persons so designated shall maintain active training and orientation programs for employees concerned with classified defense information to impress each such employee with his individual responsibility for exercising vigilance and care in complying with the provisions of this

order. Such persons shall be authorized on behalf of the heads of the departments and agencies to establish adequate and active inspection programs to the end that the provisions of this order are administered effectively.

SEC. 11. Interpretation of Regulations by the Attorney General. The Attorney General, upon request of the head of a department or agency or his duly designated representative, shall personally or through authorized representatives of the Department of Justice render an interpretation of these regulations in connection with any problems arising out of their administration.

SEC. 12. Statutory Requirements. Nothing in this order shall be construed to authorize the dissemination, handling or transmission of classified information contrary to the provisions of any statute.

SEC. 13. "Restricted Data," Material Formerly Designated as "Restricted Data," Communications Intelligence and Cryptography. (a) Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 30, 1954, as amended (section 2011 et seq. of Title 42, The Public Health and Welfare). "Restricted Data," and material formerly designated as "Restricted Data," shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and the regulations of the Atomic Energy Commission.

(b) Nothing in this order shall prohibit any special requirements that the orginating agency or other appropriate authority may impose as to communications intelligence, cryptography, and matters related thereto.

Sec. 14. Combat Operations. The provisions of this order with regard to dissemination, transmission, or safekeeping of classified defense information or material may be so modified in connection with combat or combat-related operations as the Secretary of Defense may by regulations prescribe.

Sec. 15. Exceptional Cases. When, in an exceptional case, a person or agency not authorized to classify defense information originates information which is believed to require classification, such person or agency shall protect that information in the manner prescribed by this order for that category of classified defense information into which it is believed to fall, and shall transmit the information forthwith, under appropriate safeguards, to the department, agency, or person having both the authority to classify information and a direct official interest in the information, agency, or person to which the information would be transmitted in the ordinary course of business), with a request that such department, agency, or person classify the information.

Historical Research. As an exception to the standard for access prescribed in the first sentence of section 7, but subject to all other provisions of this order, the head of an agency may permit persons outside the executive branch performing functions in connection with historical research projects to have access to classified defense information originated within his agency if he determines that: (a) access to the information will be clearly consistent with the interests of national defense, and (b) the person to be granted access is trustworthy: Provided that the head of the agency shall take appropriate steps to assure that classified information is not published or otherwise compromised.

Sec. 16. Review to Insure That Information is Not Improperly Withheld Hereunder. The President shall designate a member of his staff who shall receive, consider, and take action upon, suggestions or complaints from non-Government sources relating to the operation of this order.

Sec. 17. Review to Insure Safeguarding of Classified Defense Information. The National Security Council shall conduct a continuing review of the implementation of this order to insure that classified defense information is properly safeguarded, in conformity herewith.

Sec. 18. Review Within Departments and Agencies. The head of each department and agency shall designate a member or members of his staff who shall conduct a continuing review of the implementation of this order within the department or agency concerned to insure that no information is withheld hereunder which the people of the United States have a right to know, and to insure that classified defense information is properly safeguarded in conformity herewith.

Sec. 19. Unauthorized Disclosure by Government Personnel. The head of each department and agency is directed to take prompt and stringent administrative action against any officer or employee of the United States, at any level of employment, determined to have been knowingly responsible for any release or disclosure of classified defense information or material except in the manner authorized by this order, and where a violation of criminal statutes may be involved, to refer promptly to the Department of Justice any such case.

Sec. 20. Revocation of Executive Order No. 10200. Executive Order No. 10290 of September 24, 1951 (set out as a note under this section) is revoked as of the effective date of this order.

Sec. 21. Effective Date. This order shall become effective on December 15, 1953.

EXECUTIVE ORDER NO. 10865—SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

Feb. 23, 1960, 25 F.R. 1583, as amended by Ex. Ord. No. 10909, Jan. 18, 1961, 26 F.R. 508; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247.

Whereas it is mandatory that the United States protect itself against hostile or destructive activities by preventing unauthorized disclosures of classified information relating to the national defense; and

Whereas it is a fundamental principle of our Government to protect the interests of individuals against unreasonable or unwarranted encroachment; and

Whereas I find that the provisions and procedures prescribed by this order are necessary to assure the preservation of the integrity of classified defense information and to protect the national interest; and

Whereas I find that those provisions and procedures recognize the interest of individuals affected thereby and provide maximum possible safeguards to protect such interests:

Now, therefore, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

Section 1. (a) The Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, and the Secretary of Transportation, respectively, shall, by regulation, prescribe such specific requirements, restrictions, and other safeguards as they consider necessary to protect (1) releases of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with their respective agencies, and (2) other releases of classified information to or within industry that such agencies have responsibility for safeguarding. So far as possible, regulations prescribed by them under this order shall be uniform and provide for full cooperation among the agencies concerned.

(b) Under agreement between the Department of Defense and any other department or agency of the United States, including, but not limited to, those referred to in subsection (c) of this section, regulations prescribed by the Secretary of Defense under subsection (a) of this section may be extended to apply to protect releases (1) of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with such other department or agency, and (2) other releases of classified information to or within industry which such other department or agency has responsibility for safeguarding.

(c) When used in this order, the term "head of a department" means the Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, the head of any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and in sections 4 and 8, includes the Attorney General. The term "department" means the Department of State, the Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Department of Transportation, any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and, in sections 4 and 8, includes the Department of Justice.

Sec. 2. An authorization for access to classified information may be granted by the head of a department or his designee, including but not limited to, those officials named in section 8 of this order, to an individual, hereinafter termed an "applicant," for a specific classification category only upon a finding that it is clearly consistent with the national interest to do so.

Sec. 3. Except as provided in section 9 of this order, an authorization for access to a specific classification category may not be finally denied or revoked by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, unless the applicant has been given the following:

(1) A written statement of the reasons why his access authorization may be denied or revoked, which shall be as comprehensive and detailed as the national security permits.

(2) A reasonable opportunity to reply in writing under oath or affirmation to the statement of reasons.

(3) After he has filed under oath or affirmation a written reply to the statement of reasons, the form and sufficiency of which may be prescribed by regulations issued by the head of the department concerned, an opportunity to appear personally before the head of the department concerned or his designee, including, but not limited to, those officials named in section 8 of this order, for the purpose of supporting his eligibility for access authorization and to present evidence on his behalf.

(4) A reasonable time to prepare for that appearance.

(5) An opportunity to be represented by counsel.

(6) An opportunity to cross-examine persons either orally or through written interrogatories in accordance with section 4 on matters not relating to the characterization in the statement of reasons of any organization or individual other than the applicant.

(7) A written notice of the final decision in his case which, if adverse, shall specify whether the head of the department or his designee, including, but not limited to, those officials named in section 8 of this order, found for or against him with respect to each allegation in the statement of reasons.

Sec. 4. (a) An applicant shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the applicant relating to a contro-

verted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following paragraphs:

(1) The head of the department supplying the statement certifies that the person who furnished the information is engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

(2) The head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause determined by the head of the department to be good and sufficient.

(b) Whenever procedures under paragraphs (1) or (2) of subsection (a) of this section are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

Sec. 5. (a) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned to safeguard classified information within industry pursuant to this order.

(b) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the applicant, may be received and considered provided that: (1) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (2) the head of the department concerned or such designee has made a determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (3) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

Sec. 6. The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section 1(b), or his representative, may issue, in appropriate cases invitations and requests to appear and testify in order that the applicant may have the opporunity to cross-examine as provided by his order. Whenever a witness is so invited or requested to appear and testify at a proceeding and the witness is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, and the proceeding involves the activity in connection with which the witness is employed, travel expenses and per diem are authorized as provided by the Standardized Government Travel Regulations or the Joint Travel Regulations, as appropriate. In all other cases (including non-Government employees as well as officers or employees of the executive branch of the Government or members of the armed forces of the United States not covered by the foregoing sentence), transportation in kind and reimbursement for actual expenses are authorized in an amount not to exceed the amount payable under Standardized Government Travel Regulations. An officer or employee of the executive branch of the Government or a member of the armed forces of the United States who is invited or requested to appear pursuant to this paragraph shall be deemed to be in the performance of his official duties. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary, the Administrator, or the head of the other department or agency, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination.

Sec. 7. Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

Sec. 8. Except as otherwise specified in the preceding provisions of this order, any authority vested in the head of a department by this order may be delegated to the

(1) Under Secretary of State or a Deputy Under Secretary of State, in the case of authority vested in the Secretary of State;

(2) Deputy Secretary of Defense or an Assistant Secretary of Defense, in the case of authority vested in the Secretary of Defense;

(3) General Manager of the Atomic Energy Commission, in the case of authority vested in the Commissioners of the Atomic Energy Commission;

(4) Deputy Administrator of the National Aeronautics and Space Administration, in the case of authority vested in the Administrator of the National Aeronautics and Space Administration;

(5) Under Secretary of Transportation, in the case of authority vested in the Secretary of Transportation;

(6) Deputy Attorney General or an Assistant Attorney General, in the case of authority vested in the Attorney General; or

(7) the deputy of that department, or the principal assistant to the head of that department, as the case may be, in the case of authority vested in the head of a department or agency of the United States with which the Department of Defense makes an agreement under section 1(b).

Sec. 9. Nothing contained in this order shall be deemed to limit or affect the responsibility and powers of the head of a department to deny or revoke access to a specific classification category if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department determines that the procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security and such determination shall be conclusive.

DWIGHT D. EISENHOWER.

EXECUTIVE ORDER NO. 10985—AMENDMENT OF EXECUTIVE ORDER NO. 10501, RELATING TO SAFEGUARDING OFFICIAL INFORMATION

Jan. 15, 1962, 27 F.R. 439.

By virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, and deeming such action necessary in the best interest of the national security, it is ordered that section 2 of Executive Order No. 10501 of November 5, 1953, as amended by Executive Order No. 10901 of January 9, 1961 [set out as a note under this section], be, and it is hereby, further amended as follows:

Section 1. Subsection (a) of section 2 is amended (1) by deleting from the list of departments and agencies thereunder the Operations Coordinating Board, the Office of Civil and Defense Mobilization, the International Cooperation Administration, the Council on Foreign Economic Policy, the Development Loan Fund, and the President's Board of Consultants on Foreign Intelligence Activities, and (2) by adding thereto the following-named agencies:

Agency for International Development
Office of Emergency Planning
Peace Corps
President's Foreign Intelligence Advisory Board
United States Arms Control and Disarmament Agency

Sec. 2. Subsection (b) of section 2 is amended by deleting from the list of departments and agencies thereunder the Government Patent Board, and by adding thereto the following-named agency:

Federal Maritime Commission

Sec. 3. The agencies which have been added by this order to the lists of departments and agencies under subsections (a) and (b) of section 2 of Executive Order No. 10501, as amended [set out as a note under this section], shall be deemed to have had authority for classification of information or material from the respective dates on which such agencies were established.

JOHN F. KENNEDY.

EXECUTIVE ORDER NO. 11097—AMENDMENT OF EXECUTIVE ORDER NO. 10501, RELATING TO SAFEGUARDING OFFICIAL INORMATION

Mar. 6, 1963, 28 F.R. 2225.

By virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, and deeming such action necessary in the best interest of the national security, it is hereby ordered as follows:

Section 1. Section 2 of Executive Order No. 10501 of November 5, 1953, as amended by Executive Order No. 10901 of January 9, 1961, and by Executive Order No. 10985 of January 12, 1962 [set out as a note under this section], is hereby further amended (A) by adding at the end of Subsection (a) thereof "Export-Import Bank of Washington", "Office of Science and Technology", and "The Special Representative for Trade Negotiations"; and (B) by deleting from Subsection (b) thereof "Subversive Activities Control Board."

Sec. 2. The Export-Import Bank of Washington, the Office of Science and Technology, and The Special Representative for Trade Negotiations shall be deemed to have had authority for the original classification of information and material from the respective dates on which such agencies were established.

JOHN F. KENNEDY.

NOTES OF DECISIONS

Library references: War and National Defense—40. C.J.S. War and National Defense § 48.

1. Classification of material: "Classification" in security sense simply means decision made by proper authority in Department of Defense to put piece of defense information or material into specific category that then makes it subject to current regulations regarding safekeeping and dissemination. Dubin v. U.S., 1966, 363 F. 2d 938, 176 Ct. Cl. 702, certiorari denied 87 S. Ct. 1019, 386 U.S. 956, 18 L. Ed. 2d 103.

Purposes of classification system of Department of Defense is to safeguard information from becoming known to potential enemies of United States in interest of national defense. Id.

Under section 783 of this title, prohibiting communication of classified information by United States officers or employees to an agent or representative of a foreign government, the classification of documents is not required to be made personally by President of United States or Secretary of State; an Ambassador of United States Embassy had authority to classify foreign service dispatches, and dispatches as classified and certified by the Ambassador were within scope of section 783 of this title. Scarbeck v. U.S., C.A.D.C. 1962 317 F.2d 546, certiorari denied 83 S.Ct. 1897, 374 U.S. 856, 10 L Ed. 2d 1077.

Foreign service dispatches classified as "secret" or "confidential" pursuant to presidential executive order and foreign service manual were "classified as affecting the security of the United States" within meaning of section 783 of this title prohibiting a United States officer or employees from communicating classified information to representatives of a foreign government. Id.

2. Suspension of security clearance: Defense department order providing that willful failure or refusal of employee, needing security clearance, to furnish information might prevent finding required for security clearance in which event security clearance would be suspended and further processing of case discontinued, was not authorized by any executive order or Congressional act. Shoultz v. McNamara, D.C.Cal.1968, 282 F.Supp. 315.

Where, under defense department order, employee whose security clearance was once suspended had no further administrative or judicial remedy to challenge suspension, and further processing of case was discontinued, and where employer would no longer employ employee until clearance, suspension was equivalent of final revocation and was deprivation of employment and professional rights within liberty and property concepts of U.S.C.A. Const Amend. 5. Id.

3. Procedure for redress: That employee whose security clearance and employment had been suspended could obtain resumption of processing of his case by answering questions under procedures which he believed to be unauthorized and unconstitutional and which did raise serious constitutional questions did not negate deprivation of employment and property rights within liberty and property concepts of U.S.C.A. Const. Amend. 5. Shoultz v. McNamara, D.C. Cal. 1968, 282 F.Supp. 315.

4. Access to secret information: Where court found that board followed improper procedure in determining that employee of government contractor was not entitled to clearance for access to secret information and in determining that, pending final disposition of case, employee was not authorized for clearance at any level, trial court should have remanded the case for further proceedings but should not have ordered that pending such proceedings employee be given clearance for access to secret information. McNamara v. Remenyi, C.A.Cal. 1968. 391 F.2d 128.

ESPIONAGE ACT

Source: U.S. Laws, Statutes, etc. United States Code. 1969 ed., containing the general and permanent laws of the United States, in force on January 3, 1965. Prepared and published . . . by the Committee on the Judiciary of the House of Representatives. Washington, U.S. Govt. Print. Off., 1965 (v. 4, title 18, Crimes and Criminal Procedure, chapter 37, pages 3574–9).

Chapter 37.—ESPIONAGE AND CENSORSHIP

Sec.
792. Harboring or concealing persons.
793. Gathering, transmitting or losing defense information.
794. Gathering or delivering defense information to aid foreign government.
795. Photographing and sketching defense installations.
796. Use of aircraft for photographing defense installations.
797. Publication and sale of photographs of defense installations.
798. Disclosure of classified information.[1]
798. Temporary extension of section 794.[1]
799. Violation of regulations of National Aeronautics and Space Administration.

Amendments

1961—Pub. L. 87–369, § 2, Oct. 4, 1961, 75 Stat. 795, deleted item 791.

1958—Pub L. 85–568, title III, § 304 (c) (2), July 29, 1958, 72 Stat. 434, added item 799.

1953—Act June 30, 1953, ch. 175, § 3, 67 Stat. 133, added second item 798.

1951—Act Oct. 31, 1951, ch. 655, § 23, 65 Stat. 719, added item 798.

§ 791. Repealed. Pub. L. 87–369, § 1, Oct. 4, 1961, 75 Stat. 795.

Section, act June 25, 1948, ch. 645, 62 Stat. 736, related to the application of the chapter within the admiralty and maritime jurisdiction of the United States, on the high seas, and within the United States.

§ 792. Harboring or concealing persons.

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, 62 Stat. 736.)

Legislative History

Reviser's Note.—Based on section 35 of title 50, U.S.C. 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, § 5, 40 Stat. 219; Mar. 28, 1940, ch. 72 § 2, 54 Stat. 79).

Similar harboring and concealing language was added to section 2388 of this title.

Mandatory punishment provision was rephrased in the alternative.

Indictment for violating this section and sections 793, 794; limitation period

Act Sept. 23, 1950, ch. 1024, § 19, 64 Stat. 1005, provides that an indictment for any violation of this section and sections 793 and 794 of this title, other than a violation constituting a capital offense, may be found at any time within ten years next after such violation shall have been committed, but that such section 19 shall not authorize prosecution, trial, or punishment for any offense "now" barred by the provisions of existing law.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross references

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Harboring and concealing, generally, see section 1071 et seq. of this title.

Jurisdiction of offenses, see section 3241 of this title.

Misprision of felony, see section 4 of this title.

§ 793. Gathering, transmitting or losing defense information.

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or causes to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any docu-

[1] So enacted.

ment, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and failed to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. (June 25, 1948, ch. 645, 62 Stat. 736; Sept. 23, 1950, ch. 1024, title I, § 18, 64 Stat. 1003.)

Legislative History

Reviser's Note.—Based on sections 31 and 36 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 1, 6, 40 Stat. 217, 219; Mar. 28, 1940, ch. 72, § 1, 54 Stat. 79).

Section consolidated sections 31 and 36 of title 50, U.S.C., 1940 ed., War and National Defense.

Words "departments or agencies" were inserted twice in conformity with definitive section 6 of this title to eliminate any possible ambiguity as to scope of section.

The words "or induces or aids another" were omitted wherever occurring as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology.

Amendments

1950—Act Sept. 23, 1950, divided section into subdivisions, added laboratories and stations, and places where material or instruments for use in time of war are the subject of research or development to the list of facilities and places to which subsection (a) applies, made subsection (d) applicable only in cases in which possession, access, or control is lawful, added subsection (e) to take care of cases in which possession, access, or control, is unlawful, made subsection (f) applicable to instruments and appliances, as well as to documents, records, etc, and provided by subsection (g) a separate penalty for conspiracy to violate any provisions of this section.

Indictment for violating this Section; limitation period

Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Activities affecting armed forces—
Generally, see section 2387 of this title.
Classified information, disclosure by Government official, or other person, penalty for, see section 783 (b), (d) of Title 50, War and National Defense and section 798 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Nonmailable letters and writings, see section 1717 of this title.

§ 794. Gathering or delivering defense information to aid foreign government.

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. (June 25, 1948, ch. 645, 62 Stat. 737; Sept. 3, 1954, ch. 1261, title II, § 201, 68 Stat. 1219.)

Legislative History

Reviser's Note.—Based on sections 32 and 34 of title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, ch. 30, title I, §§ 2, 4, 40 Stat. 218, 219).

Section consolidates sections 32 and 34 of title 50, U.S.C., 1940 ed., War and National Defense.

The words "or induces or aids another" were omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The conspiracy provision of said section 34 was also incorporated in section 2388 of this title.

Minor changes were made in phraseology.

Amendments

1954—Act Sept. 3, 1954, increased the penalty for peacetime espionage and corrected a deficiency on the sentencing authority by increasing penalty to death or imprisonment for any term of years.

Temporary extension of war period

Temporary extension of war period, see section 798 of this title.

Section 7 of act June 30, 1953, ch. 175, 67 Stat. 133, repealed Joint Res. July 3, 1952, ch. 570, § 1(a)(29, 66 Stat. 333; Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, which provided that this section should continue in force until six months after the termination of the National emergency proclaimed by 1950 Proc. No. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96. Intermediate extensions by Joint Res. June 14, 1952, ch. 437, 66 Stat. 137, and Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952, expired by their own terms.

Indictment for violating this section; limitation period

Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

Canal zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross references

Classified information, disclosure by Government official or other person, penalty for, see section 783 (b), (d) of Title 50, War and National Defense and section 798 of this title.

Conspiracy to commit offense generally, see section 371 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Nonmailable letters and writings, see section 1717 of this title.

§ 795. Photographing and sketching defense installations.

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such action as he may deem necessary.

(b) Whoever violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 737.)

Legislative History

Reviser's Note.—Based on sections 45 and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 4, 52 Stat. 3, 4).

Section consolidated sections 45 and 45c of title 50, U.S.C., 1940 ed., War and National Defense.

Minor changes were made in phraseology.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

EX. ORD. NO. 10104. DEFINITIONS OF VITAL MILITARY AND NAVAL INSTALLATIONS AND EQUIPMENT

Ex. Ord. No. 10104, Feb. 1, 1950, 15 F.R. 597, provided:

Now, therefore, by virtue of the authority vested in me by the foregoing statutory provisions, and in the interests of national defense, I hereby define the following as vital military and naval installations or equipment requiring protection against the general dissemination of information relative thereto:

1. All military, naval, or air force installations and equipment which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret," "secret," "confidential," or "restricted," and all military, naval, or air force installations and equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President, and located within:

(a) Any military, naval, or air force reservation, post, arsenal, proving ground, range, mine field, camp, base, airfield, fort, yard, station, district, or area.

(b) Any defensive sea area heretofore established by Executive order and not subsequently discontinued by Executive order, and any defensive sea area hereafter established under authority of section 2152 of title 18 of the United States Code.

(c) Any airspace reservation heretofore or hereafter established under authority of section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 774) except the airspace reservation established by Executive Order No. 10092 of December 17, 1949.

(d) Any naval harbor closed to foreign vessels.

(e) Any area required for fleet purposes.

(f) Any commercial establishment engaged in the development or manufacture of classified military or naval arms, munitions, equipment, designs, ships, aircraft, or vessels for the U.S. Army, Navy, or Air Force.

2. All military, naval, or air force aircraft, weapons, ammunition, vehicles, ships, vessels, instruments, engines, manufacturing machinery, tools, devices, or any other equipment whatsoever, in the possession of the Army, Navy, or Air Force or in the course of experimentation, development, manufacture, or delivery for the Army, Navy, or Air Force which are now classified, designated, or marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret," "secret," "confidential," or "restricted," and all such articles, materials, or equipment which may hereafter be so classified, designated, or marked with the approval or at the direction of the President.

3. All official military, naval, or air-force books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs, contracts, or specifications which are now marked under the authority or at the direction of the President, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force as "top secret", "secret", "confidential", or "restricted", and all such articles or equipment which may hereafter be so marked with the approval or at the direction of the President.

This order supersedes Executive Order No. 8381 of March 22, 1940, entitled "Defining Certain Vital Military and Naval Installations and Equipment."

Cross references

Publication and sale of photographs of defense installations, see section 797 of this title.

§ 796. Use of aircraft for photographing defense installations.

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 738.)

Legislative history

Reviser's Note.—Based on sections 45, 45a, and 45c of title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2, §§ 1, 2, 4, 52 Stat. 3, 4).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Punishment provided by section 795 of this title is repeated, and is from said section 45 of title 50, U.S.C., 1940 ed.

Minor changes were made in phraseology.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

§ 797. Publication and sale of photographs of defense installations.

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 738.)

Legislative history

Reviser's Note—Based on sections 45 and 45b, of title 50, U. S. C., 1940 ed., War and National Defense (Jan. 12, 1938, ch. 2 § § 1, 3, 52 Stat. 3).

Punishment provision of section 45 of title 50, U. S. C., 1940 ed., War and National Defense, is repeated. Words "upon conviction" were deleted as a surplusage since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

§ 798. Disclosure of Classified Information.[2]

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used for prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency or limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purposes of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof. (Added Oct. 31, 1951, ch. 655, § 24 (a), 65 Stat. 719.)

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

Cross References

Disclosure of classified information by Government officer or employee, see section 783 (b), (d) of Title 50, War and National Defense.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

§ 798. Temporary extension of section 794.[3]

The provisions of section 794 of this title, as amended and extended by section 1 (a) (29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and

[2] So enacted. See second 798 enacted on June 30, 1953, set out below.

[3] So enacted. See first section 798 enacted on Oct. 31, 1951, set out above.

effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R. 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for. (Added Jan 30, 1953, ch. 175 § 4, 67 Stat. 133.)

References in Text

Section 1 (a) (29) of the Emergency Powers Continuation Act (66 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in the text, was formerly set out as a note under section 791 of this title and was repealed by section 7 of act June 30, 1953.

Proc. 2912, 3 C.F.R. 1950 Supp., p. 71, referred to in the text, is an erroneous citation. It should refer to Proc. 2914 which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

§ 799. Violation of regulations of National Aeronautics and Space Administration.

Whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration, or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined not more than $5,000, or imprisoned not more than one year, or both. (Added Pub. L. 85–568, title III, § 304 (c) (1), July 29, 1958, 72 Stat. 434.)

Codification

Section was added by subsec. (c) of section 304 of Pub. L. 85–568. Subsecs. (a) and (b) of section 304 are classified to section 2455 of Title 42, The Public Health and Welfare. Subsec. (d) of section 304 is classified to section 1114 of this title. Subsec. (e) of section 304 is classified to section 2456 of Title 42.

Canal Zone

Applicability of section to Canal Zone, see section 14 of this title.

CLASSIFYING, DECLASSIFYING OF PAPERS

SOURCE.—Classifying, Declassifying of Papers. Affidavit of George Mclain, presented in open session in U.S. District Court. Washington Post, June 22, 1971: A 11.

Affidavit of George MacClain, *presented in open session in U.S. District Court. Most of the government's affidavits were presented in closed session.*

I, George MacClain, Director of the Security Classification Management Division, Office of the Deputy Assistant Secretary of Defense (Security Policy) (Administration), being duly sworn, depose and say:

1. That, I have held my present position since 1963. I have been employed in the Department of Defense continuously since 1935.

2. That under the general direction of the Assistant Secretary of Defense (Administration), my Division is responsible for the development, promulgation, and administrative oversight of the rules and regulations of downgrading, and declassification of official information over which the Department of Defense (DoD) has original classification jurisdiction vested in the Secretary of Defense by Executive Order (EO) 10501 Safeguarding Official Information in the Interests of the Defense of the United States, December 15, 1953, as amended, or over which the DoD has derivative classification authority by reason of having been placed in custody thereof by some other United States Government agency, foreign nation, or international organization exercising original classifying jurisdiction. A copy of EO 10501, as amended to date, is attached hereto.

3. That the principal regulations of the DoD for security classification, downgrading and declassification consist of DoD Instruction 5210.47, Security Classification of Official Information, December 31, 1964, and DoD Directive 5200.10. Downgrading and Declassification of Classified Defense Information, July 26, 1962. These regulations specifically implement those portions of EO 10501, as amended, which pertain to security classification, downgrading and declassification of official information. Copies of these regulations, as amended to date, are attached hereto.

4. That as originally issued in 1953, EO 10501 provided guidance for security classification at three levels, top secret, secret, and confidential, and further provided for the downgrading and declassification of information when the same level or no level of classification was no longer required. Under the original EO 10501, downgrading and declassification were to be accomplished upon the basis of the results of review and reevaluation from time to time more or less on continuous basis. On September 1961, EO 10501 was amended by EO 10964 for the purpose of providing for a system of time-phased automatic downgrading and declassification to supplement the ongoing review and reevaluation process. This automatic system was derived from a similar system earlier created by the DoD for its own use—DoD Directive 5200.10 implements EO 10501 as amended by EO 10964.

a. The basis for original security classification is that the unauthorized disclosure of the information involved could or would be harmful to the national defense interests of the United States. The judgment whether to impose an original classification is derived from considerations of the immediate present and future. The considerations include, without limitation, the following: The international posture of the United States as related to other nations in those respects which affect, directly or indirectly, United States national defense interests. The technological state of the art in respect to those systems and equipments by which the United States is enabled to preserve its security including, without limitation, systems and equipment for gathering intelligence; weapons systems; systems and equipments for supply, maintenance and operation of military forces; systems and equipments for military forces; systems and equipments for the exercise of effective diplomatic relationships with other nations. The extent to which the information involved is already publicly known either domestically or in foreign countries. The extent to which a United States leadtime advantage is deemed absolutely necessary in the interests of United States national defense, and whether in order to achieve and maintain this lead time, security classification is indispensable. The extent to which a United States national defense, and whether in order to achieve and maintain this lead tir.e, security classification is indispensable. The extent to which a United States lead time advantage can be forgone in the interests of net overall advantage to the United States from unclassified use of the information. The extent to which the information can in fact be safeguarded against unauthorized disclosure. The extent to which the costs of effective safeguarding would or could defeat the purposes of the program to which security classification would be applied.

b. The question as to whether the level of classification should be TOP SECRET, SECRET or CONFIDENTIAL is determined by the extent of possible damage to the current and future United States national defense interests if the information were disclosed without authority. If the damage could or would be exceptionally grave, TOP SECRET (TS) would be the required level. If the damage could or would be serious, SECRET (S); if prejudicial, CONFIDENTIAL (C). The safeguarding measures for the information subsequently applied would vary according to the level of classification.

c. Downgrading means to reduce the level of classification. Downgrading is appropriate when, on the basis of a current judgment of the present and future United States national defense interests, the degree of possible harm to those interests would change from exceptionally grave to serious or prejudicial, or from serious to prejudicial.

d. Declassification means to terminate the classification. Downgrading is appropriate when, on the basis of a current judgment of the present and future United States national defense interests, the degree of possible harm to those interests is less than prejudicial.

e. The factors applied to command and control of * * * cation are the same as those used for classification in the first instance. With the passage of time, changes in the state of the art, and other changes in the circumstances which justified the original classification or a later reduced level of classification, a new current judgment is made in the light of the now current situation, all relevant things considered.

f. The passage of time, in and of itself, is not in any case a completely sufficient reason for downgrading or declassification. On the other hand, the passage of time is always important because of the inevitable connotation that during the passage of time the circumstances and conditions originally justifying classification, or reduced classification, have themselves changed.

g. It has always been a policy that at the time of original classification, the original classifier would endeavor to visualize a future situation in which downgrading or declassification could and should occur. The purpose would be to try to bring about downgrading or declassification at the earliest reasonable and feasible time, and to achieve this result if per chance the action did not earlier result from review and reevaluation. In other words, if a specific event, or date, or period of time can be identified, the downgrading or declassification process can be made to occur automatically upon the occurrence of the selected factor or factors.

h. Unless the original classifier establishes the conditions for automatic downgrading and declassification and signifies those conditions by marking intended to put the future custodian immediately on notice, the level of classification as originally determined, or as reduced, will continue without change until the process of review and reevaluation occurs and the appropriate downgrading or declassification action is determined and ordered.

i. A determination to classify must be accompanied by a classification designation directly and immediately associated with the information involved. On documents, this designation is achieved by the marking "Top Secret," "Secret," or "Confidential." These markings are not authorized to be changed or removed except as an incident of downgrading or declassification.

j. An essential part of a completed downgrading or declassification action is a change in, or cancellation of the current designation. Even if a judgment to downgrade or declassify has been made, the judgment cannot be made effective without the appropriate change, or cancellation of, the current designation.

k. Downgrading or declassification can oc-

cur at any time. Review and reevaluation can occur at any time. The system contains requirements for continuous review and reevaluation, and also for review and reevaluation on a systematic and orderly basis. It is difficult administratively to achieve the officially desired frequency of review and reevaluation.

1. In connection with making a response to a request for information which currently is classified, a review and reevaluation of the information would be needed if the requester was not eligible, by personal security clearance and by officially determined need to have the information, to be given access to that information at its current level of classification.

6. That the time-phased system of automatic downgrading and declassification established by EO 10501 as amended by EO 10964 and as implemented in DoD by DoD directive 5200.10, provides for four categories or groups numbered from one through four. For groups 1, 3, and 4, there is no necessary relationship between a level of classification, TS, S or C, and the particular group. Thus, TOP SECRET, as well as SECRET or CONFIDENTIAL information can be placed in either group 1, 3, or 4. Group 2 information, however, is used for only very sensitive information, and may be applied only on a unit basis, such as, document by document. The classification level of group 2 information must always be either TS or S.

a. Group 1 information is excluded from the automatic system. Information which is not completely within the exclusive original security classification jurisdiction made of the DoD must be placed in group 1. Thus, classified information made available to the DoD by another agency of the United States Government, such as the Department of State or The Central Intelligence Agency, or by a foreign nation or international organization, must be placed in group 1 regardless of its level of classification. Some group 1 information is within the exclusive jurisdiction of DoD. Group 1 information is never automatically downgraded or declassified. If not within exclusive DoD jurisdiction, it can be downgraded or declassified only with the combined action of the original classifier and the DoD.

b. Group 3 information is subject to automatic downgrading on a 12-year, time-phased basis. TS becomes S in 12 years, and S becomes C in 12 years. There is no automatic declassification.

c. Group 4 information is subject to automatic downgrading and declassification on the prescribed time basis of reducing one level in 3 years and becoming automatically declassified after 12 years from date of origin. Thus, TS would become S in three years, S would become C in three more years, and declassification would occur in 6 more years, a total of 12. Information starting at S or C would become declassified only after the passage of a total of 12 years from date of origin.

7. That original classification is very different from derivative classification. Original classification is determined by the original classifier in relation to his judgment of the current interests of United States national defense. After the original classification, all custodians are bound by the classification originally imposed, until and unless changed by the original classifier or by those duly authorized to act for him. Within the DoD, the authority for original classification, downgrading and declassification is exercised within a vertical channel of command or supervision. Any higher official in a vertical channel of command or supervision may change a classification imposed at a lower level, or act in lieu of a classifier at a lower level. The exercise of original classification is controlled by the Secretary of Defense or his designee, the Assistant Secretary of Defense (Administration). At the TS level, the number of officials vested with original classification authority is relatively few and is precisely specified on the basis of official positions. Many more officials have original classifying authority at the S and C levels, generally determined by the necessities of the particular positions and responsibilities held as verified by appropriate authority.

8. That the original classifying authority not only determines the level of classification, as TS, S or C. He also is required to establish the group for automatic downgrading and declassification purposes. A custodian holding only derivative classification authority with respect to the information in question is authorized, however, if a group marking has not been made, to establish the correct group and put the appropriate group marking on the document in accordance with the rules under which the original classifier exercised his authority.

9. That the classification of documents is required to be determined on the basis of the content of the particular document. Within any document there may be classified portions as well as unclassified portions, and there may be portions classified at different levels from other portions. The document as an entirety, however carries only one overall classification, and that classification must be the same as that portion of the document bearing the highest level of classification. When two or more documents are combined together to make a single package, the overall classification of the total package would depend upon not only the highest level of classification of any portion of material in either of the parts of the package, but also upon the question whether putting the two or more parts together into a single package gives rise to information which in itself merits a higher classification than any part within the total package. On this principle, it is sometimes necessary to classify a document in which no single piece or part is itself classified.

10. That when a new document is prepared from two or more source documents, it is sometimes very difficult, if not impossible, to sort out the individual portions of the new document in relation to specific sources for the purpose of endeavoring to identify specific portions of the new document which can be determined to be unclassified. For example, if source documents were supplied to the DoD by the Department of State or the Central Intelligence Agency, or by a foreign nation, and from those several sources a new document was prepared as an original composition, it is absolutely certain that the new original composition would have to carry the classification level of the highest classified portion of any source document which had been carried into the final new composition.

11. That under the foregoing system, certain necessary conclusions follow. Within DoD, an original TS classification determination must be made by an official specifically vested with that authority, and subsequent downgrading and declassification of TS information must be determined by that same authority unless another official has been duly designated to take that action. Further, when classified information at any level is entrusted by another agency of the United States Government to the DoD, no official in the DoD may reduce or cancel that classification except in concert with and by authority of the other agency exercising the original classifying authority.

12. That it is appropriate to repeat with emphasis that classification, downgrading and declassification determinations under EO 10501 as amended as implemented by the DoD must be made in terms of the current and future national defense interests of the United States, whether those interests are related in one case to the international posture of the United States in relation to other nations, or in another case to a particular weapons system or intelligence gathering or collection system or to intelligence sources and methods, or to plans for current or future military operations. Further, classification, downgrading and declassification always depend upon a judgment currently made as to the immediate and future national defense interests of the United States.

13. That, based upon information and belief and my understanding, and pursuant to EO 10501, as amended, DoD Instruction 5210.47, and DoD Directive 5200.10, the required classification of the study entitled "United States—Vietnam Relations 1945–1967," as a single package document consisting of 47 volumes, based upon and derived from miscellaneous source materials some of which were prepared and classified Top Secret by original classifying authorities outside of the DoD and some of which were prepared and classified Top Secret by original classifying authorities within the DoD, at the time for completion of the study was, and now is, Top Secret.

DEPARTMENTAL REGULATIONS: SEC. 301 TITLE 5 U.S.C.

SOURCE.—U.S. Laws, Statutes, etc. United States Code. 1964 ed., supplement V, containing the general and permanent laws of the United States enacted during the 89th and 90th Congresses and 91st Congress, first session, January 4, 1965, to January 18, 1970. Prepared and published . . . by the Committee on the Judiciary of the House of Representatives. Washington, U.S. Govt. Print. Off., 1965. (Title 5, government organization and employees, chapter 3, pp. 70–71).

§ 301. Departmental regulations.

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379.)

Historical and revision notes

U.S. Code: 5 U.S.C. 22.

Revised Statutes and Statutes at Large: R.S. § 161. Aug. 12, 1958, Pub. L. 85–619, 72 Stat. 547.

The words "Executive department" are substituted for "department" as the definition of "department" applicable to this section is coextensive with the definition of "Executive department" in section 101. The words "not inconsistent with law" are omitted as a regulation which is inconsistent with law is invalid.

The words "or military department" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which provided:

"All laws, orders, regulations, and other actions relating to the National Military Establishment, the Department of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, and such law, order, regulation, or other action which vested functions in or otherwise

related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force."

This section was part of title title IV of the Revised Statutes. The Act of July 26, 1974, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

FREEDOM OF INFORMATION ACT; P.L. 89–487

SOURCE.—U.S. Laws, Statutes, etc. An act to amend section 3 of the Administrative Procedure Act, chapter 324 of the act of June 11, 1946 (60 stat. 238), to clarify and protect the right of the public to information, and for other purposes [Freedom of Information Act]. Approved July 4, 1966. [Washington, U.S. Govt. Print. Off., 1966], [2] p. (Public law 487, 89th Congress, 80 stat. 250).

Public Law 89–487—July 4, 1966

An act to amend section 3 of the Administrative Procedure Act, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), is amended to read as follows:

"SEC. 3. Every agency shall make available to the public the following information:

"(a) PUBLICATION IN THE FEDERAL REGISTER.—Every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) every amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the Federal Register and not so published. For purposes of this subsection, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

"(b) AGENCY OPINIONS AND ORDER.—Every agency shall, in accordance with published rules, make available for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction: *Provided,* That in every case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after the effective date of this Act and which is required by this subsection to be made available or published. No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public may be relied upon, used or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided by this subsection or unless that private party shall have actual and timely notice of the terms thereof.

"(c) AGENCY RECORDS.—Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

"(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection.

"(e) EXEMPTIONS.—The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

"(f) LIMITATION OF EXEMPTIONS.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

"(g) PRIVATE PARTY.—As used in this section, 'private party' means any party other than an agency.

"(h) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act."

Approved July 4, 1966.

CONTROL OF INFORMATION (AEC); SECS 2161—2–66 TITLE 42 U.S.C.

SOURCE.—U.S. Laws, statutes, etc. United States code. 1964 ed., containing the general and permanent law of the United States, in force on January 3, 1965. Prepared and published . . . by the Committee on the Judiciary of the House of Representatives. Washington, U.S. Govt. Print. Off., 1965. (v. 9, title 42 public health and welfare, subchapter 11, pages 8070–8073).

Subchapter XI.—Control of information

PRIOR PROVISIONS

Provisions similar to those comprising this subchapter were contained in section 10 of act Aug. 1, 1946, ch. 724, 60 Stat. 755 (formerly classified to section 1810 of this title), prior to the complete amendment and renumbering of act Aug. 1, 1946 by act Aug. 30, 1954, 9:44 a. m., E. D. T., ch. 1073, 68 Stat. 921.

§ 2161. Policy of Commission.

It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. Consistent with such policy, the Commission shall be guided by the following principles:

(a) Until effective and enforceable international safeguards against the use of atomic energy for destructive purposes have been established by an international arrangement, there shall be no exchange of Restricted Data with other nations except as authorized by section 2164 of this title; and

(b) The dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding and to enlarge the fund of technical information. (Aug. 1, 1946, ch. 724, § 141, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat 940.)

§ 2162. Classification and declassification of Restricted data.

(a) Periodic determination. The Commission shall from time to time determine the data, within the definition of Restricted Data, which can be published without undue risk to the common defense and security and shall thereupon cause such data to be declassified and removed from the category of Restricted Data.

(b) Continuous review. The Commission shall maintain a continuous review of Restricted Data and of any Classification Guides issued for the guidance of those in the atomic energy program with respect to the areas of Restricted Data which have been declassified in order to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security.

(c) Joint determination on atomic weapons; Presidential determination on disagreement. In the case of Restricted Data which the Commission and the Department of Defense jointly determine to relate primarily to the military utilization of atomic weapons, the determination that such data may be

published without constituting an unreasonable risk to the common defense and security shall be made by the Commission and the Department of Defense jointly, and if the Commission and the Department of Defense do not agree, the determination shall be made by the President.

(d) Same; removal from Restricted Data category.

The Commission shall remove from the Restricted Data category such data as the Commission and the Department of Defense jointly determine relates primarily to the military utilization of atomic weapons and which the Commission and Department of Defense jointly determine can be adequately safeguarded as defense information: *Provided, however,* That no such data so removed from the Restricted Data category shall be transmitted or otherwise made available to any nation or regional defense organization, while such data remains defense information, except pursuant to an agreement for cooperation entered into in accordance with section 2164(b) of this title.

(e) Joint determination on atomic energy programs.

The Commission shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Commission and the Director of Central Intelligence jointly determine to be necessary to carry out the provisions of section 403(d) of Title 50 and can be adequately safeguarded as defense information. (Aug. 1, 1946, ch. 724, § 142, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 941.)

Ex. Ord. No. 10899. Communication of Restricted Data by Central Intelligence Agency

Ex. Ord. No. 10899, Dec. 9, 1960, 25 F.R. 12729, provided:

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 *et seq.*) [this chapter], and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsections 144 a, b, or c of the act (42 U.S.C. 2162 (a), (b), or (c)), such restricted data and data removed from the restricted data category under subsection 142d of the Act (42 U.S.C. 2162(d)) [subsection (d) of this section] as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841 [set out as a note under section 2153 of this title], to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided,* that no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperations by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

DWIGHT D. EISENHOWER.

Ex. Ord. No. 11057. Communication of restricted data by Department of State

Ex. Ord. No. 11057, Oct. 18, 1962, 27 F.R. 10289, provided:

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 et seq.) [this chapter], and as President of the United States, it is ordered as follows:

The Department of State is hereby authorized to communicate, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsection 144b of the act (42 U.S.C. 2164(b)), such restricted data and data removed from the restricted data category under subsection 142d of the act (42 U.S.C. 2162(d)) [subsec. (d) of this section] as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841, as amended [set out as a note under section 2153 of this title], to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Department of State in accordance with the terms and conditions of the agreement for cooperation involved: *Provided,* that no such communication shall be made by the Department of State until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Department of State.

JOHN F. KENNEDY.

§ 2163. Access to Restricted Data.

The Commission may authorize any of its employees, or employees of any contractor, prospective contractor, licensee or prospective licensee of the Commission or any other person authorized access to Restricted Data by the Commission under section 2165(b) and (c) of this title to permit any employee of an agency of the Department of Defense or of its contractors, or any member of the Armed Forces to have access to Restricted Data required in the performance of his duties and so certified by the head of the appropriate agency of the Department of Defense or his designee: *Provided, however,* That, the head of the appropriate agency of the Department of Defense or his designee has determined, in accordance with the established personnel security procedures and standards of such agency, that permitting the member or employee to have access to such Restricted Data will not endanger the common defense and security: *And provided further,* That the Secretary of Defense finds that the established personnel and other security procedures and standards of such agency are adequate and in reasonable conformity to the standards established by the Commission under section 2165 of this title. (Aug. 1, 1946, ch. 724, § 143, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 941, and amended Aug. 6, 1956, ch. 1015, § 14, 70 Stat. 1071; Sept. 6, 1961, Pub. L. 87-206, § 5, 75 Stat. 476.)

Amendments

1961—Pub. L. 87-206 inserted the reference to subsection (c) of section 2165 of this title.

1956—Act Aug. 6, 1956, inserted between the words "licensee of the Commission" and the words "to permit any employee" the words "or any other person authorized access to Restricted Data by the Commission under section 2165(b) of this title".

§ 2164. International cooperation.

(a) By Commission. The President may authorize the Commission to cooperate with another nation and to communicate to that nation Restricted Data on—

(1) refining, purification, and subsequent treatment of source material;

(2) civilian reactor development;

(3) production of special nuclear material;

(4) health and safety;

(5) industrial and other applications of atomic energy for peaceful purposes; and

(6) research and development relating to the foregoing:

Provided, however, That no such cooperation shall involve the communication of Restricted Data relating to the design or fabrication of atomic weapons: *And provided further,* That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 2153 of this title, or is undertaken pursuant to an agreement existing on August 30, 1954.

(b) By Department of Defense. The President may authorize the Department of Defense, with the assistance of the Commission, to cooperate with another nation or with a regional defense organization to which the United States is a party, and to communicate to that nation or organization such Restricted Data (including design information) as is necessary to—

(1) the development of defense plans;

(2) the training of personnel in the employment of and defense against atomic weapons and other military applications of atomic energy;

(3) the evaluation of the capabilities of potential enemies in the employment of atomic weapons and other military applications of atomic energy; and

(4) the development of compatible delivery systems for atomic weapons;

whenever the President determines that the proposed cooperation and the proposed communication of the Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation or organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

(c) Exchange of information concerning atomic weapons; research, development, or design, of military reactors. In addition to the cooperation authorized in subsections (a) and (b) of this section, the President may authorize the Commission, with the assistance of the Department of Defense, to cooperate with another nation and—

(1) to exchange with that nation Restricted Data concerning atomic weapons: *Provided,* That communication of such Restricted Data to that nation is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons; and

(2) to communicate or exchange with that nation Restricted Data concerning research, development, or design, of military reactors;

whenever the President determines that the proposed cooperation and the communication of the proposed Restricted Data will promote and will not constitute an unreasonable risk to the common defense and security, while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security: *Provided, however,* That the cooperation is undertaken pursuant to an agreement entered into in accordance with section 2153 of this title.

(d) Communication of data by other Governmental agencies. The President may authorize any agency of the United States to communicate in accordance with the terms and conditions of an agreement for cooperation arranged pursuant to subsection (a), (b), or (c) of this section, such Restricted Data as is determined to be transmissible un-

der the agreement for cooperation involved. (Aug. 1, 1946, ch. 724, § 144, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 942, and amended July 2, 1958, Pub. L. 85–479, §§ 5—7, 72 Stat. 278.)

Amendments

1958—Subsec. (a). Pub. L. 85–479, § 5, substituted "civilian reactor development" for "reactor development" in cl. (2).

Subsec. (b). Pub. L. 85–479, § 6, authorized communication of design information, of data concerning other military applications of atomic energy necessary for the training of personnel or for the evaluation of the capabilities of potential enemies, and of data necessary to the development of compatible delivery systems for atomic weapons, and eliminated provisions which prohibited communication of data which would reveal important information concerning the design or fabrication of the nuclear components of atomic weapons.

Subsecs. (c) and (d). Pub. L. 85–479, § 7, added subsecs. (c) and (d).

§ 2165. Security restrictions.

(a) On contractors and licensees. No arrangement shall be made under section 2051 of this title, no contract shall be made or continued in effect under section 2061 of this title, and no license shall be issued under section 2133 or 2134 of this title, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Employment of personnel; access to Restricted Data. Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) Acceptance of investigation and clearance granted by other Government agencies. In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) Investigations by FBI. In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(e) Same; Presidential investigation. If the President deems it to be in the national interest, he may from time to time determine investigations of any group or class which are required by subsections (a), (b), and (c) of this section to be made by the Federal Bureau of Investigation.

(f) Certification of specific positions for investigation by FBI. Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity and upon such certification the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.

(g) Investigation standards. The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to restricted data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the restricted data to which access will be permitted.

(h) War time clearance. Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by subsection (b) of this section to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security. (Aug. 1, 1946, ch. 724, § 145, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 942, and amended Aug. 19, 1958, Pub. L. 85–681, § 5, 72 Stat, 633; Sept. 6, 1961, Pub. L. 87–206, § 6, 75 Stat. 476; Aug. 29, 1962, Pub. L. 87–615, § 10, 76 Stat. 411.)

AMENDMENTS

1962—Subsec. (f). Pub. L. 87–615 deleted the comma following "investigation".

1961—Subsec. (c). Pub. L. 87–206 added subsec. (c) Former subsec. (c) redesignated (d).

Subsec. (d) Pub. L. 87–206 redesignated former subsec (c) as (d). Former subsec. (d) redesignated (c).

Subsec. (c). Pub. L. 87–206 redesignated former subsec (d) as (c) and amended the provisions by substituting "determine that" for "cause investigations", inserting reference to subsection (c) of this section and eliminating "instead of by the Civil Service Commission" following "Federal Bureau of Investigation." Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 87–296 redesignated former subsec (e) as (f) and amended the provisions by inserting reference to subsection (c) of this section and eliminating "instead of by the Civil Service Commission" following "Federal Bureau of Investigation." Former subsec (f) redesignated (g).

Subsec. (g). Pub. L. 87–206 redesignated former subsec. (f) as (g) and amended the provisions by substituting ", the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to restricted data will not endanger the common defense and security" for "to be made by the Civil Service Commission pursuant to subsections (a) and (b) of this section." Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 87–206 redesignated former subsec. (g) and (h).

1958—Subsec. (g). Pub. L. 85–681 added subsec. (g).

Cross reference

Arms control and disarmament security restrictions, see section 2585 of Title 22, Foreign Relations and Intercourse.

§ 2166. Applicability of other laws.

(a) Sections 2161—2165 of this title shall not exclude the applicable provisions of any other laws, except that no Government agency shall take any action under such other laws inconsistent with the provisions of those sections.

(b) The Commission shall have no power to control or restrict the dissemination of information other than as granted by this or any other law. (Aug. 1, 1946, ch. 724, § 146, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 943.)

SECURITY REGULATIONS: PHYSICAL AND PROCEDURAL

(State Department/AID/USIA); Selected excerpts—Uniform State/AID/USIA regulations.)

900—Physical and Procedural Security

(NOTE.—* indicates revision; ** indicates new material.)

901 Policy

901.1 Interests of National Defense

The interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action. Therefore, certain official information *including that in the field of foreign relations* affecting the national defense must be protected against unauthorized disclosure. *(See section 911.2.)*

901.2 Safeguarding Official Information

Executive Order No. 10501 of November 5, 1953 (18 F.R. 7047), as amended (note following 50 U.S.C. 401), provides for the safeguarding of official information which requires protection in the interests of national defense. *For the types of foreign policy information which may fall within the criteria of national defense, see sections 911.2 and 911.4.*

**901.3 Safeguarding Other Official Information

The Freedom of Information Act (5 U.S.C. 552) recognizes the necessity for the Government to withhold from public disclosure certain categories of records in addition to those containing information specified in Executive Order 10501 and other Executive Orders. These include, but are not limited to, records the disclosure of which would be a clearly unwarranted invasion of personal privacy or would violate a privileged relationship.

The absence of a security classification or an administrative control designation on a record should not be regarded as authorizing the public disclosure of information contained therein without independent consideration of the appropriateness of the disclosure. In this regard, Department and Agency policy with respect to disclosure of information under the Freedom of Information Act, or otherwise, does not alter the individual's responsibility arising from his employment relationship with the Department or Agency.**

SOURCE.—U.S. Department of State. Uniform State/AID/USIA security regulations, physical and procedural. [Washington, U.S. Govt. Print. Off.] 1969. 1 v. (various pagings)

901.4 Limitation

The requirement to safeguard information in the national defense interest and in order to protect sources of privileged information in no way implies an indiscriminate license to restrict information from the public. It is important that the citizens of the United States have the fullest possible access, consistent with security and integrity, to information concerning the politices and programs of their Government.

901.5 Scope

These regulations prescribe the security rules for classifying, marking, reproducing, handling, transmitting, disseminating, stor-

ing, regrading, declassifying, decontrolling, and destroying official material in accordance with its relative importance. They are intended to ensure accurate and uniform classification of such information and to establish standards for its protection, as required by Executive Order 10501.

901.6 Responsibility

a. Primary. The specific responsibility for the maintenance of the security of classified or controlled information rests with each person having knowledge or physical custody thereof, *no matter how obtained.*

b. Individual. Each employee is responsible for familiarizing himself with and adhering to all security regulations.

c. Supervisory. The ultimate responsibility for safeguarding classified and administratively controlled information as prescribed in these regulations rests upon each supervisor to the same degree that he is charged with functional responsibility for his organizational unit. Supervisors may, however, delegate the performance of any or all of these functions relating to the safeguarding of material.

d. Organizational. The Offices of Security in State, USIA, and A.I.D. are responsible for physical and personnel security in their respective agencies. The Office of Communications in the Department of State is responsible for cryptographic security. For administration and enforcement, see section 990.

e. Limitation. Responsibility for safeguarding classified and controlled information and records shall not be construed as authority to determine whether records may be withheld from the public when requests for their disclosure are made under the Freedom of Information Act (5 U.S.C. 552). Such requests must be referred in the manner described in section 943.2 for processing in accordance with applicable agency regulations. (State, 5 FAM 480; A.I.D., M.O. 820.1; USIA, 22 CFR 503.5–503.7.)

910 Classification and Control of Information and Material

911 Authorized Classifications

911.1 Classification Categories

Classification of official information requiring protection in the interests of national defense shall be limited to one of the three authorized categories of classification, which in descending order of importance are: Top Secret, Secret, and Confidential. No other classification shall be used to identify defense information, including military information, requiring protection in the interests of national defense, except as expressly provided by statute.

911.2 Defense *and Foreign Policy* Information

The Attorney General of the United States on April 17, 1954, advised that defense classifications may be interpreted, in proper instances, to include the safeguarding of information and material developed in the course of conduct of foreign relations of the United States whenever it appears that the effect of the unauthorized disclosure of such information or material upon international relations or upon policies being pursued through diplomatic channels could result in serious damage to the Nation. The Attorney General further noted that it is a fact that there exists an interrelation between the foreign relations of the United States and the national defense of the United States, which fact is recognized in section 1 of Executive Order 10501. Illustrative examples of such information which may require classification include but are not confined to:

a. Information and material relating to cryptographic devices and systems.

b. Information pertaining to vital defense or diplomatic programs or operations.

c. Intelligence or information relating to intelligence operations which will assist the United States to be better prepared to defend itself against attack or to conduct foreign relations.

d. Information pertaining to national stockpiles, requirements for strategic materials, critical products, technological development, or testing activities vital to natonal defense.

e. Investgative reports which contain information relating to subversive activities affecting the internal security of the United States.

f. Political and economic reports containing information, the unauthorized disclosure of which may jeopardize the international relations of the United States or may otherwise affect the national defense.

g. Information received in confidence from officials of a foreign government whenever it appears that the breach of such confidence might have serious consequences affecting the national defense or foreign relations.

911.3 Classification of Defense Information

911.3–1 Top Secret

Except as may be expressly provided by statute, the use of the classification Top Secret shall be authorized by an appropriate official only for defense information or material which requires the highest degree of protection. The Top Secret classification shall be applied only to that information or material the defense or diplomatic aspect of which is paramount and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation, such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military defense plans, intelligence operations, or scientific or technological developments vital to the national defense.

911.3–2 Secret

Except as may be expressly provided by statute, the use of the classification Secret shall be authorized by an appropriate official only for defense information or material the unauthorized disclosure of which could result in serious damage to the Nation, such as jeopardizing the international relations of the United States or its allies, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense, or information revealing important diplomatic or intelligence operations.

911.3–3 Confidential

Except as may be expressly provided by statute, the use of the classification Confidential shall be authorized, by an appropriate official, only for defense information or material the unauthorized disclosure of which could be prejudicial to the conduct of United States foreign relations or the defense interests of the Nation.

911.3–4 Unclassified

Normally, unclassified material should not be marked or stamped "Unclassified" unless it is essential to convey to its recipient that it has been examined specifically for the need of a defense classification or control designation and has been determined not to require such classification or control. However, preprinted forms such as telegrams, which make provision for an assigned classification, shall include the term "Unclassified" if the information contained the text is neither classified nor administratively controlled. *Envelopes containing unclassified information to be sent by diplomatic pouch must be marked or stamped "Unclassified" on both sides. (See section 956.5b.) *

911.4 Authorized Administrative Control Designation

911.4–1 Limited Official Use

The administrative control designation Limited Official Use is authorized to identify *non-classified information which requires physical protection comparable to that given "Confidential" material in order to safeguard it* from unauthorized access. Matters which should be administratively controlled include information received through privileged sources certain personnel, medical, investigative *commercial, and financial* records; specific references to contents of diplomatic pouches; and other similar material.

Documents which routinely would be made available to the public upon request pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) should not be administratively controlled. See State, 5 FAM 480; A.I.D., M.O. 820.1; USIA, M.O.A. III 526.

911.5 Restricted Data

a. "Restricted Data" is a term used in connection with atomic energy matters. Section 11r of the Atomic Energy Act of 1954 defines Restricted Data as follows:

"The term 'Restricted Data' means all data concerning:

"(1) Design, manufacture, or utilization of atomic weapons;

"(2) The production of special nuclear material; or

"(3) The use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data Category."

b. Restricted Data shall be classified Top Secret, Secret, or Confidential. Before any person may be permitted to have access to Restricted Data, he must have a "Q" clearance from, or the special permission of, the Atomic Energy Commission. Nothing in these regulations shall be construed as superseding any requirements of the Atomic Energy Act of 1954. Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954 and the regulations of the Atomic Energy Commission.

*c. A cover sheet, JF–42, Restricted Data, bearing the appropriate defense classification top and bottom, shall be used to cover each copy of each document marked "Restricted Data." (See Appendix V (p. 18.)) *

911.6 Limitations

No other security classification or administrative control designation shall be used on documents originating in the Department, USIA, and A.I.D. without the specific approval of the appropriate Office of Security.

912 Principles of Classification and Control

912.1 Assigning a Classification or Control Designation

a. The originator of a document is responsible for the original assignment of its classification or control designation. Documents or materials shall be classified or controlled according to their own content and not necessarily according to their relationship to other documents. Each document or item of material shall be assigned the lowest classification or control designation consistent with the proper protection of the information in it. *Documents or material containing references to classified material which do not themselves reveal classified information are not to be classified. (See sections 912.2 and 912.3.) *

b. The practice of assigning to a document a classification or control designation exceeding the degree of protection required may appear to be a simple, innocuous means of providing extra protection in the interests of security. To the contrary, overclassification and unnecessary control of documents result in the establishment of cumbersome administrative procedures and seriously hamper op-

erations, especially abroad, even to the extent of defeating the purposes for which the documents are intended. Overclassification and unnecessary control cause delays in handling and may preclude the accessibility of documents to personnel who should be working with them.

912.2 Physically Connected Documents

The classification or administrative control designation assigned to a file or group of physically connected documents must be at least as high as that of the most highly classified or controlled document in it. Documents separated from the file are handled in accordance with their individual classification or control designation. A cover sheet, JF–18, Classified or Controlled File, may be placed on the front of each file or group of physically connected documents, marked to indicate the highest classification or control designation it covers, or the front and back of the folder must be stamped or marked according to the highest classification or designation of the combined information contained in it.

912.3 Transmitting Communication

A transmitting communication shall bear a classification or control designation at least as high as the most highly classified or controlled document it covers. The transmitting communication also must be marked with its appropriate group marking. (See section 966.1.)

912.4 Foreign Government Classified Information

Information furnished by a foreign government or by an international organization with restrictions on its dissemination must be protected according to the instructions specified by the foreign government or international organization furnishing the information.

912.5 Multiple Classifications or Control Designations

A document must bear a classification or administrative control designation at least as high as that of its most highly classified or controlled component. Pages, paragraphs, sections, or components may bear different classifications or a control designation, but the document shall bear only one over-all classification or control designation. When separate portions of a document are marked with different classifications or control designations, each portion bearing a single classification or control designation (including "Unclassified") shall be set off with the phrases:

"Begin ———" (Insert classification or designation.)

"End ———" (Insert classification or designation.)

940 Safeguarding and Dissemination of Classified and Administratively Controlled Information

941 Principles Governing the Safeguarding of Classified and Controlled Information

941.1 Authorization for Access and Use

Classified or administratively controlled information must be given only to those persons who require and are authorized to receive the information in the course of the performance of their official duties; who have an appropriate and current security clearance; and who have adequate facilities for protection of documents or other tangible matters.

Special and specifically authorized clearances are required for access to information identified as Restricted Data, Cosmic, SEATO, CENTO, Cryptographic, Intelligence, Office of Security, and other information given special protection by law or regulation.

941.2 Need-to-Know Doctrine

A person is not entitled to receive classified or administratively controlled information solely by virtue of his official position or by virtue of having been granted security clearance. The "need-to-know" doctrine shall be enforced at all times in the interest of good security.

941.3 In Conversation

The discussion of classified or administratively controlled information must not be held in the presence or hearing of persons who are not authorized to have knowledge thereof.

Classified or administratively controlled information must not be discussed in telephone conversations.

941.4 Control on Dissemination

The dissemination of classified or administratively controlled information must be carefully controlled at all times. This includes maintenance of adequate records of transmission and receipt and the imposition of strict limitations on the number of copies prepared or reproduced.

941.5 Restriction on Personal Use

Classified or administratively controlled information must not be used for personal interests of any employee and must not be entered in personal diaries or other nonofficial records.

941.6 Access by Foreign National Employees

Classified information must not be dictated to, typed, or otherwise prepared by local employees. This restriction must not be circumvented by the assignment or classifications after a local employee has prepared a particular document. However, when warranted, information collected by local employees and prepared in report form by such employees may receive classification protection by appending such reports to classified transmittal reports prepared by U.S. employees.

Except as noted in sections 941.6–1, 941.6–2, and 941.6–3, classified or administratively controlled information must not be made available to, or left in the custody of, Foreign Service local employees or alien employees resident in the United States; nor will such employees be permitted to attend meetings where classified or administratively controlled information is discussed.

941.6–1 When local employees obtain information from privileged sources or otherwise develop information warranting an administrative control designation or must be given access to administratively controlled information or material originated elsewhere in order to perform their official duties, they may be authorized limited access to such information provided that:

(a) The local employee's U.S. citizen supervisor requests authority to permit access to administratively controlled material in writing, specifying the reasons the employee must have access in order to perform his official duties and describing the type of material, reports, etc., contemplated for access.

(b) The regional security officer concurs in the request, issues a memorandum of limited access, and recommends approval to the principal officer of the post concerned.

(c) The principal officer must authorize the limited access in writing. Such authority shall be reviewed by each succeeding principal officer, and he shall affirm or discontinue such authority as he deems appropriate.

(d) The employee's access is not construed to mean blanket authority to receive administratively controlled information or material. Select local employees authorized to have access to administratively controlled material shall be permitted access only to that type of material specified in paragraph (a) of this section on a strict "need-to-know" basis.

941.6–2 When it is essential that information contained in classified documents (excluding Top Secret) be disseminated to the broadcasting service alien personnel resident in the United States, in order for them to perform their duties, such information must be given verbally. They are prohibited access to Top Secret information and are not authorized visual access to classified documents or material.

941.6–3 Foreign Service local employees in very limited cases, may be permitted access to Confidential information coming from or to be delivered to the government of the host country. The internal procedures for granting access are the same as those provided in the foregoing parts of section 941.6 with regard to local employee access to administratively controlled material. Almost all instances of use of this authority will involve necessary translations. Access to such material should be allowed only after consideration of the host government's reaction to the particular Foreign Service local employee's having such access. When and where feasible, the local employee should be given such access only after a responsible agency of the host country has indicated it has no objection to the specific local employee's access to the information.

941.7 Access by Binational Center Grantees

Since appointments of Binational Center grantees are made only upon completion of a full field investigation, classified information that applies to their assignments and is necessary in the performance of their duties may be made available to them. Under no circumstances will classified documents be given to them for retention at a Binational Center. (This authority does not apply to those U.S. citizens appointed locally whose salaries are paid from Binational Center operating funds.)

942 Report of Missing or Comprised Documents

Any employee who discovers that a classified or administratively controlled document is missing must make a prompt report to the Office of Security or regional security officer via his unit or post security officer. In the case of a known or suspected compromise of a Top Secret document or crytographic material, the report must be made immediately. Telegraphic or oral reports must be followed by a prompt submission** of a memorandum addressed to the Office of Security or regional security officer, which includes the following information:

a. Complete identification of the material, including, when possible, the date, subject, originator, address, serial or legend markings, classification, and type of material (i.e., telegram, memorandum, airgram, etc.).

b. Where compromise is believed to have occurred, a narrative statement detailing the circumstance which gave rise to the compromise, the unauthorized person who had or may have had access to the material, the steps taken to determine whether compromise in fact occurred and the office or post evaluation of the importance of the material compromised.

c. Where a document is lost or missing, the narrative statement should detail the movements of the material from the time it was received by the post or office, including to whom it was initially delivered; later routings; the persons having access to the material; the time, date, and circumstances under which loss was realized; and the steps taken to locate the material.**

**d. When material is either compromised or missing, identify if possible the person responsible and state the action taken with regard to the person and/or procedures to prevent a recurrence.

Where cryptographic material is involved, a report is also to be made to the Office of Communications (OC/S) using FS–507, Report of Violation of Communications Security.**

943 Official Dissemination

943.1 Distribution to Other Agencies

Classified or administratively controlled material may be sent to other Federal departments or agencies or to officials and committees of Congress or to individuals therein only through established liaison or distribution channels. An exception is permitted when a post transmits classified or administratively controlled material to an office of another U.S. Government agency within the executive branch located outside the United States.

Classified or administratively controlled material originated in another U.S. department or agency must not be communicated to a third department or agency without the consent of the originating department or agency, including material originated in State, USIA, and A.I.D. Such approval must be obtained in writing, and a record of the approval and communication must be maintained by the communicator.

943.2 Referral of Public Requests

**Requests from the public for classified records, whether made to a Department or Agency office within the United States, or to a post abroad, must be referred to the Chief, Records Services Division (State); Director, Information Staff (A.I.D.); or Assistant Director, Office of Public Information (USIA), as appropriate.

Administratively controlled and unclassified records may be released upon approval by chiefs of mission at Foreign Service posts in accordance with 5 FAM 482.2. Administratively controlled and unclassified records abroad of A.I.D. and of USIA may also be released by the A.I.D. country mission director and by the USIA country public affairs officer respectively. See M.O. 820.1 and M.O.A. III 526.

Requests for classified or for administratively controlled records which the chief of mission (for A.I.D., the mission director, or for USIA, the public affairs officer) has declined to make available on his own authority, should be submitted to the appropriate agency, by operations memorandum for State and USIA and by airgram for A.I.D., containing sufficient information to permit consideration of the request.

Classified or administratively controlled records to be made available to the public by the above-identified authorized officers in the United States and abroad must first be declassified or decontrolled in accordance with the provisions of 5 FAM 966.4.

For more detailed procedures on releasing records to the public, see the appropriate Department or Agency regulations. (State, 5 FAM 480, A.I.D., M.O. 820.1; USIA, M.O.A. III 526.)**

943.3 Clearance for Publication

Any employee writing for publication, either in an official or private capacity, must submit his manuscript for agency clearance if the content may reasonably be interpreted as related to the current responsibilities, programs, or operations of the employee's agency or to current U.S. foreign policy, or may reasonably be expected to affect U.S. foreign relations. For detailed clearance procedures, see 3 FAM 628 and 1865, M.O. 831.1 and MOA II 120.

943.4 Use of Official Records

The regulations governing access to official records are set forth in 5 FAM 480, M.O. 820.1, and MOA III 526. They include procedures to be followed for access to official records for purposes of historical research.

943.5 Release of Material to U.S. Citizen Personnel Outside the Executive Branch

Classified and administratively controlled material must not be released to persons who are not security cleared U.S. citizen employees of the executive branch of the U.S. Government until appropriate security checks and briefings have been completed. Release of such material or information shall be made only when consistent with security and administrative requirements. Responsibility for authorizing release is vested as follows:

Top Secret, Secret, Confidential, and Limited Official Use Material—The concurrence of both the director of the originating or action office and the director of the Office of Security must be obtained prior to the release of any classified or administratively controlled information. Either the originating or action office concerned with the substance of the information may decide whether it can be declassified or decontrolled and released or whether it can be released without such action. If the information to be released remains classified or administratively controlled, the Office of Security must specify the manner in which the release is to be effected including special markings, receipts, and such other safeguards as are deemed necessary to ensure that the information receives appropriate protection.

943.6 Dissemination Ordered or Requested by a Court of Law or Other Official Body

**a. Except as provided in section 943.2 any subpena, demand, or request for classified or controlled information or records from a court of law or other official body shall be handled in accordance with the regulations of the agency concerned which prescribe procedures for responding to subpenas (State, 5 FAM 485; USIA, MOA III 527 and 625.6) **

b. Testimony involving classified or administratively controlled information must not be given before a court or other official body without the approval of the head of the Department or Agency concerned. An employee called upon to give such testimony without prior authorization shall state that he is not authorized to disclose the information desired and that a written request for the specific information should be transmitted to the head of the Department or Agency concerned. Such testimony, when so approved, shall be given only under such conditions as the head of the department or agency may prescribe.

c. Reports rendered by the Federal Bureau of Investigation and other investigative agencies of the executive branch are to be regarded as confidential. All reports, records, and files relative to the loyalty of employees or prospective employees (including reports of such investigative agencies) shall be maintained in confidence, and shall not be transmitted or disclosed except as a required in the efficient conduct of business, and then, only in accordance with the provisions * of the President's directive of March 13, 1948. (See Appendix II.) *

944 Dissemination to Foreign Governments

944.1 Dissemination of Classified Defense Information to Foreign Governments and International Organizations

For detailed instructions governing the release of classified information to foreign governments and international organizations, see 11 FAM 600.

d. In the domestic service specific approval to remove classified or administratively controlled material for overnight custody must be obtained from an office director or higher authority. At posts, specific approval must be obtained from the principal officer or officers designated by him to approve such removals.

964.3 Transporting Classified and Administratively Controlled Material Across International Borders

Classified and administratively controlled material is carried across international borders by professional diplomatic couriers. Nonprofessional diplomatic couriers are given such material for international transmission only in emergencies when the professional service will not cover the area into which the pouch must be carried or the post to which the pouch is addressed within the time that official business must be conducted. In such isolated cases, the nonprofessional diplomatic courier must be in possession of a diplomatic passport and courier letter, and his material must be enclosed in sealed diplomatic pouches until delivered to its official destination. Special procedures are in effect for U.S.-Mexican border posts.

964.4 Personal Responsibilities

The safeguarding of classified or administratively controlled material removed from official premises remains the personal responsibility of the removing officer even though all conditions of section 964 have been met.

964.5 Office Working or Reference Files

Information and working files accumulated in the course of Government employment are not personal files as defined in section 432, M.O. 520.1, and MOA III Exhibit 610A. The transfer or removal of such working or reference files shall be in accordance with the provisions of sections 417 and 443.2, M.O. 520.1, and MOA III 512.6.

965 Storage and Access of Classified and Administratively Controlled Material by Persons not Regularly Employed

965.1 Storage

Authorized consultants and contractors engaged in work involving classified or administratively controlled material may not store classified or administratively controlled material overnight on their premises unless the Office of Security has granted approval for such storage. No classified or administratively controlled material may be made available to consultants or contractors off the official premises or transmitted to such persons off the premises except with the approval of the Office of Security.

965.2 Access

Contractors or consultants may not have access to classified administratively controlled materials until a personnel security clearance has been given or confirmed by the Office of Security. Employees are personally responsible for obtaining clearance from the Office of Security prior to release or transmitting of classified or administratively controlled material to a consultant or contractor addressee off the premises. Normally, such material is sent through the Office of Security.

966 Downgrading, declassification, and decontrol

966.1 Automatic Changes

Classified and administratively controlled material should be kept under review and be downgraded, declassified, or decontrolled as soon as conditions permit. When material is assigned a classification or control designation, it must also be assigned a group marking and/or identifying notation to effect its automatic downgrading, declassification, or decontrol when the material no longer requires its original degree of protection. There are five standard group markings and identifying notations associated with the automatic downgrading and declassification of classified material and two identifying notations associated with the automatic decontrol of administratively controlled material. In atypical situations where the standard group markings and notations do not adequately describe the method or time-phase intended to accomplish the automatic downgrading procedure, the notations may be enlarged upon or amended. Group markings and identifying notations should be placed, whenever possible, two spaces above the defense classification or control designation

appearing at the bottom of page one on all copies.

966.2 Classified Documents

966.2–1 Group 5 documents are those which do not require a classification protection for any regulatory period of time specified for the protection of documents assigned to Groups 4 through 1. To the greatest extent possible, classified documents that can be assigned to Group 5 should be so assigned and be marked:

Group 5—(Declassified following date or conclusion of specific event, or removal of classified enclosures or attachments)

966.2–2 *Group 4 documents* are those requiring protection for a minimum number of years, at the conclusion of which they may be declassified. Group 4 documents are automatically downgraded one step each 3 years and are automatically declassified 12 years after date of origin. Such documents should be marked:

Group 4—Downgraded at 3-year intervals. Declassified 12 years after date of origin.

966.2–3 *Group 3 documents* are those which may be automatically downgraded but not automatically declassified. Such documents should be marked:

Group 3—Downgraded at 12-year intervals, not automatically declassified.

966.2–4 *Group 2 documents* are Top Secret and Secret documents which are so extremely sensitive that in the interests of national defense they must retain their classification for an indefinite period of time. Only an official empowered to exercise original Top Secret classification authority may assign a document to Group 2. Such documents must be signed by the exempting official when his identity is not apparent from the document itself and must be marked:

Group 2—Exempted from automatic downgrading By (Signature and Title of Exempting Official).

966.2–5 *Group 1 documents* are those classified documents excluded from the automatic downgrading and declassification provisions because they contain information or material as follows:

a. Originated by foreign governments or international organizations not subject to the classification jurisdiction of the U.S. Government.

b. Provided for by statutes, such as the Atomic Energy Act.

c. Specifically excluded from these provisions by the head of the Department or Agency.

d. Requiring special handling, such as intelligence and cryptography.

Group 1 documents should be marked:

Group 1—Excluded from automatic downgrading and declassification.

966.2–6 Administratively Controlled Documents

Limited Official Use documents will be processed in one of two categories: (1) exempted from automatic decontrol or (2) decontrolled upon the conclusion of a specific event, removal of controlled attachments, or the passage of a logical period of time. Such documents must bear an appropriate notation but no group marking and shall be identified as follows:

Exempted from automatic decontrol.

Or:

Decontrolled following (Date or conclusion of specific event, or removal of administratively controlled enclosures or attachments.)

966.3 Classified and Administratively Controlled Telegrams

Information contained in Top Secret, Secret, Confidential, and Limited Official Use telegrams is subject to automatic downgrading, declassification, and decontrol procedures to the same extent as the substantive contents of nontelegraphic documents. In order to eliminate costly transmissions, code symbols have been substituted for group markings and identifying notations which shall appear at the end of the message text as the final paragraph as follows:

GP 4 for Group 4.
GP 3 for Group 3.
GP 2 for Group 2.
GP 1 for Group 1.

Instructions for downgrading or declassifying information should be appended as the final unnumbered paragraph of the message text, when such instructions do not coincide with one of the four GP code symbols.

Since there is no GP code symbol for administratively controlled documents, the appropriate notation must be added as the final unnumbered paragraph of the message text.

SECURITY CLASSIFICATION OF OFFICIAL INFORMATION, DOD 5201.47 (DEPARTMENT OF DEFENSE); SELECTED EXCERPTS—SECURITY CLASSIFICATION OF OFFICIAL INFORMATION

References:

(a) DoD Directive 5120.33, "Classification Management Program," January 8, 1963.

(b) DoD Instruction 5120.34, "Implementation of the Classification Management Program," January 8, 1963.

(c) DoD Directive 5122.5, "Assistant Secretary of Defense (Public Affairs)," July 10, 1961.

(d) DoD Directive 5200.1, "Safeguarding Official Information in the Interests of the Defense of the United States," July 8, 1957.

(e) DoD Directive 5400.7, "Availability to the Public of DoD Information," June 23, 1967.

(f) DoD Directive 5200.10, "Downgrading and Declassification of Classified Defense Information," July 26, 1962.

(g) DoD Directive 5230.9, "Clearance of Department of Defense Public Information," December 24, 1966.

(h) OASD(M) multi-DoD memo., "DoD Instruction 5210.47, Security Classification of Official Information," January 27, 1965 (hereby cancelled).

I. Purpose and applicability

In accordance with references (a) and (b), this Instruction provides guidance, policies, standards, criteria and procedures for the security classification of official information under the provisions of Executive Order 10501, as amended, for uniform application throughout the Department of Defense, the components of which, in turn, through their implementation of this Instruction, shall accomplish its application to defense contractors, sub-contractors, potential contractors, and grantees. Determinations whether particular information is or is not Restricted Data are not within the scope of this Instruction.

II. Definitions

The definitions given below shall apply hereafter in the Department of Defense Information Security Program.

SOURCE.—U.S. Department. Security classification of official information. [Washington] 1964. 1 v. (various pagings) At head of title: Department of Defense Instruction. "Number 5210.47, Dec. 31, 1964."

Classification: The determination that official information requires, in the interests of national defense, a specific degree of protection against unauthorized disclosure, coupled with a designation signifying that such a determination has been made.

Classified Information: Official information which has been determined to require, in the interests of national defense, protection against unauthorized disclosure and which has been so designated.

Declassification: The determination that classified information no longer requires, in the interests of national defense, any degree of protection against unauthorized disclosure, coupled with a removal or cancellation of the classification designation.

Document: Any recorded information regardless of its physical form or characteristics, including, without limitation, written or printed material; data processing cards and tapes; maps; charts; photographs; negatives; moving or still films; film strips; paintings; drawings; engravings; sketches; reproductions of such things by any means or process; and sound, voice or electronic recordings in any form.

Downgrade: To determine that classified information requires, in the interests of national defense, a lower degree of protection against unauthorized disclosure than currently provided, coupled with a changing of the classification designation to reflect such lower degree.

Formerly Restricted Data: Information removed from Restricted Data category upon determination jointly by the Atomic Energy Commission and Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be adequately safeguarded as classified defense information. (See subparagraph VIII, D. 13, below, regarding foreign dissemination.)

Information: Knowledge which can be communicated by any means.

Material: Any document, product or substance on or in which information may be recorded or embodied.

Official Information: Information which is owned by, produced by or is subject to the control of the United States Government.

Regrade: To determine that certain classified information requires, in the interests of national defense, a higher or a lower degree of protection against unauthorized disclosure than currently provided, coupled with a changing of the classification designation to reflect such higher or lower degree.

Research: All effort directed toward increased knowledge of natural phenomena and environment and toward the solution of problems in all fields of science. This includes basic and applied research.

Basic Research, which is the type of research directed toward the increase of knowledge, the primary aim being a greater knowledge or understanding of the subject under study.

Applied Research, which is concerned with the practical application of knowledge, material and/or techniques directed toward a solution to an existent or anticipated military or technological requirement.

Restricted Data: All data (information) concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but not to include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act. (See Section 11w, Atomic Energy Act of 1954, as amended, and "Formerly Restricted Data.")

Technical Information: Information, including scientific information, which relates to research, development, engineering, test, evalution, production, operation, use and maintenance of munitions and other military supplies and equipment.

Technical Intelligence: The product resulting from the collection, evaluation, analysis and interpretation of foreign scientific and technical information which covers (1) foreign developments in basic and applied research, and in applied engineering techniques; and (2) scientific and technical characteristics, capabilities, and limitations of all foreign military systems, weapons, weapon systems and material, the research and development related thereto, and the production methods used in their manufacture.

III. Policies

A. Protecting Essential Information

1. The Preamble, Executive Order 10501, as amended, provides in part as follows:

"Whereas the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action [,] . . . it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure."

2. The primary objective of the Classification Management Program is to assure that official information is classified accurately under Executive Order 10501, as amended, when in the interests of national defense it needs protection against unauthorized disclosure.

3. Consistent with the above objective, the use and application of security classification to accomplish such protection shall be limited to only that information which is truly essential to national defense because it provides the United States with:

a. A military or defense advantage over any foreign nation or group of nations; or

b. A favorable international posture; or

c. A defense posture capable of successfully resisting hostile or dstructive action from within or without, overt or covert;

which could be damaged, minimized or lost by the unauthorized disclosure or use of the information.

B. Informing the Public

The Department of Defense, in accordance with the policy of the United States Government, shall inform the American public of the activities of the Department of Defense to the maximum extent consistent with the best interests of national defense and security. Nothing contained herein, however, shall be construed to authorize or require the public release of official information. In this connection see reference (c).

C. Regrading and Declassification

In order to preserve the effectiveness and integrity of the classification system, assigned classifications shall be responsive at all times to the current needs of national defense. When classified information is determined in the interests of national defense to require a different level of protection than that presently assigned, or no longer to require any such protection, it shall be regraded as declassified.

D. Improper Classification

Unnecessary classification and higher than necessary classification shall be scrupulously avoided.

E. Misuse of Classification

Classification shall apply only to official information requiring protection in the interests of national defense. It may not be used for the purpose of concealing administrative error or inefficiency, to prevent personal or departmental embarrassment, to influence competition or independent initiative, or to prevent release of official information which does not require protection in the interests of national defense.

F. *Safeguarding privately owned information*

1. Privately owned information, in which the Government has not established a proprietary interest or over which the Government has not exercised control, in whole or in part, is not subject to classification by the private owner under the authority of this Instruction. However, a private owner, believing his information requires protection by security classification, is encouraged to provide protection on a personal basis and to contact the nearest office of the Army, Navy, or Air Force for assistance and advice.

2. Section 793 (d), Title 18 United States Code provides penalties for improper disclosure of "information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation."

3. Sections 224 to 227 of the Atomic Energy Act of 1954, as amended, provide penalties for the improper obtaining, disclosure or use of Restricted Data.

G. *Safeguarding official information which is not subject to security classification*

Office information which does not qualify for security classification or has been declassified, and which pursuant to lawful authority requires protection from unauthorized disclosure or public release for reasons other than national security or defense, shall be handled in accordance with references (c) and (g).

IV. *Classification Categories*

A. *General*

All official information which requires protection in the interests of national defense shall be classified in one of the three categories described below. Unless expressly provided by statute, no other classifications are authorized for United States classified information. Appendix A gives examples of information which may come within the various categories. Section VI. below provides specific criteria for determining whether information falls within these categories.

B. Top Secret

The highest level of classification, Top Secret, shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in *exceptionally grave* damage to the Nation; such as, leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense. The use of the Top Secret classification shall be severely limited to information or material which requires the utmost protection. (See Part I, Appendix A.)

C. Secret

The second highest level of classification, Secret, shall be applied only to that information or material the unauthorized disclosure of which could result in *serious damage* to the Nation; such as, by jeopardizing the international relations of the United States, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense, or information revealing important intelligence operations. (See Part II, Appendix A).

D. Confidential

The lowest level of classification, Confidential, shall be applied only to that information or material the unauthorized disclosure of which could be *prejudicial* to the defense interests of the Nation. (See Part III, Appendix A.) The designation "Confidential-Modified Handling Authorized," which is not a separate classification category, identifies certain Confidential information pertaining to combat or combat-related operations which, because of combat or combat-related operational conditions, cannot be afforded the full protection prescribed for Confidential information. The designation C-MHA shall be applied to that Confidential information pertaining to military operations involving planning, training, operations, communications and logistical support of combat units when combat or combat-related conditions, actual or simulated, preclude the full application of the rules and procedures governing dissemination, use, transmission and safekeeping prescribed for the protection of Confidential information. The designation may be applied prior to the introduction of the information into combat areas, actual or simulated, when the information is intended for such use and dissemination, but the rules and procedures for handling the information shall not be modified until the information is so introduced. C-MHA cannot be applied to material containing Restricted Data.

E. Foreign Classified Information

1. Section 3(e), Executive Order 10501, provides as follows:

"Information Originated by a Foreign Government or Organization: Defense information of a classified nature furnished to the United States by a foreign government or international organization shall be assigned a classification which will assure a degree of protection equivalent to or greater than that required by the government or international organization which furnished the information."

2. Foreign security classifications generally parallel United States classifications. A Table of Equivalents is contained in Appendix B.

3. Top Secret, Secret, and Confidential. If the foreign classification marking is in English, no additional U.S. classification marking is required. If the foreign classification marking is in a language other than English, an equivalent U.S. classification marking as shown in Appendix B will be added.

4. Restricted.* Many foreign governments, and international organizations such as, for example, NATO, CENTO, and SEATO, use a fourth security classification "Restricted" to denote a foreign requirement for security protection of a lesser degree than Confidential. Such foreign Restricted information released to the United States Government under international agreement requiring its protection, usually does not require or warrant United States security classification under Executive Order 10501. Under the agreement covering the release of information, however, certain protection is required. In the usual case, therefore, in order to satisfy this requirement, a document or other material containing foreign Restricted information shall show, or be marked additionally to show, in English, the name of the foreign government or international organization or origin and the word "Restricted," e.g., UK-Restricted; NATO-Restricted. (See Appendix B.) Any document or other material marked as aforesaid shall be protected in the manner specified in reference (d). Documents or other material on hand falling in this category which already have been marked so as to require protection as "Confidential" or "C–MHA," as they are withdrawn from the file for any purpose, shall be re-marked in accordance with this subparagraph and the previously applied marking shall be obliterated or excised. Henceforth, the provisions of this subparagraph shall apply thereto.

5. The origin of all material bearing foreign classifications, including material extracted and placed in Department of Defense documents or material, shall be clearly indicated on or in the body of the material to assure, among other things, that the information is not released to nationals of a third country without consent of the originator.

V. *Authority to classify*

A. Original Classification

1. *Original* classification is involved when—

a. An item of information is developed which intrinsically requires classification and such classification cannot reasonably be derived from a previous classification still in force involving in substance the same or closely related information; or

b. An accumulation or aggregation of items of information, regardless of the classification (or lack of classification) of the individual items, collectively requires a separate and distinct classification determination.

---

* The effective date of this paragraph 4 is postponed. See paragraph XIV. B.

2. For the purpose of assuring both positive management control of classification determinations and ability to meet local operational requirements in an orderly and expeditious manner, the Assistant Secretary of Defense (Manpower) will exercise control over the granting and exercise of authority for original classification of official information. Pursuant thereto, such authority must be exercised only by those individuals who at any given time are the incumbents of those offices and positions designated in or pursuant to subparagraph 3 below and Appendix C, including the officials who are specifically designated to act in the absence of the incumbents. The following general principles are applicable:

a. Appendix C designates specifically the officials who may exercise *original* Top Secret or Secret classification authority and who among them may make additional designations. All such additional designations shall be specific and in writing.

b. The authority to classify is personal to the holder of the authority. It shall not be exercised for him or in his name by anyone else, nor shall it be delegated for exercise by any substitute or subordinate.

AUTOMATIC, TIME-PHASED DOWNGRADING AND DECLASSIFICATION OF CLASSIFIED DEFENSE INFORMATION, DOD 5200.10 (DEPARTMENT OF DEFENSE); SELECTED EXCERPTS

SOURCE.—U.S. Department of Defense. Downgrading and declassification of classified defense information [Washington, 1962] 4, 24 p. At head of title: Department of Defense Directive. "Number 5200.10, July 26, 1962."

1. Purpose

The purpose of this regulation is to apply the provisions of Section 4 and Section 5(a), Executive Order 10501, as amended by Executive Order 10964, 20 September 1961; and to implement the provisions of DoD Directive 5200.9 and 5200.10. It establishes a continuing system based on the passage of time for automatically downgrading, or automatically downgrading and declassifying, classified defense information originated by or under the jurisdiction of the Department of Defense (DoD), the Federal Aviation Agency (FAA), and the National Aeronautics and Space Administration (NASA). It also declassifies by category, effective January 1, 1964, certain Group-3 documents and materials originated prior to January 1, 1940, described in subparagraphs 6. a. (3), (4), (5), and (6) of this regulation. This regulation is not a guide for the assignment of a classification to information; it applies only to defense information which is assigned a classification by competent authority.

2. Explanation of Terms

The meanings of some terms used in this regulation are given below:

a. Declassify: To *cancel* the security classification of an item of classified material.

b. Downgrade: To assign a *lower* security classification to an item of classified material.

c. Weapon System: A general term used to describe a weapon and those components required for its operation.

3. Scope and application

a. DoD, FAA, and NASA Information

(1) This regulation applies to all classified information originated by or under the jurisdiction of the Department of Defense or by its contractors, or by a predecessor agency of the Department of Defense or its contractors. Specifically, this includes all classified material originated by the Office of the Secretary of Defense and Department of Defense agencies; the present and former Joint Chiefs of Staff and Joint Staff; the Department of the Army and former War Department; the Department of the Navy; the Department of the Air Force and former Army Air Forces; the United States Coast Guard when acting as a part of the Navy; joint committees or agencies comprised entirely of representatives from within the Department of Defense or its predecessor agencies; other Government agencies whose functions have been officially transferred to the Department of Defense; and contractors in the performance of contracts awarded by or on behalf of the Department of Defense, its components, or its predecessors.

(2) By agreement between the Department of Defense, the Federal Aviation Agency, and the National Aeronautics and Space Administration, this regulation also applies to all classified information originated by or under the jurisdiction of FAA and NASA. This includes all classified information originated by the Federal Aviation Agency, its components and predecessors, including the Civil Aeronautics Administration of the Department of Commerce, and the Airways Modernization Board; the National Aeronautics and Space Administration, its components and predecessors, including the National Advisory Committee for Aeronautics; joint committees, boards and agencies comprised entirely of representatives from the above agencies or from the Department of Defense, its components and predecessors; and contractors in the performance of contracts awarded by or on behalf of FAA, NASA, their components or predecessor agencies.

b. Other Departments and Agencies

By Executive Order 10964, the automatic, time-phased down-grading and declassification system applies to all classified information originated by or under the jurisdiction of all departments and agencies of the Executive Branch. However, custodians of classified material originated by or under the jurisdiction of US departments or agencies other than those described in *a* above, shall defer action with regard to such material until advised of the implementing instructions issued by the department or agency concerned. Pending that implementation, such material (other than Group–1 material defined herein) shall not be marked or assigned to a Group under this regulation; if the information is incorporated into DoD, FAA, or NASA material, an appropriate explanation shall be included in the text (for example: "Paragraph 2 contains information classified by the State Department; the automatic downgrading-declassification group cannot be determined until appropriate instructions are issued by that department").

c. Authority of Classifying Officials

(1) Nothing in this regulation shall be construed to relieve of responsibility, or to limit the authority of, those officials designated by competent authority to classify, downgrade, or declassify official defense information. Immediate action should be taken by such officials to downgrade or declassify information when it needs less protection or when it no longer requires such protection.

(2) Any DoD, FAA or NASA classified information, whether or not affected by this regulation, may be downgraded or declassified by the official who has been given that authority under pertinent regulations. Pursuant to that authority, the official who has primary functional responsibility for an item of classified information can prescribe earlier downgrading and declassifying (including assigning it to a less restrictive Group) than that provided by this regulation. However, except as authorized in paragraphs 5 and 6*b* he cannot assign information to a *more* restrictive Group than provided herein.

d. Material Officially Transferred

When material is transferred by or pursuant to statute or Executive Order is the classifying, downgrading, and declassifying authority for all purposes under this regulation. Official transfers result in the material becoming part of the official files or the property of the recipient (e.g., Army Air Forces material officially transferred to the newly established Department of the Air Force in 1948). Transfers merely for the purpose of storage do not constitute an official transfer of classification authority.

e. Material Not Officially Transferred

When any department or agency has in its possession any classified material which has become 5 years old, and a review of the material indicates that it should be downgraded or declassified and it appears that either (*i*) the material originated in an agency which has since become defunct and whose files and other property have not been officially transferred to another department or agency within the meaning of *d* above, or (*ii*) it is impossible for the possessing department or agency to identify the originating agency, the possessing department or agency shall have power to downgrade or declassify the material or to assign it to a downgrading-declassification Group according to this regulation. If it appears probable that another department or agency may have a substantial interest in whether the classification of any particular information should be maintained, the possessing department or agency shall not exercise the power stated in this subparagraph, except with the consent of the other department or agency, until 30 days after it has notified such other department or agency of the nature of the material and of its intention to downgrade or declassify it. During that 30-day period, the other department or agency may, if it so desires, express its objections to downgrading or declassifying the particular material, but the power to make the ultimate decision shall reside in the possessing department or agency.

f. General Information

The effect of the automatic, time-phased downgrading and declassification system is that all classified information and material heretofore and hereafter received or originated by the Executive Branch, its components, and its contractors, is assigned to one of four groups, described in the following paragraphs. (The attachment shows in graphic form how each Group is affected by the automatic time-phased system.) Upon receipt of this regulation and without further notice, each holder of classified material originated by or under the jurisdiction of DoD, FAA, or NASA, is authorized and required to Group, mark, downgrade, or declassify, as prescribed herein, the material in his custody or possession. In addition, classified material originated by or under the jurisdiction of other Executive departments and agencies shall be Grouped, marked, downgraded, or declassified in accordance with the instructions of the originating agency, when issued.

4. Group-1 material

Material in this Group is completely *excluded* from the automatic downgrading and automatic declassification provisions of this regulation either because it has been removed from such provisions or because it contains information not subject to the classification jurisdiction of the Executive Branch of the U.S. Government.

a. *Definition.* Specifically, Group-1 comprises material:

(1) Originated by or containing classified information *clearly* attributed to foreign governments or their agencies, or to international organizations and groups, including the Combined Chiefs of Staff. This does not include US classified information hereafter furnished to a foreign government or international organization; the US classified information shall be Grouped and marked as otherwise prescribed herein.

(2) Concerning communications intelli-

gence or cryptography, or their related activities.

(a) This includes information concerning or revealing the processes, techniques, technical material, operation, or scope of communications intelligence, cryptography, and cryptographic security. It also includes information concerning special cryptographic equipment, certain special communications systems designated by the department or agency concerned, and the communications portion of cover and deception plans.

(b) However, provided the material does not reveal the foregoing information, this does not include radar intelligence or electronic intelligence, or such passive measures as physical security, transmission security, and electronic security.

(3) Containing Restricted Data or Formerly Restricted Data.

(4) Containing nuclear propulsion information or information concerning the establishment, operation, and support of the US Atomic Energy Detection System, unless otherwise specified by the pertinent AEC–DOD classification guide.

(5) Containing special munition information as defined in AG Ltr AGAM-P(M)311.5, (17 Sept. 60) DCS/Ops 19 Sept 60; OPNAVINST 008190.1 series; or AFR 205–17.

(6) Information concerning standardized BW agents.

5. Group-2 documents

This Group is established as a means whereby authorized officials can exempt individual documents containing extremely sensitive information from both automatic downgrading and automatic declassification. This Group applies only to documents originally classified Top Secret or Secret.

6. Group-3 material

This Group contains certain types of information or subject matter that warrants some degree of classification for an indefinite period. There are two kinds of Group-3 material: (i) that containing the subject matter normally assigned to Group-3 according to *a* below; and (ii) documents which are *individually and specifically* assigned to Group-3 under the optional exemption provisions of *b* below. Group-3 documents and materials originated prior to January 1, 1940, which fall within the descriptions of subparagraphs 6. a. (3), (4), (5), or (6), without at the same time falling within the descriptions of subparagraphs 6. (a), (1), (2), or (7), are hereby declassified, effective January 1, 1964.

a. *Definition—Normal Group-3.*

The specific information or subject matter normally comprising Group-3 is as follows:

(1) Plans for an operation of war that were prepared by an organization *higher than* Army division, Navy task force, numbered Air Force, or other military command of comparable level. This includes but is not limited to:

(a) Plans for combat operations; and information concerning or revealing long-range operational concepts and the employment of forces.

(b) Plans on cover or deception, including information on operations relating thereto.

(c) Information concerning or revealing escape or evasion plans, procedures, and techniques.

(d) Planning and programming information which concerns or reveals service-wide force objectives, over-all force deployments, and complete service-wide combat unit priority listings; or which contains or reveals detailed service-wide planning or programming data.

(e) Targeting data on foreign areas, or information which would reveal strategic targeting plans.

(2) DoD and FAA intelligence and counterintelligence.

(3) Information concerning or revealing the capabilities, limitations, or vulnerabilities of a weapon, weapon system, or space system in current use or in development for future use. This is limited to information concerning significant combat capabilities.

8

#First amendment (Ch 3, 11/15/63)

7. Group-4 material:

a. *Definition.*

Group-4 includes all classified material which does not qualify for, or is not assigned to, one of the first three Groups.

(1) Normally, information such as logistical data, production schedules, budget and cost figures, dimensions or weights, and similar subjects shall be assigned to Group-4, even if the equipment or material to which it applies is in Group-3.

(2) Defense information classified in accordance with a topic of a joint AEC–DoD classification guide shall not be assigned to Group-4 unless such an assignment is clearly indicated under the pertinent topic in the joint guide.

(3) . . . vulnerabilities, knowledge of which could be exploited by an enemy to counter, render ineffective, neutralize, or destroy the weapon or system; or limitations which degrade the combat effectiveness of the weapon or system. However, it specifically includes:

(a) Target detecting devices for proximity VT fuses.

(b) Biological weapon system information which reveals the scientific name or designation of the agent and the non-descriptive code designation of the agent.

(c) Technical information concerning electronic countermeasure or counter-countermeasure equipment, processes, or techniques; and technical data concerning infrared detection or suppression.

(d) Research and development information concerning or revealing significant combat capabilities of a future weapon or space system or subsystem. This is limited to information concerning or revealing significant new technological developments or adaptations beyond normal evolutionary improvements.

(e) Information pertaining to combat-type naval vessels which reveals structural, performance, or tactical data, such as armor and protective systems, war damage reports, damage control systems, power, speed, range, propeller RPM, and maneuvering characteristics.

(4) Information which could be used by an enemy to develop target data for an attack on the United States or its allies, such as geodetic and gravimetric survey data, reductions of survey data that can be used for intercontinental datum connections or for determining the size of the earth, or the precise (in seconds of arc) coordinates of facilities that are essential elements of a weapon system or that are essential elements of a weapon system or that are essential to the conduct of a war.

(5) Technical information concerning or revealing explosive ordnance demolition techniques.

(6) Defense information (other than Group-1 material) classified according to AEC-DoD classification guides, unless otherwise specified by the pertinent guide.

(7) Material prepared by a theater headquarters, military government headquarters, military mission headquarters, or other headquarters of comparable or higher level, which concern or affect the formulation and conduct of U.S. foreign policy, and plans or programs relating to international affairs.

Mr. JAVITS. Mr. President, finally I ask unanimous consent that the text of the new Executive Order 11652 scheduled to go into effect on June 1 respecting the confidentiality of documents, methods of classification, and so forth, and the Executive Order 10501 now in effect may be printed in the RECORD.

There being no objection, the Executive orders were ordered to be printed in the RECORD, as follows:

TITLE 3—THE PRESIDENT—EXECUTIVE ORDER 11652

CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL

The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the executive branch.

Within the Federal Government there is some official information and material which because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both an overt and covert nature, it is essential that such official information and material be given only limited dissemination.

This official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

To ensure that such information and material is protected, but only to the extent and for such period as is necessary, this order identifies the information to be protected, prescribes classification, downgrading, declassification and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, it is hereby ordered:

SECTION 1. *Security Classification Categories.* Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute. These classification categories are defined as follows:

(A) *"Top Secret"* "Top Secret" refers to that national security information or material which requires the highest degree of protection. The test for assigning "Top Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

(B) *"Secret."* "Secret" refers to that national security information or material which requires a substantial degree of protection. The test for assigning "Secret" classification

shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification "Secret" shall be sparingly used.

(C) *"Confidential."* "Confidential" refers to that national security information or material which requires protection. The test for assigning "Confidential" classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

SEC. 2. *Authority to Classify.* The authority to originally classify information or material under this order shall be restricted solely to those offices within the executive branch which are concerned with matters of national security, and shall be limited to the minimum number absolutely required for efficient administration. Except as the context may otherwise indicate, the term "Department" as used in this order shall include agency or other governmental unit.

(A) The authority to originally classify information or material under this order as "Top Secret" shall be exercised only by such officials as the President may designate in writing and by:

(1) The heads of the Departments listed below;

(2) Such of their senior principal deputies and assistants as the heads of such Departments may designate in writing; and

(3) Such heads and senior principal deputies and assistants of major elements of such Departments, as the heads of such Departments may designate in writing.

Such offices in the Executive Office of the President as the President may designate in writing.

Central Intelligence Agency.
Atomic Energy Commission.
Department of State.
Department of the Treasury.
Department of Defense.
Department of the Army.
Department of the Navy.
Department of the Air Force.
United States Arms Control and Disarmament Agency.
Department of Justice.
National Aeronautics and Space Administration.
Agency for International Development.

(B) The authority to originally classify information or material under this order as "Secret" shall be exercised only by:

(1) Officials who have "Top Secret" classification authority;

(2) Such subordinates as officials with "Top Secret" classification authority under (A) (1) and (2) above may designate in writing; and

(3) The heads of the following named Departments and such senior principal deputies or assistants as they may designate in writing.

Department of Transportation.
Federal Communications Commission.
Export-Import Bank of the United States.
Department of Commerce.
United States Civil Service Commission.
United States Information Agency.
General Services Administration.
Department of Health, Education, and Welfare.
Civil Aeronautics Board.
Federal Maritime Commission.
Federal Power Commission.
National Science Foundation.
Overseas Private Investment Corporation.

(C) The authority to originally classify information or material under this order as "Confidential" may be exercised by officials who have "Top Secret" or "Secret" classification authority and such officials as they may designate in writing.

(D) Any Department not referred to herein and any Department or unit established hereafter shall not have authority to originally classify information or material under this order, unless specifically authorized hereafter by an Executive order.

SEC. 3. *Authority to Downgrade and Declassify.* The authority to downgrade and declassify national security information or material shall be exercised as follows:

(A) Information or material may be downgraded or declassified by the official authorizing the original classification, by a successor in capacity or by a supervisory official of either.

(B) Downgrading and declassification authority may also be exercised by an official specifically authorized under regulations issued by the head of the Department listed in Sections 2(A) or (B) hereof.

(C) In the case of classified information or material officially transferred by or pursuant to statute or Executive order in conjunction with a transfer of function and not merely for storage purposes, the receiving Department shall be deemed to be the originating Department for all purposes under this order including downgrading and declassification.

(D) In the case of classified information or material not officially transferred within (C) above, but originated in a Department which has since ceased to exist, each Department in possession shall be deemed to be the originating Department for all purposes under this order. Such information or material may be downgraded and declassified by the Department in possession after consulting with any other Departments having an interest in the subject matter.

(E) Classified information or material transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded and declassified by the Archivist of the United States in accordance with this order, directives of the President issued through the National Security Council and pertinent regulations of the Departments.

(F) Classified information or material with special markings, as described in Section 8, shall be downgraded and declassified as required by law and governing regulations.

SEC. 4. *Classification.* Each person possessing classifying authority shall be held accountable for the propriety of the classification attributed to him. Both unnecessary classification and over-classification shall be avoided. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security. The following rules shall apply to classification of information under this order:

(A) *Documents in General.* Each classified document shall show on its face its classification and whether it is subject to or exempt from the General Declassification Schedule. It shall also show the office of origin, the date of preparation and classification and, to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use. Material containing references to classified materials, which references do not reveal classified information, shall not be classified.

(B) *Identification of Classifying Authority.* Unless the Department involved shall have provided some other method of identifying the individual at the highest level that authorized classification in each case, material classified under this order shall indicate on its face the identity of the highest authority authorizing the classification. Where the individual who signs or otherwise authenticates a document or item has also authorized the classification, no further annotation as to his identity is required.

(C) *Information or Material Furnished by a Foreign Government or International Organization.* Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned a United States classification. In either case, the classification shall assure a degree of protection equivalent to that required by the government or international organization which furnished the information or material.

(D) *Classification Responsibilities.* A holder of classified information or material shall observe and respect the classification assigned by the originator. If a holder believes that there is unnecessary classification, that the assigned classification is improper, or that the document is subject to declassification under this order, he shall so inform the originator who shall thereupon re-examine the classification.

SEC. 5. *Declassification and Downgrading.* Classified information and material, unless declassified earlier by the original classifying authority, shall be declassified and downgraded in accordance with the following rules:

(A) *General Declassification Schedule.* (1) *"Top Secret."* Information or material originally classified "Top Secret" shall become automatically downgraded to "Secret" at the end of the second full calendar year following the year in which it was originated, downgraded to "Confidential" at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the tenth full calendar year following the year in which it was originated.

(2) *"Secret."* Information and material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(3) *"Confidential."* Information and material originally classified "Confidential" shall become automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

(B) *Exemptions from General Declassification Schedule.* Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the General Declassification Schedule. An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be restricted to the following categories.

(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.

(3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.

(4) Classified information or material the disclosure of which would place a person in immediate jeopardy.

(C) *Mandatory Review of Exempted Material.* All classified information and material originated after the effective date of this order which is exempted under (B) above from the General Declassification Schedule shall be subject to a classification review by the originating Department at any time after the expiration of ten years from the date of origin provided:

(1) A Department or member of the public requests a review;

(2) The request describes the record with sufficient particularity to enable the Department to identify it; and

(3) The record can be obtained with only a reasonable amount of effort.

Information or material which no longer qualifies for exemption under (B) above shall be declassified. Information or material continuing to qualify under (B) shall be so marked and, unless impossible, a date for automatic declassification shall be set.

(D) *Applicability of the General Declassification Schedule to Previously Classified Material.* Information or material classified before the effective date of this order and which is assigned to Group 4 under Executive Order 10501, as amended by Executive Order No. 10964, shall be subject to the General Declassification Schedule. All other information or material classified before the effective date of this order, whether or not assigned to Groups 1, 2, or 3 of Executive Order No. 10501, as amended, shall be excluded from the General Declassification Schedule. However, at any time after the expiration of ten years from the date of origin it shall be subject to a mandatory classification review and disposition under the same conditions and criteria that apply to classified information and material created after the effective date of this order as set forth in (B) and (C) above.

(E) *Declassification of Classified Information or Material After Thirty Years.* All classified information or material which is thirty years old or more, whether originating before or after the effective date of this order, shall be declassified under the following conditions:

(1) All information and material classified after the effective date of this order shall, whether or not declassification has been requested, become automatically declassified at the end of thirty full calendar years after the date of its original classification except for such specifically identified information or material which the head of the originating Department personally determines in writing at that time to require continued protection because such continued protection is essential to the national security or disclosure would place a person in immediate jeopardy. In such case, the head of the Department shall also specify the period of continued classification.

(2) All information and material classified before the effective date of this order and more than thirty years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the thirtieth full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such information or material as is specifically identified by the head of the Department in accordance with (E)(1) above. In such case, the head of the Department shall also specify the period of continued classification.

(F) *Departments Which Do Not Have Authority For Original Classification.* The provisions of this section relating to the declassification of national security information or material shall apply to Departments which, under the terms of this order, do not have concurrent authority to originally classify information or material, but which formerly had such authority under previous Executive orders.

SEC. 6. *Policy Directives on Access, Marketing, Safekeeping, Accountability, Transmission, Disposition and Destruction of Classified Information and Material.* The President acting through the National Security Council shall issue directives which shall be binding on all Departments to protect classified information from loss or compromise. Such directives shall conform to the following policies:

(A) No persons shall be given access to classified information or material unless such person has been determined to be trustworthy and unless access to such information is necessary for the performance of his duties.

(B) All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

(C) Classified information and material shall be used, possessed, and stored only under conditions which will prevent access by unauthorized persons or dissemination to unauthorized persons.

(D) All classified information and material disseminated outside the executive branch under Executive Order No. 10865 or otherwise shall be properly protected.

(E) Appropriate accountability records for classified information shall be established and maintained and such information and material shall be protected adequately during all transmissions.

(F) Classified information and material no longer needed in current working files or for reference or record purposes shall be destroyed or disposed of in accordance with the records disposal provisions contained in Chapter 33 of Title 44 of the United States Code and other applicable statutes.

(G) Classified information or material shall be reviewed on a systematic basis for the purpose of accomplishing downgrading, declassification, transfer, retirement and destruction at the earliest practicable date.

SEC. 7. *Implementation and Review Responsibilities.* (A) The National Security Council shall monitor the implementation of this order. To assist the National Security Council, an Interagency Classification Review Committee shall be established, composed of representatives of the Departments of State and Justice, the Atomic Energy Commission, the Central Intelligence Agency and the National Security Council Staff and a Chairman designated by the President. Representatives of other Departments in the executive branch may be invited to meet with the Committee on matters of particular interest to those Departments. This Committee shall meet regularly and on a continuing basis review and take action to ensure compliance with this order, and in particular:

(1) The Committee shall oversee Department actions to ensure compliance with the provisions of this order and implementing directives issued by the President through the National Security Council.

(2) The Committee shall, subject to procedures to be established by it, receive, complaints from persons within or without the government with respect to the administration of this order, and in consultation with the affected Department or Departments assure that appropriate action is taken on such suggestions and complaints.

(3) Upon request of the Committee Chairman, any Department shall furnish to the Committee any particular information or material needed by the Committee in carrying out its functions.

(B) To promote the basic purposes of this order, the head of each Department originating or handling classified information or material shall:

(1) Prior to the effective date of this order submit to the Interagency Classification Review Committee for approval a copy of the regulations it proposes to adopt pursuant to this order.

(2) Designate a senior member of his staff who shall ensure effective compliances with and implementation of this order and shall also chair a Departmental committee which shall have authority to act on all suggestions and complaints with respect to the Department's administration of this order.

(3) Undertake an initial program to familiarize the employees of his Department with the provisions of this order. He shall also establish and maintain active training and orientation programs for employees concerned with classified information or material. Such programs shall include, as a minimum, the briefing of new employees and periodic reorientation during employment to impress upon each individual his responsbility for exercising vigilance and care in complying with the provisions of this order. Additionally, upon termination of employment or contemplated temporary separation for a sixty-day period or more, employees shall be debriefed and each reminded of the provisions of the Criminal Code and other applicable provisions of law relating to penalties for unauthorized disclosure.

(C) The Attorney General, upon request of the head of a Department, his duly designated representative, or the Chairman of the above described Committee, shall personally or through authorized representatives of the Department of Justice render an interpretation of this order with respect to any question arising in the course of its administration.

SEC. 8. *Material Covered by the Atomic Energy Act.* Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 30, 1954, as amended. "Restricted Data," and material designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and the regulations of the Atomic Energy Commission.

SEC. 9. *Special Departmental Arrangements.* The originating Department or other appropriate authority may impose, in conformity with the provisions of this order, special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography.

SEC. 10. *Exceptional Cases.* In an exceptional case when a person or Department not authorized to classify information originates information which is believed to require classification, such person or Department shall protect that information in the manner prescribed by this order. Such persons or Department shall transmit the information forthwith, under appropriate safeguards, to the Department having primary interest in the subject matter with a request that a determination be made as to classification.

SEC. 11. *Declassification of Presidential Papers.* The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultation with the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5.

SEC. 12. *Historical Research and Access by*

Former Government officials. The requirement in Section 6(A) that access to classified information or material be granted only as is necessary for the performance of one's duties shall not apply to persons outside the executive branch who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President; *Provided,* however, that in each case the head of the originating Department shall:

(i) determine that access is clearly consistent with the interests of national security; and

(ii) take appropriate steps to assure that classified information or material is not published or otherwise compromised.

Access granted a person by reason of his having previously occupied a policy-making position shall be limited to those papers which the former official originated reviewed, signed or received while in public office.

SEC. 13. *Administrative and Judicial Action.* (A) Any officer or employee of the United States who unnecessarily classifies or overclassifies information or material shall be notified that his actions are in violation of the terms of this order or of a directive of the President issued through the National Security Council. Repeated abuse of the classification process shall be grounds for an administrative reprimand. In any case where the Departmental committee or the Interagency Classification Review Committee finds that unnecessary classification or overclassification has occurred, it shall make a report to the head of the Department concerned in order that corrective steps may be taken.

(B) The head of each Department is directed to take prompt and stringent administrative action against any officer or employee of the United States, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council. Where a violation of criminal statutes may be involved, Departments will refer any such case promptly to the Department of Justice.

SEC. 14. *Revocation of Executive Order No. 10501.* Executive Order No. 10501 of November 5, 1953, as amended by Executive Orders No. 10816 of May 8, 1959, No. 10901 of January 11, 1961, No. 10964 of September 20, 1961, No. 10985 of January 15, 1962, No. 11097 of March 6, 1963 and by Section 1(a) of No. 11382 of November 28, 1967, is superseded as of the effective date of this order.

SEC. 15. *Effective date.* This order shall become effective on June 1, 1972.

RICHARD NIXON.

THE WHITE HOUSE, *March 8, 1972.*

[FR Doc.72-3782 Filed 3-9-72; 11:01 am]

EXECUTIVE ORDER 10501—SAFEGUARDING OFFICIAL INFORMATION IN THE INTERESTS OF THE DEFENSE OF THE UNITED STATES

Whereas it is essential that the citizens of the United States be informed concerning the activities of their government; and

Whereas the interests of national defense require the preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means, including espionage as well as military action; and

Whereas it is essential that certain official information affecting the national defense be protected uniformly against unauthorized disclosure:

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

SECTION 1. *Classification Categories.* Official information which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations: Top Secret, Secret, or Confidential. No other designation shall be used to classify defense information, including military information, as requiring protection in the interests of national defense, except as expressly provided by statute. These categories are defined as follows:

(a) *Top Secret.* Except as may be expressly provided by statute, the use of the classification Top Secret shall be authorized, by appropriate authority, only for defense information or material which requires the highest degree of protection. The Top Secret classification shall be applied only to that information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the Nation such as leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense.

(b) *Secret.* Except as may be expressly provided by statute, the use of the classification Secret shall be authorized, by appropriate authority, only for defense information or material the unauthorized disclosure of which could result in serious damage to the Nation, such as by jeopardizing the international relations of the United States, endangering the effectiveness of a program or policy of vital importance to the national defense, or compromising important military or defense plans, scientific or technological developments important to national defense, or information revealing important intelligence operations.

(c) *Confidential.* Except as may be expressly provided by statute, the use of the classification Confidential shall be authorized, by appropriate authority, only for defense information or material the unauthorized disclosure of which could be prejudicial to the defense interests of the nation.

SEC. 2. *Limitation of Authority to Classify.* The authority to classify defense information or material under this order shall be limited in the departments and agencies of the executive branch as hereinafter specified. Departments and agencies subject to the specified limitations shall be designated by the President:

(a) In those departments and agencies having no direct responsibility for national defense there shall be no authority for original classification of information or material under this order.

(b) In those departments and agencies having partial but not primary responsibility for matters pertaining to national defense the authority for original classification of information or material under this order shall be exercised only by the head of the department or agency, without delegation.

(c) In those departments and agencies not affected by the provisions of subsection (a) and (b), above, the authority for original classification of information or material under this order shall be exercised only by responsible officers or employees, who shall be specifically designated for this purpose. Heads of such departments and agencies shall limit the delegation of authority to classify as severely as is consistent with the orderly and expeditious transaction of Government business.

SEC. 3. *Classification.* Persons designated to have authority for original classification of information or material which requires protection in the interests of national defense under this order shall be held responsible for its proper classification in accordance with the definitions of the three categories in section 1, hereof. Unnecessary classification and over-classification shall be scrupulously avoided. The following special rules shall be observed in classification of defense information or material:

(a) *Documents in General.* Documents shall be classified according to their own content and not necessarily according to their relationship to other documents. References to classified material which do not reveal classified defense information shall not be classified.

(b) *Physically Connected Documents.* The classification of a file or group of physically connected documents shall be at least as high as that of the most highly classified document therein. Documents separated from the file or group shall be handled in accordance with their individual defense classification.

(c) *Multiple Classification.* A document product, or substance shall bear a classification at least as high as that of its highest classified component. The document, product, or substance shall bear only one over-all classification, notwithstanding that pages, paragraphs, sections, or components thereof bear different classifications.

(d) *Transmittal Letters.* A letter transmitting defense information shall be classified at least as high as its highest classified enclosure.

(e) *Information Originated by a Foreign Government or Organization.* Defense information of a classified nature furnished to the United States by a foreign government or international organization shall be assigned a classification which will assure a degree of protection equivalent to or greater than that required by the government or international organization which furnished the information.

SEC. 4. *Declassification, Downgrading, or Upgrading.* Heads of departments or agencies originating classified material shall designate persons to be responsible for continuing review of such classified material for the purpose of declassifying or downgrading it whenever national defense considerations permit, and for receiving requests for such review from all sources. Formal procedures shall be established to provide specific means for prompt review of classified material and its declassification or downgrading in order to preserve the effectiveness and integrity of the classification system and to eliminate accumulation of classified material which no longer requires protection in the defense interest. The following special rules shall be observed with respect to changes of classification of defense material:

(a) *Automatic Changes.* To the fullest extent practicable, the classifying authority shall indicate on the material (except telegrams) at the time of original classification that after a specified event or date, or upon removal of classified enclosures, the material will be downgraded or declassified.

(b) *Non-Automatic Changes.* The persons designated to receive requests for review of classified material may downgrade of declassify such material when circumstances no longer warrant its retention in its original classification provided the consent of the appropriate classifying authority has been obtained. The downgrading or declassification of extracts from or paraphrases of classified documents shall also require the consent of the appropriate classifying authority unless the agency making such extracts knows positively that they warrant a classification lower than that of the document from which extracted, or that they are not classified.

(c) *Material Officially Transferred.* In the case of material transferred by or pursuant to statute or Executive order from one department or agency to an other for the latter's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, the receiving department or

agency shall be deemed to be the classifying authority for all purposes under this order, including declassification and downgrading.

(d) *Material Not Officially Transferred.* When any department or agency has in its possession any classified material which has become five years old, and it appears (1) that such material originated in an agency which has since become defunct and whose files and other property have not been officially transferred to another department or agency within the meaning of subsection (c), above, or (2) that it is impossible for the possessing department or agency to identify the originating agency, and (3) a review of the material indicates that it should be downgraded or declassified, the said possessing department or agency shall have power to declassify or downgrade such material. If it appears probable that another department or agency may have a substantial interest in whether the classification of any particular information should be maintained, the possessing department or agency shall not exercise the power conferred upon it by this subsection, except with the consent of the other department or agency, until thirty days after it has notified such other department or agency of the nature of the material and of its intention to declassify or downgrade the same. During such thirty-day period the other department or agency may, if it so desires, express its objections to declassifying or downgrading the particular material, but the power to make the ultimate decision shall reside in the possessing department or agency.

(e) *Classified Telegrams.* Such telegrams shall not be referred to, extracted from, paraphrased, downgraded, declassified, or disseminated, except in accordance with special regulations issued by the head of the originating department or agency. Classified telegrams transmitted over cryptographic systems shall be handled in accordance with the regulations of the transmitting department or agency.

(f) *Downgrading.* If the recipient of classified material believes that it has been classified too highly, he may make a request to the reviewing official who may downgrade or declassify the material after obtaining the consent of the appropriate classifying authority.

(g) *Upgrading.* If the recipient of unclassified material believes that it should be classified, or if the recipient of classified material believes that its classification is not sufficiently protective, it shall be safeguarded in accordance with the classification deemed appropriate and a request made to the reviewing official, who may classify the material or upgrade the classification after obtaining the consent of the appropriate classifying authority.

(h) *Notification of Change in Classification.* The reviewing official taking action to declassify, downgrade, or upgrade classified material shall notify all addressees to whom the material was originally transmitted.

SEC. 5. *Marking of Classified Material.* After a determination of the proper defense classification to be assigned has been made in accordance with the provisions of this order, the classified material shall be marked as follows:

(a) *Bound Documents.* The assigned defense classification on bound documents, such as book or pamphlets, the pages of which are permanently and securely fastened together, shall be conspicuously marked or stamped on the outside of the front cover, on the title page, on the first page, on the back page and on the outside of the back cover. In each case the markings shall be applied to the top and bottom of the page or cover.

(b) *Unbound Documents.* The assigned defense classification on unbound documents, such as letters, memoranda, reports, telegrams, and other similar documents, the pages of which are not permanently and securely fastened together, shall be conspicuously marked or stamped at the top and bottom of each page, in such manner that the marking will be clearly visible when the pages are clipped or stapled together.

(c) *Charts, Maps, and Drawings.* Classified charts, maps, and drawings shall carry the defense classification marking under the legend, title block, or scale in such manner that it will be reproduced on all copies made therefrom. Such classification shall also be marked at the top and bottom in each instance.

(d) *Photographs, Films and Recordings.* Classified photographs, films, and recordings, and their containers, shall be conspicuously and appropriately marked with the assigned defense classification.

(e) *Products or Substances.* The assigned defense classification shall be conspicuously marked on classified products or substances, if possible, and on their containers, if possible, or, if the article or container cannot be marked, written notification of such classification shall be furnished to recipients of such products or substances.

(f) *Reproductions.* All copies or reproductions of classified material shall be appropriately marked or stamped in the same manner as the original thereof.

(g) *Unclassified Material.* Normally, unclassified material shall not be marked or stamped *Unclassified* unless it is essential to convey to a recipient of such material that it has been examined specifically with a view to imposing a defense classification and has been determined not to require such classification.

(h) *Change or Removal of Classification.* Whenever classified material is declassified, downgraded, or upgraded, the material shall be marked or stamped in a prominent place to reflect the change in classification, the authority for the action, the date of action, and the identity of the person or unit taking the action. In addition, the old classification marking shall be cancelled and the new classification (if any) substituted therefor. *Automatic* change in classification shall be indicated by the appropriate classifying authority through marking or stamping in a prominent place to reflect information specified in subsection 4(a) hereof.

(i) *Material Furnished Persons not in the Executive Branch of the Government.* When classified material affecting the national defense is furnished authorized persons, in or out of Federal service, other than those in the executive branch, the following notation, in addition to the assigned classification marking, shall whenever practicable be placed on the material, on its container, or on the written notification of its assigned classification:

"This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law."

Use of alternative marking concerning "Restricted Data" as defined by the Atomic Energy Act is authorized when appropriate.

SEC. 6. *Custody and Safekeeping.* The possession or use of classified defense information or material shall be limited to locations where facilities for secure storage or protection thereof are available by means of which unauthorized persons are prevented from gaining access thereto. Whenever such information or material is not under the personal supervision of its custodian, whether during or outside of working hours, the following physical or mechanical means shall be taken to protect it:

(a) *Storage of Top Secret Material.* Top Secret defense material shall be protected in storage by the most secure facilities possible. Normally it will be stored in a safe or a safe-type steel file container having a three-position, dial-type, combination lock, and being of such weight, size, construction, or installation as to minimize the possibility of surreptitious entry, physical theft, damage by fire, or tampering. The head of a department or agency may approve other storage facilities for this material which offer comparable or better protection, such as an alarmed area, a vault, a secure vault-type room, or an area under close surveillance of an armed guard.

(b) *Secret and Confidential Material.* These categories of defense material may be stored in a manner authorized for Top Secret material, or in metal file cabinets equipped with steel lockbar and an approved three combination dial-type padlock from which the manufacturer's identification numbers have been obliterated, or in comparably secure facilities approved by the head of the department or agency.

(c) *Other Classified Material.* Heads of departments and agencies shall prescribe such protective facilities as may be necessary in their departments or agencies for material originating under statutory provisions requiring protection of certain information.

(d) *Changes of Lock Combinations.* Combinations on locks of safekeeping equipment shall be changed, only by persons having appropriate security clearance, whenever such equipment is placed in use after procurement from the manufacturer or other sources, whenever a person knowing the combination is transferred from the office to which the equipment is assigned, or whenever the combination has been subjected to compromise, and at least once every year. Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest category of classified defense material authorized for storage in the safekeeping equipment concerned.

(e) *Custodian's Responsibilities.* Custodians of classified defense material shall be responsible for providing the best possible protection and accountability for such material at all times and particularly for security locking classified material in approved safekeeping equipment whenever it is not in use or under direct supervision of authorized employees. Custodians shall follow procedures which insure that unauthorized persons do not gain access to classified defense information or material by sight or sound, and classified information shall not be discussed with or in the presence of unauthorized persons.

(f) *Telephone Conversations.* Defense information classified in the three categories under the provisions of this order shall not be revealed in telephone conversations, except as may be authorized under section 8 hereof with respect to the transmission of Secret and Confidential material over certain military communications circuits.

(g) *Loss or Subjection to Compromise.* Any person in the executive branch who has knowledge of the loss or possible subjection to compromise of classified defense information shall promptly report the circumstances to a designated official of his agency, and the latter shall take appropriate action forthwith, including advice to the originating department or agency.

SEC. 7. *Accountability and Dissemination.* Knowledge or possession of classified defense information shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy. Proper control of dissemination of classified defense information shall be maintained at all times, including good accountability records of classified defense information documents, and severe limitation on the number of such documents originated as well as the number of copies thereof reproduced. The number of copies of classified defense information documents shall be kept

to a minimum to decrease the risk of compromise of the information contained in such documents and the financial burden on the Government in protecting such documents. The following special rules shall be observed in connection with accountability for and dissemination of defense information or material:

(a) *Accountability Procedures.* Heads of departments and agencies shall prescribe such accountability procedures as are necessary to control effectively the dissemination of classified defense information, with particularly severe control on material classified Top Secret under this order. Top Secret Control Officers shall be designated, as required, to receive, maintain accountability registers of, and dispatch Top Secret material.

(b) *Dissemination Outside the Executive Branch.* Classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.

(c) *Information Originating in Another Department or Agency.* Except as otherwise provided by section 102 of the National Security Act of July 26, 1947, c. 343, 61 Stat. 498, as amended, 50 U.S.C. sec. 403, classified defense information originating in another department or agency shall not be disseminated outside the receiving department or agency without the consent of the originating department or agency. Documents and material containing defense information which are classified Top Secret or Secret shall not be reproduced without the consent of the originating department or agency.

SEC. 8. *Transmission.* For transmission outside of a department or agency, classified defense material of the three categories originated under the provisions of this order shall be prepared and transmitted as follows:

(a) *Preparation for Transmission.* Such material shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and address. The outer cover shall be sealed and addressed with no indication of the classification of its contents. A receipt form shall be attached to or enclosed in the inner cover, except that Confidential material shall require a receipt only if the sender deems it necessary. The receipt form shall identify the addressor, addressee, and the document, but shall contain no classified information. It shall be signed by the proper recipient and returned to the sender.

(b) *Transmitting Top Secret Material.* The transmission of Top Secret material shall be effected preferably by direct contact of officials concerned, or, alternatively, by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system especially created for that purpose, or by electric means in encrypted form; or in the case of information transmitted by the Federal Bureau of Investigation, such means of transmission may be used as are currently approved by the Director, Federal Bureau of Investigation, unless express reservation to the contrary is made in exceptional cases by the originating agency.

(c) *Transmitting Secret Material.* Secret material shall be transmitted within the continental United States by one of the means established for Top Secret material, by an authorized courier, by United States registered mail, or by protected commercial express, air or surface. Secret material may be transmitted outside the continental limits of the United States by one of the means established for Top Secret material, by commanders or masters of vessels of United States registry, or by United States Post Office registered mail through Army, Navy, or Air Force postal facilities, provided that the material does not at any time pass out of United States Government control and does not pass through a foreign postal system. Secret material may, however, be transmitted between United States Government and/or Canadian Government installations in continental United States, Canada, and Alaska by United States and Canadian registered mail with registered mail receipt. In an emergency, Secret material may also be transmitted over military communications circuits in accordance with regulations promulgated for such purpose by the Secretary of Defense.

(d) *Transmitting Confidential Material.* Confidential defense material shall be transmitted within the United States by one of the means established for higher classifications, by registered mail, or by express or freight under such specific conditions as may be prescribed by the head of the department or agency concerned. Out side the continental United States, Confidential defense material shall be transmitted in the same manner as authorized for higher classifications.

(e) *Within an Agency.* Preparation of classified defense material for transmission, and transmission of it, within a department or agency shall be governed by regulations, issued by the head of the department or agency, insuring a degree of security equivalent to that outlined above for transmission outside a department or agency.

SEC. 9. *Disposal and Destruction.* Documentary record material made or received by a department or agency in connection with transaction of public business and preserved as evidence of the organization, functions, policies, operations, decisions, procedures or other activities of any department or agency of the Government, or because of the informational value of the data contained therein, may be destroyed only in accordance with the act of July 7, 1963, c. 192, 57 Stat. 380, as amended, 44 U.S.C. 366–380. Non-record classified material, consisting of extra copies and duplicates including shorthand notes, preliminary drafts, used carbon paper, and other materials or similar temporary nature, may be destroyed, under procedures established by the head of the department or agency which meet the following requirements, as soon as it has served its purpose:

(a) *Methods of Destruction.* Classified defense material shall be destroyed by burning in the presence of an appropriate official or by other methods authorized by the head of an agency provided the resulting destruction is equally complete.

(b) *Records of Destruction.* Appropriate accountability records maintained in the department or agency shall reflect the destruction of classified defense material.

SEC. 10. *Orientation and Inspection.* To promote the basic purposes of this order, heads of those departments and agencies originating or handling classified defense information shall designate experienced persons to coordinate and supervise the activities applicable to their departments or agencies under this order. Persons so designated shall maintain active training and orientation programs for employees concerned with classified defense information to impress each such employee with his individual responsibility for exercising vigilance and care in complying with the provisions of this order. Such persons shall be authorized on behalf of the heads of the departments and agencies to establish adequate and active inspection programs to the end that the provisions of this order are administered effectively.

SEC. 11. *Interpretation of Regulations by the Attorney General.* The Attorney General, upon request of the head of a department or agency or his duly designated representative, shall personally or through authorized representatives of the Department of Justice render an interpretation of these regulations in connection with any problems arising out of their administration.

SEC. 12. *Statutory Requirements.* Nothing in this order shall be construed to authorize the dissemination, handling or transmission of classified information contrary to the provisions of any statute.

SEC. 13. *"Restricted Data" as Defined in the Atomic Energy Act.* Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 1, 1946, as amended. "Restricted Data" as defined by the said act shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1946, as amended, and the regulations of the Atomic Energy Commission.

SEC. 14. *Combat Operations.* The provisions of this order with regard to dissemination, transmission, or safekeeping of classified defense information or material may be so modified in connection with combat or combat-related operations as the Secretary of Defense may by regulations prescribe.

SEC. 15. *Exceptional Cases.* When, in an exceptional case, a person or agency not authorized to classify defense information originates information which is believed to require classification, such person or agency shall protect that information in the manner prescribed by this order for that category of classified defense information into which it is believed to fall, and shall transmit the information forthwith, under appropriate safeguards, to the department, agency, or person having both the authority to classify information and a direct official interest in the information (preferably, that department, agency, or person to which the information would be transmitted in the ordinary course of business), with a request that such department, agency, or person classify the information.

SEC. 16. *Review to Insure That Information is Not Improperly Withheld Hereunder.* The President shall designate a member of his staff who shall receive, consider, and take action upon, suggestions or complaints from non-Governmental sources relating to the operation of this order.

SEC. 17. *Review to Insure Safeguarding of Classified Defense Information.* The National Security Council shall conduct a continuing review of the implementation of this order to insure that classified defense information is properly safeguarded, in conformity herewith.

SEC. 18. *Review Within Departments and Agencies.* The head of each department and agency shall designate a member or members of his staff who shall conduct a continuing review of the implementation of this order within the department or agency concerned to insure that no information is withheld hereunder which the people of the United States have a right to know, and to insure that classified defense information is properly safeguarded in conformity herewith.

SEC. 19. *Revocation of Executive Order No. 10290.* Executive Order No. 10290 of September 24, 1951 is revoked as of the effective date of this order.

SEC. 20. *Effective Date.* This order shall become effective on December 15, 1953.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *November 5, 1953.*

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

Mr. GRIFFIN. Mr. President, I thought I had objected. However, if I did not, I now object.

The ACTING PRESIDENT pro tem-

pore. The resolution will go over under the rule.

AMENDMENTS NOS. 1180, 1181, AND 1182

Mr. CRANSTON. Mr. President, I send to the desk three amendments to the resolution just submitted by the Senator from New York and ask that they be stated.

The ACTING PRESIDENT pro tempore. The clerk will report the amendments.

The second assistant legislative clerk read as follows:

AMENDMENT No. 1180

Adding at the end thereof the following:

Such report shall also include recommendations to establish a continuing mechanism in the Senate for disposition of the requests for opinions which individual members or groups thereof may make respecting the applicability of procedures and guidelines adopted by the Senate to govern the secrecy, confidentiality and classification of such documents.

AMENDMENT No. 1181

By adding at the end the following:

Such report shall also include recommendations to establish a continuing mechanism invocation of the doctrine or executive privilege with respect to executive branch documents, recommendations with respect to the extent to which the Congress is entitled to such documents in pursuit of legislative purposes when such documents are withheld, and recommendations for the establishment of appropriate congressional procedures to obtain information in the possession and control of the executive branch necessary for such legislative purposes and as to appropriate legislative and other recourse on the part of the Senate in order to obtain such necessary information.

AMENDMENT No. 1182

Adding at the end thereof the following:

Until such ad hoc select committee has reported its findings and recommendations to the Senate, said select committee shall report its findings and recommendations to the Senate on all questions relating to the secrecy, confidentiality, and classification of any specific Government document or documents submitted to said committee by any Member or Members of the Senate, and shall dispose of any such requests within 30 days of receipt thereof.

Mr. CRANSTON. Mr. President, for the same reasons that cause the Senator from New York to make no explanatory remarks today concerning his resolution, I shall make no explanatory remarks concerning my amendments.

TRIBUTE TO THE WASHINGTON, D.C., POLICE DEPARTMENT

Mr. PROXMIRE. Mr. President, I rise to pay tribute to the Washington, D.C., Police Department. We all know of the tragic crime problem in this city, but few of us fully realize what a tremendous effort is being made to cope with it.

I suppose there are few more difficult jobs these days than to reduce the incidence of crime. Well, that is being done in this city, in spite of the rising trend nationally and in spite of the relentless pressure of crime-generating social forces in the District: poverty, drugs, miserable housing conditions, and deep racial antagonisms and discrimination.

These forces are fundamental. If crime is going to be reduced sharply and permanently we must deal with them. Our efforts here in the Congress have been far too feeble.

But the immediate day-by-day problem of dealing with crime in the Nation's Capital is being handled in an extraordinarily skillful and determined way, and I now speak with experience.

Within the last 6 months, I have been the victim of two crimes, and in both cases the response of the Washington police was swift and efficient.

Six months ago, my home on Ordway Street in Northwest Washington was burglarized. It was obviously a professional job, the burglar struck when no one was at home. He wore gloves to conceal his fingerprints. He left virtually no clues. My home was one in a series of homes in the area that had been burglarized.

The Washington police promptly came to my home when I reported the burglary, questioned my daughter and me at length. I was impressed by their efficiency, but I estimated that there was not a chance in a hundred that they would catch the skilled professional thief.

Within a few weeks, they apprehended him. He confessed and was convicted and sentenced.

Last night, I suffered the second crime. I was walking within a block of my home when two young men shoved me, demanded my wallet and threatened to blow my head off.

I retorted loudly and emphatically, started yelling, and they left. I walked home, reported the holdup to the police. Within a very few minutes, police and detectives arrived. They questioned me, and within 15 minutes the so-called tactical squad came with two suspects who had been seen running from the vicinity of the attempted holdup.

The tactical squad is something else. They are right out of the "French Connection." They are dressed very informally. One would think them to be hippies and not connected in any way with the police department. They were most impressive. The suspects were not the young men who had accosted me.

I mentioned two eye witnesses who had seen the two men who had threatened me and the police questioned the witnesses carefully and at length. The police arranged for me and the witnesses to see mug shots of the suspects today.

The police acted with such courtesy, thoroughness, and efficiency that I could see why this city is one of the very few that is enjoying a reduction in crime.

One serious weakness with this country—with our proper regard for civil liberties and justice for anyone who is accused—is that the police are frequently denounced, demeaned, or even categorized as somehow enemies of a free and happy society.

Well, let me say, Mr. President, that of all the forces working to make Washington a better and a happier and a freer place to live—and there are many good and fine people working for that purpose—the Washington police in my book rate right at the top.

We are very proud of our police departments in Wisconsin. Milwaukee and Madison and our other cities have incorruptible and dedicated officers doing a remarkable job holding down crime, but I think they would agree that their fellow officers here in the District of Columbia are among the very best anywhere and they deserve the grateful thanks they rarely, if ever, get.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. TUNNEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PROXMIRE, from the Committee on Appropriations, without amendment:

H.J. Res. 1174. A joint resolution making an appropriation for special payments to international financial institutions for the fiscal year 1972, and for other purposes (Rept. No. 92–781).

By Mr. ROBERT C. BYRD for Mr. Moss, from the Committee on Interior and Insular Affairs, with an amendment:

H.R. 13435. An act to increase the authorization for appropriation for continuing work in the Upper Colorado River Basin by the Secretary of the Interior (Rept. No. 92–782).

By Mr. SPONG, from the Committee on Commerce, with amendments:

S. 1478. A bill to amend the Federal Hazardous Substances Act, as amended, and for other purposes (together with supplemental views) (Rept. No. 92–783).

REPORT ENTITLED "DEVELOPMENTS IN AGING: 1971 AND JANUARY–MARCH 1972"—REPORT OF A SPECIAL COMMITTEE (REPT. NO. 92–784)

Mr. CHURCH, from the Special Committee on Aging, pursuant to Senate Resolution 27, 92d Congress, first session, submitted a report entitled "Developments in Aging: 1971 and January–March 1972," which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. STENNIS, from the Committee on Armed Services:

Lt. Gen. Russell E. Dougherty, xxx-xx-xxxx XXXX (major general, Regular Air Force) U.S. Air Force, to be assigned to a position of importance and responsibility requiring the rank of general, under the provisions of section 8066, title 10, U.S.C.

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Harald Bernard Malmgren, of the District of Columbia, to be a Deputy Special Representative for Trade Negotiations, with the rank of Ambassador (Ex. Rept. No. 92–21).

Mr. FULBRIGHT. Mr. President, I wish to report to the Senate the nomination of Mr. Harald B. Malmgren, from the Committee on Foreign Relations. Mr. Malmgren is to be a Deputy Special Representative for Trade Negotiations with

the rank of Ambassador. Having considered same, he is to be recommended to be confirmed.

Over the years, the Committee on Foreign Relations has become increasingly concerned about the use of the title of Ambassador for individuals serving in positions not involving accreditation to a foreign government.

In the committee's view, the rank of Ambassador should be reserved for the representatives of our country to another country—the sense in which the title of Ambassador is used in the Constitution—and not be used by negotiating personnel within the bureaucracy. Excessive use of the title of "Ambassador" tends to denigrate the role of the duly accredited American representatives to each country and creates confusion as to who is actually the official spokesman of the United States Government.

The practice of granting the title of "Ambassador" is particularly prevalent among U.S. representatives in Europe—to say nothing of the United Nations Headquarters in New York where the United States has no less than four individuals with the rank of Ambassador. In Brussels, for example, counting the Special Representative for Trade Negotiations and his two Deputy Representatives, the United States will have six Ambassadors in residence. In Paris, when the American representative to UNESCO is present, there are four Ambassadors, and in Geneva there are two.

Mr. President, it does seem to me that this practice is becoming really an absurdity. I do hope that the Senate will give a little more consideration to the question of maintaining some degree of enforcement, degree, and significance to the title of ambassador and to the functions of real ambassadors accredited to foreign nations.

In view of the foregoing, the Committee on Foreign Relations takes this opportunity to state that henceforth the committee will be most reluctant to approve individuals given the title of "Ambassador," unless that person has been nominated by the President as the duly accredited representative of the United States Government to a foreign country or to an international organization as authorized by law.

The committee emphasizes that its action is not to be construed as any reflection on the nomination of Mr. Harald Malmgren, whose position was created by an Executive order. On the contrary, Mr. Malmgren appears to be well qualified to act as a deputy to the President's Special Representatives for Trade Negotiations.

The ACTING PRESIDENT pro tempore. Without objection, as in executive session, the report will be received.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 738 (WITHDRAWAL)

Mr. PERCY. Mr. President, on May 1, 1972, my name was added in error as a cosponsor of S. 738, a bill to amend the Immigration and Nationality Act with respect to the waiver of certain grounds for exclusion and deportation.

I ask unanimous consent that I be withdrawn as a cosponsor of S. 738.

The ACTING PRESIDENT pro tempore (Mr. STEVENSON). Without objection, it is so ordered.

S. 3276

At the request of Mr. DOLE, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 3276, a bill to enable wheat producers, processors, and end-product manufacturers of what foods to work together to establish, finance, and administer a coordinated program of research, education, and promotion to maintain and expand markets for wheat and wheat products for use as human foods within the United States.

S. 3410

At the request of Mr. ALLOTT, the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 3410, a bill to revise the special pay structure for the military.

S. 3495

At the request of Mr. DOLE, the Senator from Tennessee (Mr. BROCK) and the Senator from Kentucky (Mr. COOK) were added as cosponsors of S. 3495, a bill to provide reimbursement of extraordinary transportation expenses incurred by certain disabled individuals in the production of their income.

NOTICE OF HEARING ON NOMINATION BEFORE THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished senior Senator from Alabama, I ask unanimous consent that a statement prepared by him be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR SPARKMAN

Mr. President, I wish to announce that the Committee on Banking, Housing and Urban Affairs will hold a hearing on the nomination of Jeffrey M. Bucher, of California, to be a member of the Board of Governors of the Federal Reserve System.

The hearing will be held on Friday, May 12, 1972, and will commence at 10 a.m. in room 5302, New Senate Office Building, Washington, D.C.

NOTICES OF HEARINGS

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished senior Senator from Alabama (Mr. SPARKMAN), I ask unanimous consent that two statements prepared by him be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENTS BY SENATOR SPARKMAN

Mr. President, I wish to announce that the Committee on Banking, Housing and Urban Affairs will hold a hearing on the bill, S. 2987, to authorize the Secretary of the Treasury to make grants to Eisenhower College, Seneca Falls, N.Y., out of the proceeds of the sale of minted proof dollar coins bearing the likeness of the late President of the United States, Dwight D. Eisenhower.

The hearing will be held on Friday, May 19, 1972, and will begin at 10 a.m. in room 5320, New Senate Office Building, Washington, D.C

Persons wishing to testify or to submit written statements in connection with this bill are requested to contact Mr. Dudley L. O'Neal, Jr., Committee on Banking, Housing and Urban Affairs, room 5300, New Senate Office Building, Washington, D.C. 20510; telephone 225–7391.

Mr. President, I wish to announce that the Committee on Banking, Housing and Urban Affairs will hold hearings on the following bills:

S. 1015, to establish an Environmental Financing Authority to assist in the financing of waste treatment of facilities;

S. 1699, to establish a National Environmental Bank, to authorize the issuance of U.S. Environmental Savings Bonds, and to establish an Environmental Trust Fund;

S. 3001, to establish a Federal Financing Bank, to provide for coordinated and more efficient financing of Federal and federally assisted borrowings from the public; and

S. 3215, to expand the market for municipal securities.

The hearings will be held on Monday, Tuesday, Wednesday and Thursday, May 15, 16, 17 and 18, and will begin at 10 A.M. each day in Room 5302 New Senate Office Building.

Persons wishing to testify or to submit written statements in connection with these bills are requested to contact Mr. Dudley L. O'Neal, Jr., Committee on Banking, Housing and Urban Affairs, Room 5300 New Senate Office Building, Washington, D.C. 20510; telephone 225–7391.

ANNOUNCEMENT OF PUBLIC HEARINGS ON THE RIVER AND HARBOR AND FLOOD CONTROL ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Chairman of the Subcommittee on Flood Control, Rivers and Harbors, of the Committee on Public Works (Mr. JORDAN of North Carolina), I ask unanimous consent that a statement relating to public hearings on the 1972 river and harbor bill, be printed at this place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT OF SENATOR JORDAN

I wish to announce for the information of the Senate and the public, that open hearings have been scheduled by the Subcommittee on Flood Control, Rivers and Harbors, of which I am Chairman, commencing at 10:00 a.m. on Friday, May 12, 1972. Hearings will continue on May 15, 16, 17, 19, 22, 23, and 24. Also, on June 7, 8, 9, 13, 14 and 15. All hearings will begin at 10:00 a.m., and will be held in Room 4200, New Senate Office Building.

On Friday, May 12, the Subcommittee will be privileged to hear from the Chief of Engineers, Lt. General Frederick J. Clarke, who will review the civil works program. Members of the Committee, the Congress, and the public are urged to attend the opening session to hear General Clarke on important water resource matters facing the Corps of Engineers and the Nation.

Other days scheduled by the Subcommittee will be devoted to receiving the recommendations of the Corps of Engineers on a number of water resource projects and policy matters. The views of Members of Congress, State and Federal agencies, environmental and water resource groups, and interested and concerned individuals will also be heard during the course of these hearings.

Any person or organization desiring to present testimony or file a statement for the record relating to proposed water resource projects or matters, should contact Mr. Joseph F. Van Vladricken, Professional Staff Member, telephone: area code 202–225–6176.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished senior Senator from Mississippi (Mr. EASTLAND), the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Thomas A. Grace, Jr., of Louisiana, to be U.S. marshal, middle district of Louisiana, for the term of 4 years; new position created by Public Law 92–208, approved December 18, 1971.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Friday, May 12, 1972 any representations or objections they may wish to present concerning the above nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ADDITIONAL STATEMENTS

DON'T TURN YOUR BACK ON THE FLAG

Mr. HANSEN. Mr. President, Gen. Daniel James is a very wise man.

One of the things he has said is:

The power of excellence is overwhelming.

Another thing he has said is:

Don't ever, no matter what the provocation or the invitation, turn your back on your God or your country or that flag.

That, Mr. President, is what I believe, and it is what a majority of our American citizens believe in, regardless of their skin color.

The capital city of my State, Cheyenne, has had a recent incident involving the refusal of a few students at one of the high schools to join in the pledge of allegiance.

James Flinchum, managing editor of the Wyoming State Tribune, Cheyenne, has commented on this editorially and quoted General Daniel's recent speech to the National Association of Secondary School Principals.

The editorial—and General Daniel's remarks—make such good sense that I want to share them with the Senate. I ask unanimous consent that the April 29, 1972, Wyoming State Tribune editorial be printed in the RECORD.

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

DON'T TURN YOUR BACK ON THE FLAG

In connection with the flag incident at Central High School here, in which seven black students first were suspended, and later a total of 121 students black and white were excused from the pledge of allegiance ceremonies at an Army Band concert, a local reader has sent us some excerpts from a speech by Daniel James to the National Association of Secondary School Principals at Anaheim, Calif., on March 18.

James is a brigadier-general in the Air Force currently assigned as deputy assistant secretary of defense for public affairs.

He also is a black. While the remarks of General James, a distinguished Air Force combat leader in Vietnam, were directed to black youth, we think they are particularly inspiring for all people of whatever age, color or national origin.

Said General James:

"My young life was filled with orders, advice and encouragement. I was told to eliminate one by one all the reasons some bigot might say I was not capable of standing beside him or deserving of equal opportunity.

"If he says you are dirty, make sure you are clean. If he says you steal, make sure you don't. If he says you are dumb, make sure you learn. If he says you are scared, make sure you are brave, my son.

"And if there ever comes a time to fight for your country, don't you run away and hide. And don't you ever, no matter what the provocation or the invitation, turn your back on your God or your country or that flag.

"Remember, they said, you are not African. You are an American and this is your land. Many of those who will suggest you go back to Africa cannot trace their ancestors in this country as far back as you can trace yours.

"This is your nation and don't you get so busy practicing your right to dissent that you forget your responsibility to contribute. If she has ills you hold her hand until she is well and then work for constructive change within the system.

"Let your own contribution to the problems of your race be a by-product of your achievement in your chosen field. You will prosper in proportion to your contribution to the Nation.

"Remember that with the heritage of being an American goes the responsibility for developing that heritage and passing it on to your kids in better shape than you got it.

"Don't stop to argue with the ignoramus on the street who calls you nigger. You don't have time. Press on. Perform. Perform. Excel. Excel.

"And when you drive back by in the limousine of success, that ignoramus will still be standing there on the corner wrapped in his hate. The power of excellence is overwhelming. It is always in demand and nobody cares about its color."

NOMINATION OF RICHARD G. KLEINDIENST TO BE ATTORNEY GENERAL

Mr. BEALL. Mr. President, the position of Attorney General of the United States has been filled by Richard G. Kleindienst in an acting capacity for many weeks. Although his nomination had previously been approved by the Judiciary Committee, Mr. Kleindienst requested a reopening of the hearings in order to remove any doubt as to the propriety of his actions in the Antitrust Division's handling of the ITT merger cases.

While the subsequent hearings turned into a political circus, they have clearly shown that Richard Kleindienst's actions have been entirely proper, and as a result the Judiciary Committee has recommended that the Senate act favorably on his nomination to be Attorney General of the United States.

Mr. President, the time has now come for Members of the Senate to put this matter behind us by proceeding to confirm the nomination of Mr. Kleindienst. In his service as Deputy Attorney General of the United States, he has demonstrated the ability, character, and capacity to be Attorney General of the United States. Even those who differ with him philosophically have found no basis for questioning his legal ability or the fairness with which he has carried out the responsibilities of his office.

Mr. President, Richard G. Kleindienst possesses the attributes necessary to be a fine Attorney General. To delay his nomination further would be an injustice to the nominee and to the Department which he will head. I intend to vote in favor of his nomination, and I hope that the Senate will proceed to consider this matter as soon as possible.

NATIONAL ARBOR DAY

Mr. WILLIAMS. Mr. President, I am greatly pleased that Friday, April 28, 1972, was observed as National Arbor Day. For Friday was the 100th anniversary of the first observance of Arbor Day, held in the State of Nebraska.

In 1872, because of a great shortage of trees in Nebraska, J. Sterling Morton, the founder of Arbor Day, initiated a Statewide tree-planting contest, calling for each citizen to plant as many trees as possible in 1 day. Mr. Morton's program was so successful that many other States soon adopted this activity. As a result, thousands of trees were planted by various groups throughout the country.

The observance of Arbor Day 100 years ago was a positive step toward improving and preserving our ecology. I believe that this work is well summed up in an article entitled "Arbor Day—The First 100 Years," written by Mr. Harry Banker, of West Orange, N.J. Mr. Banker referred to this observance as "probably the granddaddy of our country's conservation movements."

But even the most determined efforts of those early environmentalists were little match for the inexorable march of what we often refer to as progress.

Borrowing again from Mr. Banker's article, I would like to emphasize the value of our trees.

Every person on this earth needs 78 trees to absorb the carbon dioxide we exhale, and to produce the oxygen we inhale.

Approximately 20 trees are required to offset the effect of the average commuter who drives his car to work.

More than 100,000 trees are needed to cancel the atmospheric pollution of one commercial jetliner traveling round-trip between New York and Los Angeles.

But, despite this obvious need, we in this country, have steadily reduced our green space. Astoundingly, we pave over some 1 million acres of greenery every year.

For this reason, the observance of National Arbor Day is of significant importance and should be appropriately acknowledged by all those dedicated to preserving our natural resources and in protecting our trees and forests.

Mr. President, on Friday the International Shade Tree Conference commemorated the 100th anniversary of Arbor Day by planting a tree on the grounds of the Capitol. I had the honor of accepting this tree on behalf of the President and the Members of Congress. It was, indeed, my privilege to offer my contribution to National Arbor Day.

RUMANIA'S DAY OF INDEPENDENCE

Mr. PROXMIRE. Mr. President, the 10th of May has long been a day of proud celebration for the people of Rumania.

On May 10, 1866, Charles, Prince of Hohenzollern-Sigmaringen and scion of the southern and Catholic branch of the Prussian royal family, was proclaimed the Prince of Rumania in Bucharest. This momentous occasion ended years of internal rivalry and strife and finally brought political tranquility to the Rumanian State.

On May 10, 1877, 11 years later, the Principality of Rumania, in alliance with Russia, defeated the Turkish Sultan during the Russo-Turkish War and proclaimed her independence from the old Ottoman Empire. This was perhaps the greatest moment in Rumanian history, for as a result of the Congress of Berlin the following year, the nations of Europe acknowledged the existence of a free and independent Principality of Rumania.

Four years later, on May 10, 1881, the Principality was elevated to the Kingdom of Rumania when Charles I was crowned King. From that point forward, Rumania became a factor in the ever delicate European balance of power, and her prosperity grew rapidly over the next six decades.

This has been the history and great achievement of Rumania, and the 10th of May has symbolized these moments of progress and victory. Today, however, the 10th of May receives no official recognition or celebration within the Communist-run nation of Rumania, and those who cherish freedom must restrain their joy. Freedom is stifled in this country, now behind the Iron Curtain.

Yet those of us fortunate enough to live in the free world can recall the days of Rumania's independence. In our hearts we celebrate the spirit of that independence.

PROLIFERATION OF GENERALS IN THE ARMED SERVICES

Mr. GOLDWATER. Mr. President, it seems that we have heard so many complaints about the so-called military industrial complex, the Department of Defense, and the man in uniform that many Senators have completely lost their perspective on some vital military questions.

For example, it has been the belief for some years now that the defense establishment of the United States was top-heavy in its number of generals and admirals. Even this year, in a report on the 1972 defense appropriations bill, the House Committee on Appropriations criticized what it called the "proliferation of generals and colonels in the armed services." It pointed out that the United States had 190 more generals and admirals today than it had at the height of the Korean war, and it then directed the Secretary of Defense to review the officer requirements of each of the services.

Mr. President, it is perhaps significant that it took an outside organization, the Army and Navy Journal, Inc., to conduct a study showing that the United States is—to use the Journal's exact wording—"badly out-generaled by its NATO allies and other foreign nations." Their study showed that the United States has 54 generals and admirals for every 100,000 active duty servicemen. By comparison, the Army and Navy Journal's report showed little Denmark had 55 top ranking officers per 100,000 servicemen; the Philippines 65, France 74, Spain 107, Greece 108, Canada 128, South Africa 145, the United Kingdom 186, Austria 188, Finland 237, Sweden 373.

Mr. President, because of the important light this article of the Army and Navy Journal sheds on an important aspect of our defense system, I ask unanimous consent that it be printed in the RECORD.

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

U.S. GENERALS ARE BADLY OUTNUMBERED

The United States is badly out-generaled by its NATO allies and other foreign nations. The "general/admiral gap" shows up vividly in a Journal survey just completed.

For years, some members of Congress have made headlines carping about the "proliferation" of generals and admirals in our armed services. But a Journal survey of military rank structure world-wide shows that American generals and admirals are badly outoutnumbered—two-and-a-half to one, on the average, among fourteen countries which provided enough data for a meaningful comparison of flag and general officers as a percent of active duty strengths.

For every 100,000 Servicemen on active duty, the U.S. has 54 generals and admirals: Sweden, by comparison, has 373—almost seven times as many. Finland out-stars us by over four-to-one. Great Britain and Austria have close to 3½ times the U.S. average. Canada and South Africa outnumber us 2½-to-one, Greece and Spain two-to-one. Even Denmark out-stars the U.S. top brass, if only by two percent. Only one of all the nations surveyed, West Germany, shows fewer generals and flag officers per 100,000 Servicemen than the United States—47 for the Federal Republic of Germany, about 87 percent of the U.S. figure, 54.

Incidentally, the high ratio of generals to Servicemen obviously doesn't breed wars. Sweden, which has the most generals in relation to the size of its armed forces, has not been involved in a major war since 1814. At that time, a former French Marshal who was also Crown Prince, Marshal Bernadotte, led the Swedish forces to victory against Napoleon and Denmark, and later became King Charles Johann XIV.

An earlier Journal survey showed that what Congress refers to as the "proliferation of top ranking officers" is small potatoes by at least one other significant criteria, the U.S. Civil Service structure. Civil Service executive suites are manned by more than four times as many "supergrades"—GS–16s, –17s, and –18s equivalent to general and flag rank—as are military headquarters (August Journal, "Stars vs. Supergrades: Who's Ahead?"). At a time late in 1970 when military strength totaled 11% more than Civil Service ranks (2.87 vs. 2.57-million), there were 5,586 GS–16s, –17s, and –18s on the U.S. payroll, compared with only 1,330 generals and flag officers.

The Civil Service figure excluded 543 scientific and technical experts in the Department of Defense alone who are paid equivalent supergrade salaries by special acts of Congress, as well as 49 Presidential appointees in the $36,000-to-$60,000 bracket. Chief of Naval Operations Admiral Elmo Zumwalt made note of this point while testifying before the House Defense Appropriations Subcommittee on the "proliferation of top ranking officers" early in February.

The Journal survey of general officer versus active duty strengths was mailed to seventy foreign countries beginning last December. About half of the nations replied, but many of them with data too sparse to permit a meaningful comparison. The Soviet Union refused to provide any data, as did other Warsaw Pact countries.

Italy also declined to respond. A recent story in the Philadelphia Inquirer, however, said that Italy has more generals and admirals than all of Latin America (with under 1,000) and Africa (about 200) combined. According to the Inquirer, the Italian Army has "roughly 1,200 generals to command 295,000 troops and 76,000 carabinieri (national police under military command). This is one general per 309 men. In the Italian Navy, there are more admirals (number not given) than ships, submarines, and all other sea craft combined. The Air Force has 228 generals and 425 planes."

Spain, in contrast, was anxious to set the record straight. Data provided to The Journal show 310 general and flag officers against a total active duty strength of 289,098, or one "general" for every 933 Servicemen. This is about one-fourth the figure quoted by the Chicago Tribune late last year in an article which claimed that "Spain has more than 1,200 generals and admirals, about as large a group as the country's college professors."

Norway provided detailed active duty strengths, but said "General and flag officers: at present no available figures free to the public." Israel declined as well: "We are sorry we cannot answer your other questions because of disclosure policy."

OXFAM AMERICA

Mr. ALLOTT. Mr. President, I have recently received an impressive packet of information entitled "Anatomy of Oxfam America." This packet was sent to me by Oxfam America, Inc., our branch of the distinguished Oxford Famine Relief Committee of the United Kingdom.

Oxfam America is operating in the tradition of the parent organization, which was founded in 1942 to help World War II refugees. The principal current concern of Oxfam America is called "Oxfam Recognizes Bangladesh." The purpose of this campaign is to supplement the $6.5 million in cash and kind already raised for Bangladesh by Oxfam organizations around the world.

The campaign, which enjoys widespread support, especially among young Americans, is sure to be a success and a credit to all those who support it. I commend Oxfam America for its noble work in bringing idealism to bear on the miseries of mankind.

DEATH OF WILLIAM MAHER, FORMER ASSISTANT SERGEANT AT ARMS

Mr. JACKSON. Mr. President, my longtime friend Bill Maher, who served the Senate for 15 years as an Assistant Sergeant at Arms, passed away on April 29, 1972.

Bill and I shared the same hometown, Everett, Wash. He was born in New Castle, New Brunswick, but lived in Everett almost all his adult life. He was for many years active in the labor movement, serving as a vice president of the

Washington State American Federation of Labor. He also contributed his time and talents to Democratic Party affairs and public service in his hometown.

When Bill reached 65, he was not ready to retire, so he came to Washington, D.C., to serve the Senate until his retirement in 1970 at the age of 81.

Bill Maher was a good friend and helpful colleague who will be missed by all who knew him during his long and active life.

EMPLOYMENT AT KITTERY-PORTSMOUTH NAVAL SHIPYARD

Mrs. SMITH. Mr. President, yesterday my office received a letter from the executive director of the Maine Republican State Committee in which he reported rumors in Maine that "massive layoffs are due in the fall" at the Kittery-Portsmouth Naval Shipyard and asked my office to investigate the matter.

Inquiry was then made immediately to the Department of the Navy as to whether there was any truth in such rumors. A check was made by the Navy Department and on oral report was made in which an unequivocal refutation of such rumors was made. The Navy stated that there was absolutely no basis for such rumors and that no layoffs were planned or scheduled in the fall or at any future time.

It was only a week ago on April 27, 1972, that I disclosed the letter of the Secretary of the Navy of April 21, 1972, to me, stating that the current schedule being developed at the Kittery-Portsmouth Naval Shipyard will provide a stable workload for the shipyard throughout fiscal year 1973.

One can only wonder in the face of these assurances where and how these rumors start and circulate and the degree of responsibility of those who do start and circulate them. As in most cases, in this case they remain anonymous. Perhaps the explanation is that this is the political campaign season when motivated rumors run riot.

NOMINATION OF RICHARD G. KLEINDIENST TO BE ATTORNEY GENERAL

Mr. BENNETT. Mr. President, the Committee on the Judiciary has voted for the second time to report favorably to the Senate the nomination of Richard G. Kleindienst, and the committee report confirms the intentions of the majority of the committee members.

Now that the final actions have been taken by the committee, I urge the Senate to begin promptly its consideration of the nominee for Attorney General. The nomination has been pending long enough; the Senate should get on with its business.

There have been repeated threats by those who do not agree with the decision of the Judiciary Committee to lead a protracted floor fight to defeat the nomination, or return it to committee for further hearings. I find it difficult, if not impossible, to see what good can come from such tactics. The Judiciary Committee has conducted extensive hearings on the nomination, and nothing which came out in the hearings demonstrated that the nominee had behaved dishonestly or dishonorably in connection with the out-of-court settlements in the three ITT antitrust suits. There may be some questions about the testimony of other witnesses which some Members of this body may wish to pursue, but as the majority of the committee has indicated, there is no evidence of any wrongdoing on Mr. Kleindienst's part. If there are those who are not satisfied with the committee's action regarding the entire ITT affair and all of the testimony which was given by the various witnesses, then, perhaps, they may wish to pursue the investigation of ITT. However, the nomination of Mr. Kleindienst should not be held hostage to their desires to make political mileage out of the ITT case now that the Judiciary Committee has reported the nomination favorably.

The Constitution gives the Senate a voice in Presidential appointments by declaring that:

> The President shall nominate and by and with the Advice and Consent of the Senate, shall appoint.

The time has come for the Senate to act on this nomination. Those who wish to make a political sideshow out of the remnants of the ITT case should pursue their activities in a forum removed from the consideration of this nomination.

THE GENOCIDE CONVENTION: AMERICA'S SILENCE ON HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, recently the Minneapolis Tribune printed an excellent article by Morris B. Abram, former United States representative to the United Nations Commission on Human Rights. As a distinguished civil libertarian, scholar and educator, Mr. Abram has perceptively described America's changing attitude toward violence and oppression in the world community. While once the United States unhesitantly upheld the rights of all men to life and liberty, now our voice for peace and freedom has grown nearly inaudible.

Mr. Abram's piece notes that the time has come for America to reaffirm her commitment to humanitarian principles and to stand by those international treaties which serve to protect those basic rights. One of those treaties which the U.S. Government should immediately endorse is the International Treaty for the Prevention and Punishment of Genocide. Mr. President, I ask unanimous consent that the article be printed in the RECORD.

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

[From the Minneapolis Tribune, Jan. 4, 1972]

AMERICA'S MUTE CONSCIENCE

(By Morris B. Abram)

NEW YORK.—The outrages perpetrated in South Asia should be seen in the perspective of other horrors of this century and the failure of a succession of American presidents even to raise an official voice in protest.

As the 18th century was one of enlightenment and the 19th one of industrial formation, the 20th may all too appropriately be characterized as the century of massacre.

Beginning with the pogroms in Russia and the genocide of the Armenians, the century has witnessed the killings and deportations of World War I, the Stalin ravages of the Kulaks, the Japanese pillage of China and the unparalled massacres by Hitler.

Post-World War II history has been but little better. The British retirement from India was the occasion for slaughter. The Indonesian revolution in the 1960s was accompanied by at least a half-million deaths inflicted by the most unspeakable means.

Less than three years ago, the Ibos were decimated by sword, gun and noose. Now, again, the Indian subcontinent is wracked with death, and American policy has succeeded in alienating all sides. Nor can we find solace in a position which, however lonely, is at least moral.

There was a time when America's voice was heard, loud and clear, in the name of humanity and against tyranny. In 1851, an American man-of-war rescued Kossuth, a Hungarian freedom fighter, and the American people gave him a tumultuous reception when he visited this country.

Post-World War II history has been but little better. The British retirement from India was the occasion for slaughter. The Indonesian revolution in the 1960s was accompanied by at least a half-million deaths

But the voice of our conscience has now too long been mute. Not once did we express our horror and disgust at the slaughter in Indonesia in any world forum. Nor have we raised a peep against the barbarities of our junta allies in Greece.

Quite the contrary; when a subcommission of the United Nations Commission on Human Rights asked in 1968 merely for a study of "some particularly glaring examples of . . . consistent patterns of violation of human rights" in Greece and Haiti, I, as the then U.S. representative to the commission, was required to withdraw even a mild resolution to look into the matter because of heavy pressure from our NATO ally.

America pays lip service to the principles of human rights set forth in the Charter and in innumerable United Nations declarations and covenants. But like others, we have grown accustomed to reining in our impulses where a narrow self-interest seems to dictate another course.

The executive has grown so callous that it was left for the House of Representatives, first through its Foreign Affairs Committee and then by House vote, to take the lead in proposing to deny military aid to the despotic governments of Pakistan and Greece.

While the President has authorized emergency relief for the Bengali victims, this frugal Care package will not stop the terror or make clear our moral position on the matter.

No state can lead in the development of human rights until it puts principle above expediency and is willing to have the standard applied to its own conduct. It is time that the United States makes international human rights a priority of foreign-policy consideration; that we announce that we shall call all shots as we see them against friend and foe alike.

Such a policy could not mean that we scrap alliances. An honest adherence to the spirit of our democratic heritage mandates an uncompromising respect for freedom and human life. When our friends commit gross violations of human rights, we must do the unusual of condemning and marshaling world opinion against these acts. And we should invite every other state to do the same when we are at fault.

In the United Nations particularly, we must resist the temptation to tailor our attitudes toward human rights in other nations to conform with foreign policy toward those nations. For as we exempt our allies and satellites and limit criticism to our foes, as we now do, we can hardly object when others follow our bad example.

What I propose would be new in recent history, but will help refurbish a badly tarnished American image. It might even make more practical sense than the current mispractice of realpolitik.

CHANCELLOR BRANDT'S OSTPOLITIK

Mr. CURTIS. Mr. President, Secretary of State Rogers will be in West Germany this weekend on the first stop of his overseas trip.

I well realize that it is not the Secretary's intention, nor that of the administration, that this visit should in any way be taken as expressing official or even tacit support of either side in the current West German government crisis. Nevertheless, it has come to my attention that, whether intended or not, the Secretary's visit is being construed as an expression of support for the Brandt government.

It is only natural that Chancellor Brandt, now that his coalition government is on the verge of collapse, would take every opportunity to wrap his policies in the cloak of U.S. support and to assure, for that purpose, that the Secretary's visit is so construed.

For this reason, I think it should be made absolutely clear that the United States is not taking sides in this internal crisis. For myself, I have grave reservations regarding Chancellor Brandt's Ostpolitik. I know that many of my colleagues share those reservations.

At a time when the Soviet Union is being severely criticized for meddling in internal German affairs and attempting to force ratification of the Moscow and Warsaw treaties by threats of renewed Cold War, we in this country should certainly be most circumspect about doing anything which could be construed as meddling on our part. Much of the criticism of the actions of the Soviets in this matter has come from the United States, and what is sauce for the goose is sauce for the gander.

LAMAR, COLO., DUDES AND DAMES

Mr. ALLOTT. Mr. President, it is refreshing these days to read of wholesome youth activities, and I would like to call the attention of the Senate to an organization in my hometown of Lamar, Colo., known as the Lamar Dudes and Dames. This cooperative square dance group of young people from 5 to 18 years of age has been cited for controlling juvenile delinquency and for contributing more than $12,000 to the fight against polio and other diseases.

Mrs. J. B. Spencer started the Dudes and Dames 21 years ago with a group of 10 youngsters. The demand for membership grew in fantastic numbers, and today there are 600 children from Lamar and from surrounding communities. Mrs. Spencer is still the director with the help of her husband, John. No child is refused membership because of lack of talent or coordination. The Spencers feel that those who are not so talented as others may need the training more than those who do have the talent. The Dudes and Dames have been featured in Look magazine and on national television. So that the Senate may know more of this unusual group, I ask unanimous consent to have printed in the RECORD a recent article about the group, published in the Lamar Tri-State Daily News.

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

[From the Lamar (Colo.) Tri-State Daily News, Apr. 28, 1972]

GONE, FOR THIS YEAR, BUT NEVER FORGOTTEN—THE LAMAR DUDES AND DAMES

Lamar, Colo., a town of approximately 8,000 population, claims (and so far the claim has gone undisputed) to have more children (per capita) participating in a recreational square dance program than any other town or city in the nation.

This recreational organization embracing youngsters 5 to 18 years of age is known as the "Lamar Dudes and Dames." Originated in 1949 with 10 members, the group has grown to 600 members and available meeting time and space has forced the sponsors and director to limit membership to the 600. There is always a waiting list of youngsters anxious to belong.

Contrary to the experiences related by many leaders in other areas where youth groups formed, flourished for a short time and died an early death, the Lamar group has never experienced a lag in interest. Their only problem has been to find enough meeting time to include all who wish to join.

Any child in Lamar is eligible to belong—there are no tryouts. Instead, each child is encouraged to develop his own best level of dancing.

The "Cloggers," a nationally known faction of the organization, are all high school students and are much in demand for entertaining. Having traveled over most of the United States, this group is known for a very fast clog step which is done as they execute the intricate square dance figures, usually doing their own choreography. The exuberance of these youthful dancers and the unique and fast moving routines seem to delight audiences, wherever they appear.

Included in their major appearances was the World's Fair, Seattle, Wash., Ted Mack Original Amateur Hour on CBS TV, the Red Rocks Theater near Denver, Colo., and Colorado State Fair daily for the past 12 years, also eight National Square Dance Conventions including Oklahoma City, San Diego, St. Louis, Denver, Des Moines, Detroit, Miami, Beach and St. Paul, Long Beach, Indianapolis, Philadelphia, Louisville, and New Orleans.

The organization in 1958 received a special citation from Gov. Stephen McNichols of Colorado for their part in helping to control juvenile delinquency. By providing wholesome recreation for the young people of the community and for the money they have raised and contributed to fight polio, cancer and other diseases. In the past 12 years this amount is $12,000.

Each year the entire 600 dancers present a revue of many types of dancing in a varied program which draws an audience from several states. It is presented two nights in order to accommodate the people who wish to attend.

Look Magazine representatives photographed the entire group in action and included this unique program as one of the reasons for naming Lamar, Colo., as "All American City" in 1960.

ORGANIZATION

Each set has a "set mother" who works all year for her group. She attends classes when her set meets, calls meetings of the eight mothers concerned to plan the costuming for the revue and, in other words, she acts as committee chairman behind the set.

ORDER OF PROMENADE

First is the third grade, then second, then first grade set. Next in line are the fourth, fifth, and sixth grade; and the third group is made up of seventh, eighth and ninth grade students who come on under blacklight, a spectacular entrance.

New kindergarten and first grade dancers come next and the applause is always tremendous because this is called the Hokey Pokey group.

Blacklight comes on for the sophomores and the magic of the dancers is made a little more elusive.

Then to the music of "What Can I Do for My Country" come the juniors and seniors, strutting out, then doing a most fantastic clog, fast-paced, perfectly timed, beautifully choreographed.

Leaders of this promenade are George Baker and Gary Peyton. Following the entrance of all 600 dancers, Gary Peyton leads the audience and dancers in the Pledge of Allegiance.

Specials include dogs and a dog act, complete with trainers; elephants and donkeys as well as runners; the special number "Everything is Beautiful," done by 16 junior and senior girls from Wiley and Lamar; 12 first, second and third graders who danced to the call of Mrs. Spencer; ballroom dancing—which includes those in first grade and on up; and separate and tandem sets.

Of course it was a sell-out. Even Tuesday, April 25, when everything in Nature seemed to let loose in the wide and deep area from which these dancers came, they came—all except two, who had called in sick. And the audience was there both nights—just a bit late Tuesday but just as anxious to attend and to enjoy this once-a-year extravaganza.

J. EDGAR HOOVER

Mr. WILLIAMS. Mr. President, I join Senators in expressing my sorrow over the death of FBI Director J. Edgar Hoover, I was, indeed, saddened to learn that this vigorous man, as active as ever at the age of 77 years, had died.

While many people in our country often disagreed sharply with some of Mr. Hoover's activities and opinions, I believe most Americans had great respect for him. Certainly our Nation owes him its gratitude for the lifetime of devoted service he gave to this country.

Next Wednesday, Mr. Hoover would have marked his 48th anniversary as Director of the FBI. When he became Director in 1924, the FBI was an agency with several hundred employees and a poor reputation; at the time of his death he had built it into a vast and highly respected crime fighting network with more than 19,000 employees, including 8,500 agents.

It was Mr. Hoover's hand that guided the FBI as it grew from a fledgling operation into one of the world's most effective law enforcement agencies. He made sure that it was a thoroughly professional organization, entirely competent to enforce our Federal laws and to guard against subversive activities whether they were contemplated by Nazi saboteurs during World War II, by Communist agents in the 1950's, or by homegrown extremists of either the left or the right.

Whether one was a constant admirer of Mr. Hoover's or not, it can safely be said that the United States is more secure, and all of our citizens are better

protected from criminal elements, because of his dedicated leadership as Director of the FBI; for this, we must say a sincere thank you, and mourn his passing.

THE VIETNAM WAR AND THE SALT TALKS

Mr. COOPER. Mr. President, I have today urged the President to take no action that would adversely affect the expected favorable outcome of the SALT talks.

Today there was a speculation report that the SALT talks might break down because of the Vietnam war. I do not believe this will occur.

The military situation in Vietnam is in a state of crisis, and it is evident that the forces of South Vietnam will be under severe attack for sometime. I am confident that President Nixon will carry out his constitutional responsibility to protect U.S. forces from imminent danger as he continues to withdraw U.S. forces from Vietnam, and I support him.

The President has stated that he is going to Moscow at the end of this month to meet with leaders of the Soviet Union to conclude the first stage of the SALT talks. It is expected that a treaty to limit ABM's to a very low level will be signed at that time, and an agreement to limit further deployments of offensive weapons will be entered into. The SALT talks are the most important undertakings that the United States is now engaged in throughout the world. Nothing—the Vietnam war, or any other critical situation—should be permitted to adversely affect the expected agreement.

It will be the greatest act of courage and statesmanship, in this time of crisis, if the President and the leaders of the Soviet Union remain firm in their effort to limit the dangerous nuclear armaments race.

I have confidence that the President will continue his efforts to reach agreement. I am sure that he will have the supports of Congress and the country in bringing the SALT talks to a successful conclusion in Moscow at the end of this month.

JUST LET US RUN THINGS

Mr. WILLIAMS. Mr. President, we all recall the crises in the securities industry in 1969 and 1970, which led to the enactment of the Securities Investor Protectection Act and to the 2-year study of the industry now being conducted by the Securities Subcommittee of the Committee on Banking, Housing and Urban Affairs.

Another result of those crises was a demand for the strengthening of the Securities and Exchange Commission's oversight and enforcement responsibilities with regard to the operation of the self-regulatory organizations in the industry, including the New York Stock Exchange.

Until recently, the SEC itself seemed ready to press for greater authority in this area. However, there are now beginning to be expressions of concern in many quarters as to whether the SEC is seriously interested in obtaining or exercising this additional authority, and whether it is taking a truly independent view of what rules will best serve the interests of the investing public as distinguished from the interests of the brokerage firms.

I ask unanimous consent to have printed in the RECORD, an article entitled "Just Let Us Run Things," written by Philip Greer, and published in the Washington Post of April 24, 1972. I believe Mr. Greer's article expresses very well the bases for my own concern and that of others as to the SEC's willingness to provide firm and vigorous supervision over the brokerage business and the self-regulatory agencies in the public interest.

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

[From the Washington Post, April 14, 1972]

JUST LET US RUN THINGS

NEW YORK, April 24.—On the last day of 1971, the Securities and Exchange Commission, in a letter from chairman William J. Casey, asked Congress for additional powers over the country's stock exchanges. At the time, it looked like Casey and the SEC were beginning to flex a little more muscle and that was a welcome sign.

The feeling may have been premature. In his more recent statements, the SEC chairman has made it very clear that he has no plans for revamping the exchanges. In the debate over the future of the markets, the brokers and the exchanges are clearly the white hats and everybody else is a black hat—especially the mutual funds, insurance companies and other institutional investors who account for the lion's share of trading and the bulk of the brokers' profits.

Appearing at a question-and-answer "press conference" on stage at the Institutional Investor Conference last week, Casey spelled out his conviction that running and regulating the stock market is best left primarily to the brokers.

Delivering what amounted to his personal statement of position, Casey didn't exactly unleash a thunderbolt. There have been signs enough over the past few months. In January, the SEC issued its White Paper which, in essence, came out in almost blanket support of the position of the New York Stock Exchange which is, basically, that everything will be all right if you'll just let us run things our own way.

It wasn't put just like that, of course. But the commission did say that the membership rules, which allow members to go into just about any business they want, but prohibit anybody is another business from entering the hallowed halls of the exchange, are just about right.

Casey also said he sees no real reason for abandoning the fixed commission system for smaller investors, although he conceded that there would be no harm in a test. That goes beyond the exchange's position because they don't even want the test. It might work and the brokers wouldn't want to take that chance.

Last week, Casey was questioned rather closely on his willingness to keep the NYSE as the front line of regulation. He said the exchange has improved its procedures since the operational and financial crisis of 1968–70.

That's all true, but those are the symptoms and not the causes. The reason why the back office mess developed into a full-blown crisis—and the reason why the industry came to the brink of financial collapse—is simply that the NYSE refused to enforce its own rules when it meant going against the wishes of the brokers.

So far, nobody—not Casey, not NYSE president Robert Haack, anybody—has claimed that has changed. Nobody has said, much less demonstrated, that the Big Board is any more willing to enforce its own rules when members don't want them enforced.

That's the crux of the problem. The NYSE is, after all, nothing more than a trade association which happens to run a trading floor as part of its operations. It is owned and controlled by its members. It is run for their benefit—and when that ends, they'll stop paying the bill. The head man at the exchange—call him the president, the chairman or whatever—is a paid employee of the members.

There's nothing wrong with that. But no one can regulate the people who underwrite his salary. That's a job for somebody outside the exchange and that somebody should be the SEC, whether Casey thinks so or not.

COMPULSION OF BROADCASTERS TO PROVIDE TIME FOR COUNTER ADVERTISING

Mr. ALLOTT. Mr. President, great interest has been shown recently in the proposal by the Federal Trade Commission that the Federal Communications Commission compel broadcasters to provide time for counter advertising. Broadcasters see this quite rightly for what it is—a misguided expansion of the fairness doctrine and another unwarranted intrusion by an overzealous Government agency into their affairs.

The board of directors of the Colorado Broadcasters Association has adopted a resolution on behalf of all Colorado broadcasters which clearly explains the apprehension they feel and the reasons behind that apprehension. So that all Senators may benefit from the wisdom expressed by the Colorado broadcasters, I ask unanimous consent that the text of their resolution be printed in the RECORD.

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

RESOLUTION OF THE COLORADO BROADCASTERS ASSOCIATION

Whereas, The Federal Trade Commission has advocated that broadcasting alone, among all advertising media, should be compelled to sell time for counter-advertising that attacks broadcast commercials, and that broadcasters should be compelled to provide additional free time for such attacks, and that the sole basis for selection of broadcasting as the only affected medium is its government-regulated status, and

Whereas, This proposal by the FTC would cripple or destroy the financial basis which supports the entire broadcasting industry including the many free social contributions of broadcasters, because common sense and past experience shows that advertisers would not remain interested in advertising on a medium wherein they would be forced to pay for opponent's messages, and

Whereas, The advertiser would transfer expenditure of his advertising budget to other media, and

Whereas, This proposal by the FTC seeks to obtain through the rules or policies of the Federal Communications Commission a degree of power over broadcast advertising which Congress has not seen fit to grant to the FTC with respect to any kind of advertising, and would force on individual broadcasters a role that the FTC admits it cannot fufill, and

Whereas, This proposal would broaden the chaos that has already resulted from the FCC's and the Court's misguided and illegal

expansion of the "Fairness Doctrine" into commercial broadcasting, and

Whereas, Broadcasters do not in any way seek to defend false and misleading advertising or any other form of advertising that is contrary to law, now therefore be it resolved, That the entire membership of the Colorado Broadcasters Association expresses its strongest feelings that counter-advertising would impose on broadcast licensees an impossible administrative burden, hold them responsible for their judgments in areas of controversy outside their competence, set them up for criticism from advertiser, counter-advertiser, and the general listening public, and would subject them to fines or the loss of license if the Federal Communications Commission or the Federal Courts later disagree with broadcaster judgments made under stress, all the while diverting broadcast time for counter-advertisements that ultimately will destroy the core of broadcast existence, the economic life blood of broadcast licensees and obliterate the advertiser-supported broadcasting system, and

Be it further resolved, That the Colorado Broadcasters Association strongly urges and implores the members of the Colorado Congressional Delegation to expend every effort in the defeat of this proposal, and to encourage their fellow legislators in the Senate and House of Representatives of the United States also to diligently and energetically work for the defeat of this proposal.

This resolution was passed by the Board of Directors of the Colorado Broadcasters Association on April 19, 1972.

NEED FOR FLAMMABLE FABRIC LEGISLATION

Mr. SCHWEIKER. Mr. President, on April 12 I introduced S. 3491, the Schweiker Flammable Fabrics Act Amendments of 1972 to toughen Federal requirements for fire-resistant clothing. Flammable fabrics constitute a serious health hazard for every person, and my bill is intended to speed up the Federal regulatory process so that we can insure that our clothing becomes fire-resistant.

My interest in drafting legislation relating to flammable fabrics began when a friend and constituent received serious burns in seconds when a lone spark from his fireplace ignited his shirt and engulfed it in flames. Unfortunately, this type of accident is all to common.

Recently the Pittsburgh Post-Gazette published a report of a woman who suffered burns over 50 percent of her body when her nightgown caught fire.

So that Senators and their constituents might gain a broader understanding of the gravity of the flammable fabrics problem, I ask unanimous consent that the Post-Gazette article be printed in the RECORD.

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

BURN VICTIM SPED HERE IN RACE AGAINST DEATH

A 62-year-old Cumberland, Md., woman was fighting for her life at Mercy Hospital last night after a race with death from her home where she suffered burns over 50 percent of her body after her nightgown caught fire.

Mrs. Estelle Jewel was whisked to Mercy in about 3½ hours by ambulance after Cumberland hospital officials turned down an evacuation plane from the Air National Guard in Pittsburgh because of the woman's critical condition.

The C–121 medical evacuation craft with a full crew aboard was about to leave Pittsburgh when Cumberland officials changed plans.

A Mercy Hospital spokesman said Mrs. Jewel was receiving specialized treatment under the direction of Dr. Charles E. Copeland, director of the burn center and chief of surgery at the hospital.

Mrs. Jewel arrived at the hospital unconscious about 3 p.m. attended by nurses Mary Seiler and C. Wilhelm who accompanied her in the ambulance, the spokesman said.

Members of her family were reported en route to the bedside of Mrs. Jewel, who lives alone.

Mrs. Jewel's nightgown is believed to have caught fire while she was smoking.

She was taken to Memorial Hospital in Cumberland, where no special burn treatment facilities exist, according to Mercy spokesmen.

OSHA OVERSIGHT HEARINGS WILL HELP

Mr. HANSEN. Mr. President, on several occasions I have called the attention of the Senate to the burdens which have been placed on employers as a result of the Occupational Safety and Health Act of 1970.

I support the purposes of the act, but cannot condone the cumbersome and often irrelevant rules and regulations with which employers are being asked to comply. Not only are the standards so voluminous that they require days of constant reading, but they are so technical that they are often difficult for the layman to understand.

In spite of these problems, Occupational Safety and Health Administration inspectors inspect work premises, issue citations, and fine the employer on the spot without giving him an opportunity to comply. These penalties are not imposed only in the case of serious violations, as required by law, but in the case of lesser violations as well.

In light of these circumstances, I wish to thank the chairman of the Committee on Labor and Public Welfare for his decision to schedule legislative oversight hearings to review the Occupational Safety and Health Act of 1970. It is my hope that persons who have experienced problems with the provisions of the act and the enforcement of the rules and regulations will make the facts of their specific cases available to the committee either by testifying in person before the committee or submitting their experiences to the committee in written testimony for inclusion in the hearing record.

These hearings offer the American people the opportunity to convince Congress and the administration of the need for change. I hope that all citizens will take advantage of that opportunity.

EXECUTIVE DEPARTMENT—INTERNATIONAL ECONOMIC POLICY

Mr. JAVITS. Mr. President, in recent days, Secretary of State William P. Rogers and Assistant to the President for International Economic Affairs Peter M. Flanigan have made excellent speeches on the international economic problems and opportunities facing the United States. These speeches are particularly germane to the debate now underway in the United States concerning the future shape of our trading and monetary relations with our major trading partners in the free world—debates which will help influence the major trade legislation which is likely to be before Congress in 1973.

I am encouraged that both the Secretary of State and Presidential Assistant Peter Flanigan firmly reject the idea of an inward-looking United States retreating behind protectionist walls.

Secretary Rogers warned that—

In "walling out" imports we would run the grave risk of "walling in" the very U.S. exports that we want to encourage. Building protectionist walls may seem very tempting, but it leads inevitably to retaliation and counter-retaliation. Today no single country, no matter how powerful can succeed in a unilateral policy of beggaring its neighbors or of exporting its "domestic adjustment" problems. It could be disastrous to our national interest to abandon our commitment to a more open world in which our economy, above all others, has flourished.

Peter Flanigan's fine speech outlines the threat that economic isolation would pose to the health of the U.S. economy. He said:

One factor which threatens to undermine our foreign economic policy is the persistence, and perhaps even the growth, of irrational protectionism—an economic isolationism. This economic isolationism holds that the United States can no longer compete, even if the rules are fair; that expanded trade may have been good in the past, but that no matter what the terms it is suspect in the future. This philosophy is currently reflected in several pieces of legislation proposed to the Congress. Perhaps the principal example is the Foreign Trade and Investment Act of 1972, known informally as the Burke-Hartke Bill.

The Bill shares an Administration objective—more jobs for American workers. Its failure stems from the premises on which it rests. It is our belief that the Bill would result in fewer jobs, lower real wages, and higher prices for the American consumer.

Mr. Flanigan's speech then goes on to provide a detailed analysis of the foreign trade and investment bill of 1972—the so-called Burke-Hartke bill.

I commend these two speeches to the Senate and ask unanimous consent that they be printed in the RECORD.

There being no objection, the speeches were ordered to be printed in the RECORD, as follows:

ADDRESS BY THE HONORABLE WILLIAM P. ROGERS

It is a privilege to be here this morning and to address the annual meeting of the Chamber of Commerce. President Nixon has asked me to convey to you his greetings and best wishes for what will surely be a successful and significant meeting. Your program is most timely in that it quite properly connects national progress—and in a very real sense international progress—with the success of American business enterprise.

Your theme is "The World Is Your Main Street." Two generations ago Sinclair Lewis wrote a book called "Main Street" in which he dwelt on the provincialism of American life as he had known it growing up in Sauk Center Minnesota.

Nowdays, few social critics write about small towns or at best write about them with a sense of nostalgia. In a relatively short time many of our towns have become cities or suburbs of cities and many of our Main Streets have lengthened into interstate highways. Electronic communications and jet travel take a little notice of frontiers and

national boundaries, and the provincialism of "Main Street, U.S.A." has given way to the assured sophistication of the theme of your meeting here today.

It is quite surprising that all of us have made the practical and psychological adjustment as well as we have. I venture to suggest that this adjustment was possible because we applied to the world, as our horizon expanded, many of the principles of Main Street, U.S.A. They are the same principles that President Nixon is applying to our international economic policy.

The first is a sense of community responsibility. I believe that we have shown this responsibility in the Marshall Plan which helped revive a war-ravaged Europe, in our efforts to assist Japan, in our aid to less-developed countries, and in our willingness to join with others to stimulate international economic well-being and social improvement. Now that other countries have made good use of their opportunities and have achieved unprecedented prosperity, it's a new ball game—or if they prefer, a new soccer match. Thus it is that we expect them more fully to share with us the responsibility for the free community as a whole.

A second principle is a sense of fairness among neighbors. Good neighbors recognize the necessity of shared responsibility. International behavior must be governed according to rules of fair trade and good international business practice. We intend to insist on this.

A third principle for any dynamic community—local or international—is a determination and zest to grow. In a nation an important role of government is to give encouragement and scope to the human initiative, creativity, and energy which produce growth. In the world the role of the international economic system is to give similar encouragement and scope, for rich countries and poor countries alike to develop and grow in an interdependent environment.

Thus these principles—a sense of common responsibility, a sense of fair treatment, a determination to encourage constructive growth—are as sound for international economics as they are for business on Main Street. They helped to build the post-war international economic system from which all have benefited.

Today that system is in need of repair. It was created at a time when the United States had few economic competitors and when our help was essential to stimulating the economics of others. Now that these conditions have changed, the continuing inertia of the system has put both our trade and our payments position on the critical list.

1971 proved that abrupt and major adjustments were needed. President Nixon's New Economic Policy which was announced on August 15 was followed by the so-called Smithsonian Agreement of December 18. Thus it is that today we have a new pattern of exchange rates more favorable to the United States—a change which was long overdue. We recognize, of course, that it will take time to improve our balance of payments. And we must not forget that the key to a substantive and lasting improvement is increased productivity, efficiency and ingenuity by American private enterprise. Without these no amount of government effort will prevail. But now that the exchange rate adjustment has been made, we have the opportunity, and it is up to American business to take full advantage of it. I have every expectation that you will.

It is right that Americans should take our international economic problems seriously, but it is also right that we should put them in the perspective of our overall economic success. There is a lot of hand wringing about America's economic future. I don't subscribe to it. Since becoming Secretary of State, I have travelled to 42 countries, and there is no doubt that our economic system and our economy—whatever their problems and however much they are in need of solution—are the envy of virtually every nation and of most thoughtful people in the world. And no wonder, when you look at the facts—for example:

With only one twentieth of the world's population the United States accounts for one third of its total output of goods and services.

Our annual gross national product is twice that of the second-ranking country, the Soviet Union.

Our annual exports are only four percent of our GNP, but those exports alone are more than the total annual GNP of all but nine of the world's nations.

One dollar out of every seven generated by world trade comes to this country in payment for American exports.

U.S. direct foreign investment totals nearly $80 billion. It is four times that of Great Britain, the next largest foreign investor, and 60 percent of all world-wide direct foreign investment.

According to one estimate of all the goods and services produced outside the United States, the foreign operations of U.S. firms account for fully one-eighth of it.

It is difficult even to grasp the magnitude of such an economic performance. And we are still growing. During 1971, despite inflation, unemployment, and our international problems, our GNP in real terms grew by $30 billion—a figure itself higher than the annual GNP of 90 percent of the countries in the world.

As we set about the task of restructuring the international economic system, therefore, there is as little room for recrimination as there is for complacency. The task is too important for either.

With three million American jobs directly dependent on exports, with our increasing import needs—for example, in petroleum and minerals—and with our enormous investments abroad, we have a large stake in a world economy which is both expanding and equitably regulated. Over a year ago, in my first foreign policy report to Congress, I said that economic policy would play a far larger and more vital role in U.S. foreign policy. It is playing such a role, and there can be no doubt that the trend will continue throughout this century.

President Nixon's visits to the People's Republic of China and the Soviet Union, his determination to reach a SALT agreement, his troop withdrawal policy in Viet-Nam, his successful efforts in bringing about a cease-fire in the Middle East, his fidelity to U.S. commitments throughout the world—all these have created greater opportunities for a more peaceful and stable world. But we simply cannot maintain a constructive foreign political policy unless it is based on a sound American economy.

Some segments of the American business community may still believe that the State Department tends to represent foreign interests at the expense of American interests. Nothing could be further from the truth. We are the people who sit where domestic and foreign considerations intersect. I have—and I believe my associates have—a deep conviction that a healthy and competitive American economy is our number one asset in U.S. foreign relations. Thus, the fundamental objective of our foreign economic policy is to assure the international conditions of competition and cooperation which can keep our economy strong.

To accomplish this, we must pay greater attention to economic matters and pay particular attention to our relations with our major economic partners—Canada, Japan, Mexico, and the states of western Europe. These countries are at once our friends, our allies and our competitors. They are the best customers for our exports and they sell us most of our imports. They are the host countries to two-thirds of our overseas investments.

These extraordinarily close economic ties grew up in a post-war period distinguished by a rapid growth in the flow of goods and capital across national borders. During the post-war period tariffs world-wide were cut by 75 percent. Let us not forget what this openness meant to our economy. Between 1950 and 1970 U.S. exports increased four-fold. U.S. direct investment abroad increased six-fold.

Even against this background there are some Americans in the business community, in Congress and elsewhere who believe we should turn to protectionism to correct the current inequities in our trade and payments position.

I profoundly disagree.

Robert Frost once wrote: "Before I built a wall I'd ask to know what I was walling in or walling out." In "walling out" imports we would run the grave risk of "walling in" the very U.S. exports that we want to encourage. Building protectionist walls may seem tempting, but it can lead to retaliation and counter-retaliation.

In negotiating such a new international system with our major trading partners, however, we must and will apply the principles I spoke of earlier—a sense of community, fair treatment, and a desire for constructive growth. In this connection our competitors point to our past economic successes for example, while they recognize the problem of our trade deficit.

They point to the fact that we ran consecutive surpluses for the 77 years before 1971. They must, however, fully understand and respond constructively to the stark fact that our trade deficit for the first quarter of 1972 was $1.5 billion—an historic high. We cannot go on this way. All of the nations involved must understand and appreciate that openness in one direction means openness in both and that negotiation is a two-way street. And we must advance our own interests forcefully and without apology but in such a way as to strengthen the fabric of community, not to weaken it.

Our trade partners must see that it is in their interest for the international monetary and trade system to provide a reasonable equilibrium. It is a challenge to wise statesmanship to bring this about.

We have a responsibility toward our neighbors in the world community to maintain our own economic house in good order, and to see that we do not create unnecessary problems for other people in the international community. They have a similar responsibility toward the community and consequently toward us. Problems cannot be solved by making speeches at each other domestic political advantage. We can solve them only by working together pragmatically, realistically and in a spirit of cooperation. Peace—whether political or economic—is constructed patiently, little by little. It is a fragile structure, needing constant attention and repair. At the heart of that structure, however, must be the principle of freer trade. We must accept that fact and others must honor it, in both word and deed. The world of the future will not flourish behind walls—no matter who builds them and no matter what their purpose. A world divided economically must inevitably be a world divided politically. As Secretary of State I cannot contemplate that prospect with anything but deep disquiet.

The State Department is deeply engaged in the effort to strengthen the international aspects of the American economy.

First, we are stepping up our efforts on behalf of U.S. exports. We now have some 450 officers in our missions abroad engaged specifically in commercial and economic activities. A number of your overseas members have testified to the value of their work.

To cite only one example, it was largely due to the initiative and follow-through of the U.S. Embassy in Tokyo that the American coal industry obtained agreements resulting in sales to Japan of over $1 billion of coal over a 10-year period.

In this regard, I should note the efforts we have been making within the Government to improve trade in Eastern Europe and the Soviet Union. As many of your know, the Department is now negotiating with the Russians a settlement of their old Lend Lease debts. If we can get a reasonable settlement, then we can look forward to a serious examination of the prospects for increased trade with the Soviet Union—where I think there are very substantial markets for our technology and heavy equipment. And we look forward to the day when trade with the People's Republic of China will develop and grow.

In a recent letter to every American Ambassador I reemphasized my conviction that export promotion is not just the responsibility of the specialists but of everybody in the mission, from the Ambassador on down. On the whole, I think our record has been good. Apart from our positive contribution to specific contracts, there have been literally hundreds of occasions when our diplomats have stepped in and quietly but very effectively persuaded other governments not to take action or adopt policies harmful to American business interests. For diplomatic reasons, we cannot shout from the housetops about these successes—but many of you here have reason to appreciate them.

And I have directed Bill Armstrong, our new Assistant Secretary of State for Economic Affairs and, as you know, the former President of the United States Council of the International Chamber of Commerce, to give high priority to export promotion and to our ties with American business. I might say, in this regard, that our commercial services to American business can play a relatively more important role in helping you in those areas of the world where you don't have established contacts and marketing services. Japan, Europe, Latin America are familiar ground to many of you. The Middle East, Asia and Africa may not be to you. We would be happy to cooperate with you in connection with those areas of the world.

Second, we are working to promote the interests of American commerce on a wide range of specific issues which rarely make headlines. For example, over the past five years the State Department has concluded 28 bilateral air transport agreements opening new markets for U.S. carriers. And we have worked closely and successfully with the major oil companies on some of the recent international problems. We are working to ensure that actions which we or others may take during and after next month's U.N. Environment Conference do not put U.S. business at a competitive disadvantage. In preparation for next year's U.N. Law of the Sea Conference we are seeking international support for concepts which take full account of the interests of our fishing industry.

Third, we are doing all we can to help the American overseas investor, who may encounter serious problems in dealing with other governments. We cannot always solve the problem to everyone's satisfaction—and we do not want to interfere with private business if it prefers us to keep hands off. But we do consider the protection of American interests abroad as one of the basic and most important responsibilities of the Department of State and the Foreign Service.

Fourth—and perhaps of greatest current significance—we are strongly committed to the continuing effort to reform the international monetary and trade system.

The U.S. Government seeks a monetary system which permits necessary adjustments to be made promptly and which can be used as a mechanism for greater balance of payments equilibrium. We are cooperating fully in the efforts of the Treasury and others in the Executive Branch to achieve such a system.

Trade liberalization has been a consistent U.S. policy ever since Secretary of State Cordell Hull's reciprocal trade program of 1934, and the State Department has consistently been in the vanguard of our national efforts to lower barriers. Early this year we helped to negotiate some reduction in barriers to our exports to the Common Market and Japan. But there is a more fundamental need to make a broad attack on remaining barriers to world commerce. Thus we look forward to the negotiations to deal with tariff and non-tariff barriers contemplated for next year within the General Agreement on Tariffs and Trade. These negotiations should improve our competitive position within an enlarged European Community. They should also assure the general growth of world trade and assure the United States a fair chance to share in that growth.

As we move toward major monetary and trade negotiations, it is well to keep in mind that we ourselves will benefit greatly from an international economic system in which all are treated equitably and from which all can benefit. As President Nixon said in his speech to the Canadian Parliament two weeks ago: "Peaceful competition can produce winners without producing losers; . . . success for some need not mean setbacks for others; . . . a rising tide will lift all our boats."

Thus it is in a cooperative as well as a competitive spirit that the President and his associates in this Administration approach our international economic problems. A peaceful and cooperative world is vital among U.S. national interests. We are totally determined not to fall behind in our efforts to advance those interests and to contribute to bringing about such a world.

Let me make a final observation. I have spoken today of the role of government in our international economic affairs. We think it is an important role and we are determined to make it an effective role. Government can set a congenial framework for economic activity and it can help stimulate that activity. But it is not the government that makes our economy work. It is, I think first, a sound democratic political system based on free enterprise and, second, the resourcefulness of the individual American.

There are some—particularly in other countries—who tend to attribute our success solely to our wealth. They fail to appreciate the fact that our wealth came from our efforts not from money trees, that what we have we earned and that the achievements of our nation resulted from the character and the determination of the American people. In following the superb performance of the astronauts of Apollo 16, I was reminded of this fact. Money was required to put these men on the moon, but it isn't wealth that accounts for the dedication, the ingenuity, the stamina, and the courage that our astronauts and their associates possess in such abundance. It is the spirit and the dedication of men which has made our space program the marvel of our age.

So it is with the performance of our economy; it is the human qualities that count. And it is the human qualities that are again needed for us to achieve our full economic potential, both at home and abroad. The task is primarily yours—Americans who are engaged in business and commerce. I have no doubt that you will be equal to it. And I want you to know that, in foreign policy as in domestic matters, you have the strong, dedicated and enduring support of the Government of the United States.

A Look at International Economic Policy

(By Peter M. Flanigan)

1971 was a watershed year for the free world economy. There was a fundamental break with the past; a new course was set for the future. The President undertook a series of far-reaching measures to strengthen our international competitive position and to set the stage for long-term reforms in the international economic system. Let us first consider the major accomplishments already achieved and then where we want to go and how best to get there in the international economic area.

ACCOMPLISHMENTS TO DATE

The nation has, since 1957, suffered a continuing balance of payments deficit. By the middle of last year these deficits culminated in a damaging foreign exchange crisis. On August 15th the President announced a major new program of domestic and international economic measures.

The broad goals of the President's New Economic Policy were: (1) to stimulate economic growth in order to provide more jobs at higher levels of real income for American workers; (2) to curb the inflation so costly to the American consumer; and (3) to strengthen the nation's international economic position.

To reach the latter goal, he imposed a 10% surcharge, since removed, on imports, closed the gold window preventing the convertibility of dollars into gold, and called for a realignment of exchange rates. His domestic anti-inflation efforts, so important to maintain a healthy economy at home, also will contribute to a stronger international competitive position.

The end result of these actions was the Smithsonian Agreement in December 1971 in which we agreed with our major trading partners on a realignment of exchange rates, revaluing their currencies against the dollar by about 13%. The most significant trade components of the monetary and trade package were the immediate unilateral lowering of barriers to our exports by Japan and the European Community, and their commitment to begin multilateral comprehensive trade negotiations during 1973.

To improve the competitive position of American industry and its workers, the President proposed and Congress passed the Revenue Act of 1971. This established the 7% job development tax credit and new tax provisions for Domestic International Sales Corporations. These DISCs provide American industry and its workers with tax treatment comparable to competitors abroad, giving a strong inducement to build plants and provide jobs at home to serve export markets. More than 1,100 firms have already filed DISC plans with the Internal Revenue Service.

The President also directed that particular "sore spots"—industries and workers suffering special problems as a result of imports—be given special attention. As a result, at the end of last year the four major textile exporting countries in the Far East agreed to limit the growth of their textile exports to the United States—agreements that had been sought since the Kennedy Administration. Italy agreed to monitor the growth of shoe exports to this country, keeping them at a level to which our industry and our workers could adjust. And after two years of intensive negotiations, the major steel exporting companies in the free world seem close to agreeing to limit the growth of steel exports to the United States. All of these agreements have been reached on a voluntary basis, avoiding restrictive legislation with its inevitable consequences of retaliation by our trading partners.

Finally, we have improved our enforcement of anti-dumping laws. It is essential that these laws be something more than a minor deterrent to some foreign producers who would compete unfairly. The Treasury has speeded up its investigative procedures. The number of headquarters staff assigned to anti-dumping cases have been quadrupled and new positions have been created abroad.

The time it takes to assess a dumping complaint has been reduced from six months to one. The Treasury has reached its first goal

of completing anti-dumping cases on the average of one year, compared to two years or more in the past. Treasury's next objective is to cut the time needed for the handling of normal cases to 270 days.

The Administration's objective is to create a responsive and fair system of investigation, one that assures prompt and effective protection to domestic workers and industry from destructive international price discrimination.

PERIOD OF TRANSITION

The Administration's progress to date in the international economic area has been substantial; yet I should remind you that this is a period of transition. Transition not from an era of free trade to an era of protectionism—not from an era of looking outward to one of looking inward—but rather transition from the post World War II period of American dominance in world economic affairs to one of greater equality. This calls for the establishment, if you will, of a Nixon doctrine for our economic relations, recognizing the new realities of America's competitive position much as the Nixon doctrine recognizes the new realities in foreign affairs.

These new economic realities have been in existence for some time. Until the President's actions, however, many government policies failed to recognize their existence. For a number of years the pressing tensions resulting from the Vietnam War had distracted us from important decisions required in other areas of national policy. Plainly, the time has long since passed when American resources were such that we could afford to give more than we got. The time has come to insist on equity in our international economic dealings with our major trading partners. This was the basis of our 1971 agreements, and will be the basis for future agreements.

In 1972 we will be preparing for the negotiations to create a new monetary system for the free world. We will also be preparing for next year's trade negotiations. In the monetary arena, the forum for negotiations first must be agreed upon. In preparing for trade negotiations we first must define our goals. Given the fundamental requirement of equity, what agreements can we reasonably expect from the next round of trade talks. Having defined this goal in detail, we must then develop our negotiating strategy for getting there. And finally we will need legislation to give the President the authority to implement the strategy. In reaching these positions we in the Administration will be working with both the Congress and the private sector. The outcome will be the product of all of us. Given the scope of this undertaking, including the necessity of getting legislation through the Congress, it is easy to see why the second half of next year is the most realistic time for the opening of detailed, give and take trade negotiations.

THREAT OF ECONOMIC ISOLATIONISM

One factor which threatens to undermine our foreign economic policy is the persistence, and perhaps even the growth, of irrational protectionism—an economic isolationism. This economic isolationism holds that the United States can no longer compete, even if the rules are fair; that expanded trade may have been good in the past, but that no matter what the terms it is suspect in the future. This philosophy is currently reflected in several pieces of legislation proposed to the Congress. Perhaps the principal example is the Foreign Trade and Investment Act of 1972, known informally as the Burke-Hartke Bill.

The Bill shares an Administration objective—more jobs for American workers. Its failure stems from the premises on which it rests. It is our belief that the Bill would result in fewer jobs, lower real wages, and higher prices for the American consumer.

Supporters of the Bill hold that U.S. firms invest heavily abroad to produce goods for the U.S. market. In their view, this is "double jeopardy"; jobs are lost because investment made abroad could be made at home and then imports from these investments take their toll in domestic employment. From this they argue that imports should be drastically reduced, that the foreign investment activities of Americans should be regulated, and that the tax laws should discriminate against foreign production.

IMPORTS AND EXPORTS

Let us examine those premises. First, it is contended that the U.S. is being heavily supplied by imports from foreign subsidiaries of American parents. The fact based on most recent figures, is that only about 14% of U.S. imports came from foreign subsidiaries of U.S. companies. And if you exclude imports of cars and parts from Canada under the special auto agreement, only about one-half of foreign subsidiary imports remain. On the other hand about one quarter of our merchandise exports, or an estimated $10 billion, go directly to U.S. foreign subsidiaries, creating more than half a million domestic jobs. Legislation destructive of U.S. foreign subsidiaries would eliminate a natural market for many of our current exports. Jobs at home could be lost, not gained, by restricting foreign investment.

Most of U.S. foreign affiliate sales occur in the country where the facility is located. Latest available data indicate that 78% of sales by U.S. businesses abroad are made in the country of residence, 14% to third countries, and only 8% to the U.S. Obviously, the "import problem" and the supposed loss of jobs cannot be sweepingly ascribed to American foreign investments or the foreign subsidiaries of U.S. companies.

Critics of the multinational firm in particular, and direct foreign investment in general, argue that foreign markets should be served by exports from the U.S. and not by overseas subsidiaries. In their view, both exports and domestic employment would benefit and there would be no "exporting" of jobs. But this analysis assumes that foreign markets are ours for the taking. On the contrary, as every aggressive businessman already knows, it is often necessary for firms to locate abroad physically to serve overseas markets; that it would be difficult, if not impossible, to supply many foreign markets by exporting domestic production.

U.S. firms manufacture abroad to meet foreign standards and marketing requirements, to move behind tariff and non-tariff barriers, and in some cases to meet foreign demands for local production. U.S. firms abroad participate in growing foreign markets that would be difficult or impossible to reach by simply exporting products manufactured domestically.

FOREIGN INVESTMENTS AND THE BALANCE OF PAYMENTS

Because of the outflow of funds for direct foreign investment—about $5.5 billion in 1971—some at home echo the complaints of some abroad that this is the cause of our balance of payments difficulties. Again the premise is wrong—it overlooks the benefits to our balance of payments generated by such investment. The return flow of earnings far exceeds the capial outflow. Last year that return flow amounted to $7.3 billion, so the net effect of our foreign investments was a surplus of almost $2 billion accruing to our international accounts. This surplus plays an important role in maintaining U.S. strength in world commerce and finance. It would be a grave error to undercut this long-term source of strength.

QUOTAS AND JOBS

Legislation currently before Congress would place mandatory quotas on all imports that do have their counterpart in some U.S. production or are not already restricted. Proponents argue that setting quotas would regulate the unemployment supposedly caused by the recent "drowning" of our country in foreign goods. Again let us look at the premise.

During the sixties, imports did grow about 1½ times faster than the economy, while exports increased only slightly faster than our GNP.

Supporters of the legislation argue that this cost more than half a million U.S. jobs. Apparently, this figure was derived by subtracting real employment gains from export growth from hypothetical employment gains that might have been created were it not for import growth. But this is comparing the apples of real employment with the oranges of hypothetical employment. As the Department of Labor has noted, it simply does not follow that because imports *might* have been produced domestically they *would* have been.

To shift domestic resources to produce import substitutes would substantially raise prices for U.S. consumers. There would be difficulties in finding the skills and facilities at home for import substitution. For many products, if consumers were denied access to imports, they might simply not buy for reasons of cost, style and the like. Given these reasons and the certainty that U.S. costs and prices would be higher than those of imports, it simply cannot be fairly concluded that 500,000 jobs were "lost" because of the rapid growth of imports compared to exports.

The notion that limiting imports would improve U.S. employment also ignores the estimated 1.2 million jobs associated with domestic marketing and processing of imports. And some of our imports contain materials and parts originally exported from the United States—automobiles from Canada, products containing U.S. electronic components, and even textiles finished abroad using domestic cotton.

Most importantly, as the record clearly shows, any comprehensive program to curb U.S. imports would immediately be countered with programs abroad to reduce our exports and the jobs associated with our foreign sales. Domestic jobs simply cannot be saved by arbitrarily restricting imports.

The Burke-Hartke Bill proposes quotas on all imports on a category-by-category and country-by-country basis. The quotas would be equal to the average annual imports during the 1965–1969 period.

Preliminary figures show that this would result in an import cutback, from 1971 levels, of $2 billion from the European Community, $2.6 billion from Japan, and $3.6 billion from Canada. These countries are major buyers of our exports, in 1971 we shipped $8.3 billion to the European Community, $4 billion to Japan, and $10.1 billion to Canada. Overall, the Bill would require a reduction of 25%, or $11 billion, in our 1971 imports of about $45 billion.

Our trading partners clearly could not and would not take this massive restriction of their exports lying down. Indeed, they would have a legitimate grievance. They would retaliate in kind, as they have in the past, with the result that tens of thousands of higher paying jobs associated with U.S. exports would be wiped out, forcing massive adjustments and dislocations on the U.S. economy. If retaliation was comparable in size to the proposed restrictions, one-quarter of our exports, or about $10 billion in 1971, could be cut off. And most of the burden would be borne by American workers, the very people the quotas in theory are designed to help. Surely the economic history of Smoot Hawley and the 1930's teaches us that shrinking trade costs jobs while fair and expanding trade creates jobs.

U.S. PATENTS

The Bill would also limit a U.S. patentholder's right to produce the patented prod-

uct abroad or to license someone else to produce it in a foreign country. Effects on U.S. patent holders could be drastic. Controls on the flow of commercial technology would greatly limit U.S. marketing flexibility. Given the skills in science and research now available to foreign producers, the result would simply be to reduce the value of U.S. inventions.

Many foreign countries have patent laws that do not protect foreign patents which are not used in local production. Under the proposed legislation, therefore, patent holders would be denied royalty income as well as protection against infringement that results from a patent being licensed to a foreign producer. In short, withholding the use of a U.S. patent would not generally stop the transfer of know-how; it would, however, shift production away from American firms to foreign firms. In turn, this would cause a loss of our competitive strength. Finally, denying our inventors the right to exploit their patents abroad could again provoke retaliation in kind by foreign governments, and thus prevent the U.S. from obtaining and using foreign inventions.

There are, to be sure, inequities in the international rules governing technology transfer, particularly in the present requirements imposed by Japan for the sharing of patents as consideration for participation in joint ventures. And some countries will not recognize patents on imports, but will only recognize them when the patent is exercised in local production. The problem of technology transfer needs resolution, but the proposed legislation is hardly the way to go about it.

INVESTMENT AT HOME AND ABROAD

Finally, let us look at the Bill's tax proposals. It would change the tax laws under which direct foreign investment is conducted, with the objective of denying the so-called "incentives for foreign investment" of those laws. Under present law, the earnings of U.S. subsidiaries abroad are generally not taxed until they are sent back to the parent, and foreign taxes paid by subsidiaries are generally allowed as a direct credit against American income taxes on income earned overseas.

One proposal would eliminate the deferral of U.S. taxes on earnings of foreign subsidiaries and would treat foreign income taxes as an expense but not as a credit against U.S. corporate income taxes. Some believe that the deferral and credit provide an incentive for investment abroad at the expense of job and investment at home. The premise is that removal of these presumed incentives would return investment to the U.S., thereby increasing domestic employment. Again let us examine that premise.

Allowing credit for foreign taxes is provided for in thirty bilateral treaties as a way to preclude double taxation of income. To change the treatment of foreign taxes as a credit would be inconsistent with those treaties, go against tax equity, and produce double taxation, effectively raising the tax liability on income of U.S. foreign subsidiaries by about 50%.

The credit and the deferral of taxes on foreign income enables U.S. foreign subsidiaries to compete on even terms against foreign firms in foreign countries, and to compete with them in third countries. Eliminating their deferral would diminish their comparative strength. However, about two-thirds of the earnings of foreign subsidiaries are already returned to the U.S. annually, so the deferral does not create a huge tax free profit.

The deferral and tax credit are not so much an incentive, but a way to enable these U.S. firms to compete.

Rather than discouraging Americans investing in foreign countries, we should increase our efforts to attract foreigners to invest in the United States. The recent currency realignment is a major step in that direction. The result of foreign investment here will be more jobs for Americans and an improvement in our balance of payments.

An examination of the facts and figures of direct foreign investment confirms the fallacy of the premise that foreign investment is a major substitute for domestic investment. Comparing direct foreign investment by Americans to gross private domestic investment in the United States reveals that in 1971 foreign investment was only about 3.7% of the U.S. total; for plant and equipment it was 5.1%. Despite the minor proportion of foreign to domestic investment, it is not clear that even this amount would be placed back in the U.S., were the Bill's tax proposals imposed.

Since our firms go abroad primarily to gain access and to better serve foreign markets, it is doubtful that anything like a major substitution of investment would be made. The Bill would have domestic investment made "just as attractive as investment abroad", but investment can only be attractive where there is access to markets.

The most effective way to stimulate our exports is to reduce tariff and other barriers to trade—a major goal in the next round of trade negotiations. To react to foreign barriers by penalizing U.S. companies, as Senator Hartke would do, is to compound the problem.

THE CHALLENGE AHEAD

A major problem now is one of transition. The textbook arguments supporting free trade assume a smooth, costless movement of resources among industries, but this assumption does not fit the harsh realities of economic life. It is up to all of us—business, government, and labor—to find paths and programs to lower the human cost of change. It is also our job to increase the competitiveness of the U.S. economy, to use the genius of American technology and inventiveness, together with the most modern plant and equipment, to keep ours the most productive of the world's societies.

This is a task which I consider one of the most vital responsibilities of the Council on International Economic Policy. But stifling restrictions on trade, investment and technology would do great harm to our country, to its workers, its consumers, and its investors. Let us see to it that our remedies are in proportion to the problem.

The overwhelming evidence points to the counter-productive nature of economic isolationism; this is clearly not the way to save or create jobs. More importantly, economic isolationism can breed political isolationism, and a turning away from the kind of interdependent free world which has been the aim of post-war American foreign policy. The American tradition and the American spirit call on us to look outward—to believe in the competitiveness of our American workers and our American system in any fair competition. The Administration is convinced that the New Economic Policy is the right approach and that the programs set in motion by the President's decisive actions will produce real and lasting benefits to American workers, consumers and managers.

SPACE SHUTTLE

Mr. ANDERSON. Mr. President, as we approach the debate on the space shuttle, we are going to hear more and more about the testimony of Dr. Ralph Lapp before the Committee on Aeronautical and Space Sciences on April 12. Indeed, the entire testimony has already been placed in the RECORD three times, twice on April 19—pages 13409 and 13583—and again yesterday, May 4—p. 15956. No doubt we will see this testimony in the RECORD again and again, long after the material has been refuted by responsible authorities, or long after the material had any other than historical value to the relevance of the current situation.

Dr. Lapp is a physicist, not an economist, but all of his arguments against the shuttle are directed at its economics. Therefore, the committee felt it only proper to ask that Dr. Lapp's remarks be analyzed by recognized experts in this field. Consequently, we asked Dr. Oskar Morgenstern and Dr. Klaus P. Heiss to supply a rebuttal to his statement.

Previously, on April 20, I placed in the RECORD—p. 13786—the remarks of Dr. Morgenstern and Dr. Heiss before the committee and a reply to Dr. Lapp's statement submitted to us by NASA. I do not see the need for placing this material in the RECORD again at this time. I do, however, ask unanimous consent to place in the RECORD the letters I have received from Drs. Morgenstern and Heiss and the detailed rebuttal to Dr. Lapp's statement. The rebuttal is conveniently numbered to correspond to the specific points raised by Dr. Lapp.

I hope that Senators will study this rebuttal in detail and decide for themselves what the proper course of action is regarding the future of our space program.

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

MATHEMATICA, INC.,
Princeton, N.J., April 24, 1972.

Hon. CLINTON P. ANDERSON,
Chairman, Committee on Aeronautical and Space Sciences, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to inform you for the record that I am in complete agreement with the contents and form of the statement Dr. Heiss has written in reply to the testimony by Dr. Lapp which the latter delivered before the committee on April 12th. My own reply on that day was necessarily brief because the meeting was breaking up. I am glad that Dr. Heiss' testimony exists because it surely will set the record straight.

We have both tried sincerely to provide correct and useful information about the economic characteristics of the planned Space Shuttle.

If we can be of further use, please do not hesitate to call on us.

Yours truly,

OSKAR MORGENSTERN.

MATHEMATICA, INC.
Princeton, N.J., April 19, 1972.

Hon. CLINTON P. ANDERSON,
Chairman, Committee on Aeronautical and Space Sciences, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed please find a detailed rebuttal concerning Dr. Ralph E. Lapp's testimony made before your committee April 12, 1972, after the testimonies presented by Dr. Oskar Morgenstern and by me.

The detail and the depth of the rebuttal to Dr. Lapp is motivated not so much by the attention that this particular testimony deserves, but rather by my personal strong feeling that a constructive criticism of the

Space Shuttle System could actually have contributed in a positive way to a better understanding by your committee of the true issues involved. This service in my opinion has not been rendered so far by the critics of the Space Shuttle.

As a matter of fact, it is rather the economic analysis performed for NASA by us, as well as other important inputs from other agencies and industry, that NASA has substantially adapted the Space Shuttle System to meet economic requirements as well as technical design wishes. This has led, as a matter of fact, to a reduction of non-recurring costs of the Space Shuttle System of about $7 billion.

As stated in the rebuttal, the present configuration that NASA has now chosen is meeting the most conservative economic evaluation criteria. There are important issues that remain to be studied with regard to the proposed Space Shuttle System and in the absence of a constructive criticism from the outside I think that NASA is studying these on its own initiative already.

Yet whatever the outcome of these additional exercises will be they will not change the basic economic findings that first, a reusable space transportation system is within the economic interest of the United States and second, that the present configuration chosen by NASA guarantees the lowest cost and lowest risk approach to the Space Shuttle development in the 1970's.

Most sincerely yours,

KLAUS P. HEISS.

REBUTTAL BY DR. KLAUS P. HEISS, DIRECTOR, ADVANCED TECHNOLOGY ECONOMICS, MATHEMATICA, INC., TO TESTIMONY OF DR. RALPH E. LAPP, MADE TO THE U.S. SENATE COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES, WEDNESDAY, APRIL 12, 1972, ENTITLED "STATEMENT ON THE SPACE SHUTTLE SYSTEM"

OPENING REMARKS

Dr. Ralph E. Lapp has shown in his testimony of Wednesday, April 12, 1972 a singular unawareness of the facts as presented in the economic study performed by Mathematica and the two supporting contractors, namely Aerospace Corporation and Lockheed Missiles and Space Corp. (LMSC). Dr. Lapp, for example, calls repeatedly for analyses that have been carried out in much more depth and detail than he actually advocates in his testimony.

Also, Dr. Lapp's testimony shows that, his claims to the contrary, Dr. Lapp is singularly unfamiliar with space transportation systems, space program costs and operations, as well as economic analyses thereof. His testimony has been a disservice to the *critics* of the Space Shuttle System.

In the following are some ad hoc statements concerning Dr. Lapp's testimony. It may suffice to highlight some of the major misconceptions and mistakes made in his testimony. This rebuttal in no way should imply that there do not exist many issues that need further examination and study by NASA, Congress and others concerning the Space Shuttle program. In the following, I will comment on the individual "points" made by Dr. Lapp in his ad hoc testimony.

Points 1 through 9: During the course of the Space Shuttle efforts, NASA as well as other government agencies have been making use of a rather naive oversimplification of the economic case for the Space Shuttle by quoting numbers such as $100 per pound for the cost of putting a payload into orbit using the Space Shuttle and then comparing this cost to $600, $700 or even $1,000 per pound for expendable systems. The numbers of $100 per pound (and more recently of $160 per pound) was arrived at by dividing the due east payload capability of the Space Shuttle to a 100 nautical miles orbit into the average operating costs of a Space Shuttle launch. As only a fraction of space payloads are launched due east and only a fraction of these into a 100 nautical mile orbit, it is difficult to assert that the payload number used should be this maximum capability of the Space Shuttle. Furthermore, since the Space Shuttle is not yet developed and the non-recurring investment for the system is not yet made, opponents of the system have argued that the large non-recurring costs must be added into the balance to calculate a "cost per pound" in terms of transportation costs of the Space Shuttle System.

Let me state to this Committee that the complete systems cost of the Space Shuttle System were included in our economic evaluation. Of course with regard to the existing expendable system, all if not most of the research costs have been spent in the 1960's and therefore are *not* considered at all in the comparison between the Space Shuttle System and the expendable transportation technologies. This should be so. It is on the total life cycle cost basis of the Space Shuttle System and the comparison of these to expendable systems that we do find the Space Shuttle System to be economically justified.

It is, of course, an entirely different matter when costs are measured for *pricing* the services of Space Shuttle launches. In this latter context, such freshman course economic concepts as *average* costs, *incremental* costs and *total* cost recovery do play an important role. The relation of, for example, incremental cost to the prices that NASA should charge for Space Shuttle launches to bring about the most efficient national use of the new space transportation system is a complicated issue. I dealt extensively in a separate working paper with exactly this. With all due considerations, let me state that the presently quoted number of $10.5 million for a single Space Shuttle launch for the new Space Shuttle configuration is an *average* cost per Space Shuttle launch expected for the 1980's. The actual *incremental* costs as shown by our analysis are expected to be *below* this figure by anywhere from $2 to $3 million. In addition, the capability of the Space Shuttle System to launch *multiple* payloads leads to the theoretical possibility of *zero* launch costs for some particular spacecraft.

In a practical sense, the $160 per pound number is, therefore, meaningless and the only way in which a proper assessment of the Space Shuttle economics can be made is by considering all costs incurred in the operation of a space program using the Space Shuttle or expendable systems. In particular, the *different* costs of *payloads* as well as satellite *operations* (for expendable systems and the Space Shuttle System) have to be included in an economic comparison. The complete life cycle costs of *launch vehicles as well as payloads and operations* have then to be compared between expendable vehicle operations and Space Shuttle operations. This is exactly what has been done in a series of analyses presented in the MATHEMATICA Report, as well as by the two support contractors.

NASA's passion for the use of this oversimplification has, of course, left it vulnerable to attack by uninformed critics, and Dr. Lapp has seized upon this opportunity.

Space launch costs have to be seen in proportion to the cargo they carry. This is the most immediate and primitive notion in transportation economics in general. For bulk cargo, transportation costs are very important. For highly valued instruments, transportation costs actually are only a fraction and often the least important portion of their overall cost. Thus, bulk cargo is transported by ship and rail; scientific instruments can be transported economically by air freight. Also, the cost of the cargo, the packaging, as well as insurance premiums, may change depending on the transportation system used.

In the case of the Space Shuttle System one has to estimate and analyze the effects that different space transportation systems will have on the costs of space satellites since these are the major contributors to the costs of the national U.S. space program today.

In the case of hydrogen or other space bulk cargo in support, for example, of a large interplanetary mission or an in-orbit space tug, the transportation costs *do* become important and the Space Shuttle cargo bay *can* be used to its full capability yielding in these cases cost per pound of $160 (and possibly less on an incremental cost basis).

When looking at individual missions, of course, the economics of the Space Shuttle occurs both in the *payload costs* and in the *launch costs*. Let me draw Dr. Lapp's attention to just three examples of *scientific* payloads. The examples chosen, at random, are the Radio Explorer, the Solar Orbit A, and the Polar Earth Observatory (see Table 1.0). As Table 1.0 shows, in the case of the Radio Explorer the payload cost using expendable launch vehicles would be $305 million in the 1980's. The launch vehicles needed to carry these payloads into orbit would come to a total of $103 million. Individual launch breakdowns as well as launch vehicle optimization with regard to the individual payloads were considered in our analysis in detail. Table 1.1 gives the *aggregate* results of this analysis for the Radio Explorer as performed by Aerospace Corporation. Underlying Table 1.1 again are analyses on a *subsystem* basis for this satellite based on the inputs provided by LMSC as well as other extensive satellite cost information available to Aerospace Corporation. For the Space Shuttle System the *identical mission requirements in terms of observations* were then taken and *a Space Shuttle payload program performing the same scientific functions* constructed, making use of the Space Shuttle vehicle. In this particular example, the payload cost over the same time period would amount to $222 million and the launch vehicle costs needed to carry the payloads into orbit and maintain their capability are $54 million. Overall, the advantage in the case of the Radio Explorer would amount to $83 million in terms of payload cost savings. In this particular case, the economics of the Space Shuttle derives about equally from the payload area and the launch vehicle area. In the most recent analyses, reported in the January 1972 report, we actually used *average* cost per launch of $10 million rather than the lower *incremental* costs for the Space Shuttle.

TABLE 1.0.—SAMPLE OF 3 PROGRAM ANALYSES (TOTAL CIVILIAN PROGRAMS ANALYZED:78)

[Millions of 1970 dollars]

	Expendable systems	Space shuttle system	Advantage of space shuttle
Radio Explorer:			
Payload costs	$305	$222	$83
Launch vehicle costs	103	54	49
Total	408	276	132
Solar Orbit A:			
Payload costs	146	126	20
Launch vehicle costs	27	22	5
Total	173	148	25
Polar Earth Observatory:			
Payload costs	771	438	333
Launch vehicle costs	84	128	−44
Total	855	566	289

TABLE 1.1.—INDIVIDUAL PROGRAM COST INCLUDING LOSSES, RADIO EXPLORER—OSSA, LAUNCHED FROM ETR

[Dollar amounts in millions of 1970 dollars]

Fiscal year	Case A—Current expendable system					Case C—Space transportation system (Space Shuttle)								
						PI								
	PI (number)	Lv T3B/C (number)	PI Tot	Lv dir	Prog dir	New (number)	Ref (number)	Lv (number)	Lv (number)	Lv Shtl (number)	Lv Tug (number)	Lv Tug exp (number)	PI Tot	Lv dir	Prog. dir
1974															
1975															
1976															
1977															
1978			$16	$6	$22								$13		$13
1979			54	15	69								48		48
1980	2	2	55	11	66	2				1.0	1.0		49	$10	59
1981	1	1	15	2	17	1				.6	.6		14	8	22
1982			7	3	10								4		4
1983			38	12	50								26		26
1984	1	1	55	15	70		1			.6	.6		41	6	47
1985	2	2	23	8	31		2			1.0	1.0		15	10	25
1986			8	6	14								3		3
1987	1	1	3	2	5		1			.6	.6		3	6	9
1988			6	6	12								1		1
1989			17	12	29								7		7
1990	2	2	8	5	13		2			1.2	1.2		4	14	18
Total	9	9	305	103	408	3	6			5.0	5.0		228	54	282

NOTES

Dir—Direct. ETR— astern Test Range. Lv—Launch Vehicle. OSSA—Office of Science and Space Applications. PI—Payloads (spacecraft and instruments). PI-New—New payloads. PI-Ref—Refurbished Payloads. Prog—Program. Shtl—Space Shuttle. TAT9/D/T—Thrust Augmented Thor Delta. T3C—Titan 3C. T3B/C—Titan 3B/Centaur. Tot—Total. Tug—Space Tug. WTR—Western Test Range.

In the case of the Solar Orbit A, the payload cost using expendable launch vehicles would have been over the 1980's about $146 million. Similarly, the optimum launch vehicle costs to carry this payload into its orbit are $27 million again for the same time period and present technology. Again, using a detailed analysis of achieving the same scientific observations, using the Space Shuttle System, the payload cost of the Solar Orbit A would come to $126 million for the Space Shuttle System. The launch vehicle costs using the Space Shuttle System were $22 million (see Table 1.2). Overall, the savings *in this particular mission* of the Space Shuttle System break down into $20 million saved in the payload area and another $5 million saved in launch vehicle costs. Again, payload cost as well as launch vehicle cost savings occurred using the Space Shuttle System. In both areas the Space Shuttle System showed an advantage.

Finally, in the case of the Polar Earth Observatory, the expendable launch payload costs would have amounted to about $771 million over a twelve year program of active observations. The launch vehicle costs needed to carry these payloads to their orbits are $84 million. In arriving at both payload as well as launch vehicle costs on the expendable system, the technical capabilities of expendable launch vehicles were optimized to come to the least cost solution to fulfill this mission with expendable transportation systems (in all cases for current and new expendable technology).

TABLE 1.2.—INDIVIDUAL PROGRAM COST INCLUDING LOSSES, SOLAR ORBIT A—OSSA, LAUNCHED FROM ETR

[Dollar amounts in millions of 1970 dollars]

Fiscal year	Case A—Current expendable system					Case C—Space transportation system (Space Shuttle)								
						PI								
	PI (number)	Lv T3C/ (number)	PI Tot	Lv dir	Prog. dir	New (number)	Ref (number)	Lv (number)	Lv (number)	Lv Shtl (number)	Lv Tug (number)	Lv Tug exp (number)	PI Tot	Lv dir	Prog. dir
1974															
1975															
1976															
1977															
1978															
1979															
1980															
1981															
1982			$30	$3	$33								$25		$25
1983			67	8	75								56		56
1984	1	1	25	3	28	1				1	1		21	$10	21
1985															
1986															
1987			5	3	8								5		5
1988			13	8	21								13		13
1989	1	1	6	2	8	1				1	1		6	12	18
1990															
Total	2	2	146	27	173	2				2	2		126	22	148

NOTES

DIR—Direct. ETR—Eastern Test Range. Lv—Launch Vehicle. OSSA—Office of Science and Space Applications. PI—Payloads (spacecraft and instruments). PI-New—New payloads. PI-Ref—Refurbished Payloads. Prog—Program. Shtl—Space Shuttle. TAT 9/D/T—Thrust Augmented Thor Delta, T3C—Titan 3C. T3B/C—Titan 3B/Centaur. Tot—Total. Tug—Space Tug. WTR—Western Test Range.

In comparison, an optimum use of the Space Shuttle System making use of its larger payload bay as well as weight carrying capability, the payload costs performing the *same missions and functions* in terms of scientific information came to $438 million. The launch vehicle costs that go with this for the Space Shuttle System were $128 million, actally *larger* than expendable launch costs (see Table 1.3). (One should understand that this optimization or economic calculation was carried out in detail year by year, depending on the launch requirements of both expandable and Space Shuttle vehicles and again on a satellite subsystem basis.) Let overall in the third case quoted, of the Polar Earth Observatory the advantages of the Space Shuttle System are obvious: in the area of payloads there are $333 million of savings, offsetting amply launch vehicle cost increases of $44 million. In the latter case, obviously it is the payload costs that matter most, while based on launch vehicle costs only one might reject the Shuttle System.

One should take notice that for scientific and application programs about 78 missions (all civilian) were analyzed on this basis for the 1980's in a similar extensive manner. It goes without saying that programs of the Department of Defense were analyzed in similar detail.

It is not possible in these few pages to describe to the Committee the care as well as the conservatism in each of these steps that were taken in order to come up with a true and comprehensive evaluation of the Space Shuttle System when compared to expandable space transportation technology. It is a sad commentary that after an extensive period of time, some critics of the Space Shuttle System still resort to neglecting the economic analysis actually carried out.

TABLE 1.3—INDIVIDUAL PROGRAM COST INCLUDING LOSSES, POLAR EARTH OB—OSSA, LAUNCHED FROM WTR

[Dollar amounts in millions of 1970 dollars]

	Case A—Current expendable system					Case C—Space transportation system (Space Shuttle)									
						PI									
Fiscal year	PI (number)	Lv TAT9 /D/T (number)	PI Tot	Lv dir	Prog. dir	New (number)	Ref (number)	Lv T3B/C (number)	Lv (number)	Lv Shtl (number)	Lv Tug (number)	Lv Tug exp (number)	PI Tot	Lv dir	Prog. dir
1974															
1975															
1976															
1977			$22	$2	$24								$19	$8	$27
1978			67	5	72								54	20	74
1979	1	1	70	7	77	1		1					47	6	53
1980	1	1	81	7	88	1				1.0			45	10	55
1981	1	1	102	7	109		1			1.0			60	8	68
1982	1	1	78	7	85		1			1.0			44	10	54
1983	1	1	57	7	64		1			1.0			30	10	40
1984	1	1	60	7	67		1			1.0			29	8	37
1985	1	1	75	7	82		1			1.0			38	10	48
1986	1	1	51	7	58		1			.5			23	4	27
1987	1	1	37	7	44		1			.5			14	6	20
1988	1	1	37	7	44		1			1.0			14	8	22
1989	1	1	29	5	34		1			1.0			14	10	24
1990	2	2	5	2	7		1			1.0			7	10	17
Total	12	12	771	84	855	2	10	1		10.0			438	128	566

NOTES

Dir—Direct. ETR—Eastern Test Range. Lv—Launch Vehicle. OSSA—Office of Science and Space Applications. PI—Payloads (spacecraft and instruments). PI-New—New payloads. PI-Ref—Refurbished Payloads. Prog—Program. Shtl—Space Shuttle. TAT9/D/T—Thrust Augmented Thor Delta. T3C—Titan 3C. T3B/C—Titan 3B/Centaur. Tot—Total. Tug—Space Tug. WTR—Western Test Range.

I must emphasize therefore here again that the numbers as put forth by Dr. Lapp in terms of cost per pound of transportation have no practical significance and play no part in the economic analysis as suggested by Dr. Lapp.

Furthermore, I would like to point out the baseline program used by us as an input (514 Space Shuttle flights) already is a *scaled down version* of the program given to us by NASA and the Department of Defense, which actually included 624 Space Shuttle flights in the 1980's. The reduction from 624 to 514 Space Shuttle flights was made by us *independent* of the judgment of NASA and the Department of Defense in order to *exclude* 110 Space Shuttle flights that potentially contributed greatly to the economic advantage of the Space Shuttle but on which no clear convergence of opinions existed as to the *exact* scale of the Space Shuttle advantage, although everybody agreed that these advantages would be substantial. The missions were not excluded due to a lack of our confidence that they will actually happen in the 1980's but rather in order not to open the economic analysis to controversy with regard to the actual figures used and the great difficulty to estimate the economic advantages in these particular areas for the 1980's. This was a modification made on the *input* side.

Points 10 and 11: Here again Dr. Lapp is exploiting the situation which has been fostered by NASA and other agencies. The MATHEMATICA Report makes no secret of the fact that it considers the complete national United States space program, namely including NASA, non-NASA users of space, and the Department of Defense. We state and restate this fact again and again throughout the report. MATHEMATICA examined a series of space programs (called SCENARIOS) in which the military component for one measured in terms of Space Shuttle flights, varies from a low of about 30% to a hypothetical high of about 60%.

The Administration has chosen NASA for the task of developing a national capability for space transportation in the 1980's. Several commercial applications have come to my attention which actually would lead to quite a dramatic increase of civilian economic commercial space applications in the 1980's and beyond, that might overshadow any of the present considerations made by us for the analysis of the Space Shuttle System in terms of numbers of Space Shuttle flights. Our analysis shows that the Space Shuttle will be effective over a very broad spectrum of traffic mixes between the Department of Defense, NASA, commercial users and other government agency users, *provided* the total national United States traffic level remains at least in excess of about 30 Space Shuttle flights per year. Thus the Space Shuttle should serve the national purpose *whatever* the future may hold in terms of requirements for Space Shuttle flights. It is most astonishing that this particular characteristic of our analysis escaped Dr. Lapp's attention. Chapter 8 of our report is exclusively dedicated to the analysis of these different space programs. Literally hundreds of different space programs have been analyzed and alternative space transportation systems were competed against them. The summary reflects the overall objective results of this analysis.

Dr. Lapp, however, states, "If the Space Shuttle is intended to be a military vehicle, then I submit that it ought to be funded by the Department of Defense." In reply to this, let me state that the Space Shuttle is intended to be a general purpose vehicle which has military applications and is by no stretch of the imagination *exclusively* a military vehicle. As stated above in terms of numbers of Space Shuttle flights, over 70% of the traffic will be civilian, by NASA and by commercial users as well as other government agencies. If to this a demand for space transportation were added by European and other nations, this portion of the expected traffic of the Space Shuttle would be increased even more in favor of civilian space transportation. The very fact that the Space Shuttle System may lend itself as a worldwide means of space transportation, is all the more a reason why a civilian agency like NASA should develop the Space Shuttle System.

The national investment competence to develop advanced space vehicles has been made in NASA way back in the 1960's. Why Dr. Lapp believes that this now should be abandoned is far from clear. Also since the Space Shuttle will be the single major development program of NASA in the 1970's, I am confident that NASA will give its undivided attention to the task of seeing this program come in at the estimated costs.

By analogy, of course, the railroad systems of the United States also transport military cargo quite extensively. Yet, I have not seen any single notion advanced by economists or "adversary scientists" that the railroads should be run and taken over by the Department of Defense for that reason.

In Point 10 and the Table outlined therein, Dr. Lapp just makes a point in support of the economic analysis carried out by us by quoting that launch vehicle costs are only a minor part of the space program costs. Why he then concentrates in the previous points exactly on launch vehicle costs escapes my notion. In Point 11, Dr. Lapp quotes a $14 billion figure over the past *eight* years for the Department of Defense for space spending. For 12 years, the comparable time period, this would amount to $20 billion. In addition to this, Dr. Lapp forgets to adjust the dollars spent by the Department of Defense between 1964 and 1971 to constant 1970 dollars, which would increase the number of $20 billion just quoted by another substantial factor, in the neighborhood of 38% over a 12-year period. Thus, Dr. Lapp is actually implicitly making the case for a $27.6 billion Department of Defense program over a 12-year period by citing the record of the 1964-to-1971 period. Of the total space program used by us of $42 billion for expendable systems, this would then leave only $14.4 billion for all NASA, non-NASA and other civilian applications. Nowhere in our analysis were we so optimistic with regard to activities of the United States by agencis in the 1980's. It underlines the conservation of our analysis.

Points 12, 13 and 14. First of all, the Table reproduced in Dr. Lapp's testimony is not a result of our analysis but is an input given to our analysis. It represents the life-cycle cost comparison for a specific space program, a measure of the size of which is given by its content of 514 Space Shuttle flights in a 12-year period from 1979 through 1990. As a matter of fact, this particular space program was modified from the original input given to MATHEMATICA by NASA and the Department of Defense which included a Space Shuttle flight activity of about 624 flights for this same 12 year period. In adapting the 624 Space Shuttle flight program to the 514 Space Shuttle flights, we did exclude several missions which, if they came about, would be *particularly favorable* to the economics of the Space Shuttle System. We are more than happy to report and explain to Dr. Lapp more about this particular adaptation. Thus, the inputs used by us have already scaled down some portions of the national space activity within which and above which a Space Shuttle System would make sense to the United States on an *economic* basis.

We then examined a variety of space programs, varying in size from a low of 400 Space Shuttle flights to a high of 682 Space Shuttle flights in the January 1972 analysis (and in the analyses reported on in May of 1971 to a high of up to 900 Space Shuttle

flights). We have shown in these analyses, and the extrapolations made, that the Space Shuttle remains economically acceptable for the United States down to a low of about 360 Space Shuttle flights, and including payload cost, over a 12 year period from 1979 to 1990. We extended, furthermore, the space program of the United States beyond this period in accordance with general principles of economic analysis to see the effects of an extended use of reusable space transportation technology.

Dr. Lapp questions the $7 billion savings shown in the Table that he extracted from our analysis. In doing so, he questions the $42 billion space program in the current expendable category. Please bear in mind that this is the direct cost of the total national United States space program including NASA, non-NASA government agencies, commercial users and the Department of Defense for a 12 year period with an average of total funding of $3.5 billion per year. To give a better understanding of the physical distribution of these dollars over time, Figure 1 is included which shows the total life cycle costs comparing the Space Shuttle System and a new expendable system over the same time period for a 12 year space program. I am looking forward to explain to Dr. Lapp more of the detail and the backup of the numbers used in our analysis.

The numbers shown in Figure 1 as well as those just quoted can hardly be said to be unreasonable in the light of what we are *presently* spending for our national space program. In the comment made with regard to Points 10 and 11, I already cited numbers given by Dr. Lapp himself in support of the Department of Defense program, which, if we were to use Dr. Lapp's own figures, would amount to a Department of Defense program in comparable 1970 dollars of possibly as high as $27.6 billion out of the total quoted by us of $42 billion. No where in our analysis did we include such a Department of Defense program, although in some of our space programs we did increase hypothetical Department of Defense activities to be in line with these historical figures quoted by Dr. Lapp.

Rather, our Department of Defense space activity levels were roughly half of those which Dr. Lapp quotes on an historical basis. (Of course, again done in constant comparable 1970 dollars).

Dr. Lapp also mentioned RAND studies on aerospace cost prediction performance and states with pseudo authority that "Actual costs exceed the estimates by 80%", as though this were a well defined empirical law.

As a matter of fact, we did a detailed study also of the relevant RAND reports in house with MATHEMATICA. As far as possible, we did allow in our sensitivity analyses extensively for possibilities of cost overruns and learning effects within the Space Shuttle program. These analyses are reported extensively in both the May 31, 1971 report as well as the January 31, 1972 report by us.

Of the two RAND reports that Dr. Lapp references, the second RM-3061-PR, dates back to 1965 and does not reflect more recent experience. Dr. Lapp does not reference RAND report RM-6072-PR dated November 1969, which is the data base for RM-6269-ARPA, which he does reference. These later results, the significance of which escapes Dr. Lapp, predict that 1970 vintage cost estimating techniques should predict a cost within about 20% of the final numbers. Again, I would be more than happy to review with Dr. Lapp the present state of the art of cost estimation of advanced aerospace systems, including the potential uncertainties that remain in these areas. However, nowhere is the present state of the art close to the facts as reported by Dr. Lapp; the updated RAND results are quite different and contradict Dr. Lapp's testimony. In our own in-house evaluation, we basically concur with later RAND findings. This is not to say that substantial cost uncertainties do not exist in these major programs. As a matter of fact, NASA has allowed for $1 billion of contingency funding for the Space Shuttle above and beyond the quoted $5.15 billion research and development figure.

The numbers used in the MATHEMATICA Report for the non-recurring cost of the Space Shuttle are in excess of the contractors' numbers. The numbers being used by NASA in turn exceed in some areas the figures used by MATHEMATICA. It would appear, therefore, that NASA's numbers are realistic in the light of present day cost estimating capabilities. NASA's own past performance in the area of space transportation (and cost estimates associated with that) is actually remarkable, at least on an aggregate basis. In this connection, for example, it should be remembered that the Apollo program, overall, was undertaken at less cost than predicted at the beginning of the 1960's. Detailed examples to the contrary, of course occur within any agency, yet the overall aggregate performance of NASA in the most important program undertaken by that agency, namely, the landing of a man on the moon, the agency performed actually remarkably well. If similar attention is given by NASA to the development of the Space Shuttle and the potential tradeoff between capability, cost, and time, there exists no reason why NASA cannot perform similarly well within this new development program.

Point 16: Solid rocket motors in the present configuration chosen by NASA for the Space Shuttle booster can either be reused or expended. MATHEMATICA's analysis certainly shows that SRM reuse is not required for economic justification of this system and that the use of these boosters in an expandable mode is entirely satisfactory. The $10.5 million average cost number per launch could be *substantially lower* if one were to believe industry estimates as to the potential for reuse of the solid rocket motor boosters within the expected activity level of space transportation in the 1980's. If these economic analyses, when confirmed, show that resue of solid rocket motors is more advantageous, then so much the better for the Space Shuttle System.

It is important to point out that the new space transportation system in the form of the Space Shuttle is actually a *mixed reuseable and expendable space transportation system*. Any great advantages that theoretically could or might be claimed for expendable systems would therefore intrinsically also help the new Space Shuttle configuration chosen if the advantages of expendable propulsions were integrated in suitable form with the reusable orbiter now being developed by NASA. We actually performed a hypothetical analysts in which the expendable cost for both transportation systems (the Shuttle System as well as the "expendable" system) were assumed to be zero. In this case, through the reuse, updating, maintenance and repair capability of the Space Shuttle System, there is actually an *increasing* advantage and justification to develop the reusable *orbiter* shuttle. This result goes to indicate that hypothetical, dramatic launch cost savings on expendable systems will and might actually help the economics of the present Space Shuttle configuration.

Point 17: In our analysis, we examined in considerable detail the equal capability case in which the costs of operating a given space program using the Space Shuttle are compared to the costs of operating an identical program using expendable vehicles. Since the Space Shuttle, by its very nature, provides the *capability* for a manned space flight, it is necessary for a true comparison to include in the expendable system at least an economic earth orbital capability. The *lowest cost* way of achieving this capability with expendable vehicles in the 1980's is considered to be an adaptation of the present manned capability for best use in earth orbit; that is, to develop a Big G (Gemini) spacecraft and its associated launch vehicle.

The launch vehicles would be different from the Saturn technology, which turns out to be extremely expensive, as witnessed by Apollo launches, the complete mission costs of which change between $350 and $500 million per launch. Yet, Dr. Lapp calls for the maintenance of that system "We have the current expendable capability."). The vehicles in support of an earth orbiting manned capability are *not* presently developed. They would allow on the *expendable* space transportation system side for a low cost capability to perform a much reduced manned program in earth orbit (our funding level for the manned program varies between $250 to $350 million per year as compared to about a tenfold number in the 1960's). Therefore, for a true (minimum cost) comparison, the non-recurring costs associated with these vehicles must be included in an economic analysis comparing expendable as well as reusable space transportation systems. Other Office of Manned Space Flight space capabilities were considered, for example a space glider, which then were dismissed as uneconomic for a true equal capability comparison with regard to the Space Shuttle System. To repeat, the Big G program included for our equal capability analysis is the lowest cost alternative within the U.S. space program of the 1980's to Apollo technology for earth orbital missions.

Point 18: It is true that a program including both Big G and a Space Shuttle would involve a redundancy, just as a program including both the Space Shuttle and expendable launch vehicles would involve redundancies; the Big G program is an *alternative*, and at that the lowest cost alternative to be considered within *expandable* systems. Since the Big G and the Space Shuttle are not shown as components of the same space transportation system, Dr. Lapp's comment eludes me.

Point 19: In the analysis of the Space Shuttle and of expendable space transportation systems, we were keenly aware of the problem of accurately forecasting a traffic model for a period which is from 10 to 20 years away. We therefore chose to analyze the performance of the Space Shuttle for a wide range of potential space programs. The actual programs analyzed and compared run literally into several hundreds. How these programs were arrived at is described in detail in several chapters of the reports of May 31, 1971 and January 31, 1972. How this key portion of the analysis escaped Dr. Lapp's attention is beyond my comprehension.

Why Dr. Lapp should, furthermore, consider it immoral to carry Department of Defense traffic using a national launch system such as the Space Shuttle is not clear. Since NASA, a civilian agency, is developing the Space Shuttle, am I to understand that the Department of Defense should be precluded from using this system in the 1980's for reasons of economy?

Our work shows the Space Shuttle to be economically effective down to a traffic level of 30 Space Shuttle flights per year. Dr. Seamans has gone on record that the Department of Defense will plan to use about 20 Space Shuttle flights per year and we have reason to believe that the civilian non-NASA traffic, including other government agencies, earth resource applications, navigation, etc., will be at least 7 or 8 flights for the United States per year. Thus, the 30 flight total could include no more than 3 NASA flights per year, all this assuming that there is no traffic originating from overseas.

In conclusion, this hardly sounds like Dr. Lapp's "sharp step up" in NASA's space activity.

We also reduced, for example, the (formerly) Office of Space Science and Applications space program by up to 50% in the activity levels given to us in some of our space programs. We did not do this because we advocate such a reduction, but just to determine the sensitivity of the Space Shuttle System, as well as the minimum activity level which has to be supported and predicted in order to make the Space Shuttle System an economic choice. This activity level, using relatively conservative evaluation methods, is determined by us to be around 30 Space Shuttle flights per year.

Point 20: Dr. Lapp's new total of $25 billion for column 1 would give an average national expenditure of approximately $2 billion per year in the 1980's. The Department of Defense needs approximately $1.5 billion per year based on our extrapolation of DoD needs for the 1980's, rather than the historically high expenditure level quoted by Dr. Lapp earlier. To handle these requirements, therefore it would leave about $500 million per year for all civilian applications including NASA, other government users of space, as well as commercial applications for the United States non-military space program in the 1980's.

On the other side, if we were to take the advocated $25 billion by Dr. Lapp for scientific and application purposes in the space program in the 1980's for Space Shuttle applications, I could not but agree that we can define an aggressive and rewarding space program for the 1979 to 1990 period. The point is that with the Space Shuttle, we could do *twice* the activity advocated by Dr. Lapp. With regard to the economic analysis of the Space Shuttle System, this could not but yield a tremendous return on investment. It seems unlikely that there will be spent, however, $25 billion for the civilian U.S. space applications in the 1980's. If this were to come about it would just confirm the economic choice of a Space Shuttle System over and above the present expendable technology.

Point 21: The value of $8.1 billion is not a contractor number nor has Dr. Lapp's 1.8 factor any basis that we can discover (other than the old 1965 RAND study, which was updated since then by RAND to 1.2). Contractor estimates for the present Space Shuttle are rather in the neighborhood of $4 billion. Again, I would be more than happy to explain to Dr. Lapp the actual cost estimation that has gone into our economic analysis as well as that of NASA, and with which Dr. Lapp seems not to be familiar.

Point 22: The basis for Dr. Lapp's $20 billion forecast is not given. It escapes my notion on how Dr. Lapp possibly did arrive at this number other than by subjective estimates of his own and ignoring the facts. For example, why not $40 billion or on the other side, why not $4 billion? I would appreciate the opportunity to study and evaluate the foundation and backup for Dr. Lapp's figures.

Point 23: Nobody ever, at least within our group, contested Dr. Lapp's statement that it is not possible to justify the Space Shuttle economically on the basis of launch vehicle costs only, at least for space programs that historically we have experienced. The examples given in the opening remark amply document how the economic analysis was carried out and the role transportation costs play therein.

As to the future, Dr. Lapp's statement may actually prove wrong in fact. For example, the analysis of just one manned lunar exploration program yielded advantages for the Space Shuttle System of possibly $3 billion of additional savings *if* such a mission were to be undertaken, a mission of course not included in our economic analysis of the Space Shuttle System for reasons of conservatism.

Of course, the more the Space Shuttle System would be used, the more Dr. Lapp would contest it using his methodology based on increased total costs. (As a matter of fact, it is one aim of the Space Shuttle System to lead to a much enlarged use for economics and civilian purposes of space which will come about by the reduction of the mission cost of space programs). Thus, Dr. Lapp's economic analysis leads to this paradoxical result: *the more desirable a system is for economic reasons, the more it should be rejected.* The more productive activity a space transportation system supports, the worse it is for the nation.

Point 24: Only a very small portion of the payload economy claimed and used in our economic analysis for the Space Shuttle System is derived from the potential of making larger and heavier satellites. We suggest that Dr. Lapp study our report again as well as Aerospace Corporation's "Integrated Operations/Payloads/Fleet Analysis" Report, the primary source of input data for MATHEMATICA's analysis, which may be obtained from NASA's Scientific Technical Information Center at College Park, Md. The report is extensively referenced in our report. Dr. Lapp appears to have missed this most important reference.

In addition to this, of course, groups other than LMSC and Aerospace Corporation have looked at payload effects for reusable space transportation systems. In my earlier testimony, that is in the testimony given above, I quoted three corporations, namely Grumman Aerospace Corporation, TRW, as well as Messerschmitt-Bölkow-Blohm Space Division. It is my understanding that in addition to these corporations other studies of payload effects were made and are being done. As far as a satellite by satellite and space mission analyses competing Space Shuttle Systems against expendable systems go, these studies confirm in a broad sense the payload effect analysis used in our study.

This analysis was carried out satellite by satellite on a subsystem basis. As a matter of fact, there are indications in several subsystem areas that the Space Shuttle System could decrease substantially the costs of space programs below the actual inputs used in our economic comparisons. On the other side, for particular missions, for example communication satellites, the Space Shuttle System did contribute only in a very limited way to the overall economics of these programs within *present* technology. More to this later on.

Point 25: Dr. Lapp's statement with regard to payload failures and reliability of present launch vehicles is simply not based on facts. Statistical analyses of payload mortality rates are reported in Aerospace Corporation's report, referenced above. In addition to this, substantial and very extensive statistical information is available through various sources and reports existing to date. A study made by Planning Research Corporation, and recently updated, on detailed satellite failures formed the statistical basis for the analysis by Aerospace Corporation. Apparently the record is not known to Dr. Lapp.

As reported earlier in our testimony, one has to look also at the distribution of payload failures over time as well as the effect on the costs of payload development that are incurred due to the extensive testing procedures needed today before launch to assure their functioning in orbit. Yet, even with these extensive expenditures of funds to date, payloads, often of a very expensive nature, do fail.

To report here fully the potential of the Space Shuttle in this area obviously is not possible. Extensive historical experience and records exist in this area and I would like to draw Dr. Lapp's attention to this record.

Point 26: Dr. Lapp suggests or actually states that there has been no very detailed analysis of payload costs for the different launch systems. *Nothing could be further from the truth.* Again, I refer him to Aerospace Corporation's report referenced above, the major portion of which is a very detailed analysis of payload costs on a mission by mission and spacecraft subsystem by subsystem basis for future defense space applications as well as for 78 different and detailed civilian missions. It may be of interest to note that the direct cost of the Aerospace study was approximately $1.2 million.

Dr. Lapp furthermore makes the statement, "In the communications satellite field, there appears to be a trend towards smaller devices which grant greater flexibility and backup to the deployed system." In fact, however, the history of the Intelsat program completely contradicts this statement. Intelsat I (1965) had an in orbit mass of 37 kilograms. Intelsat II (1967) had an in orbit mass of 81 kilograms, Intelsat III (1968) had an in orbit mass of 127 kilograms, Intelsat IV (1971) had an in orbit mass of 700 kilograms.

For the benefit of Dr. Lapp, I would like to call his attention to an article now published by Wilbur L. Prithsard and Pier L. Bargellini of COMSAT Corporation, "Trends in Technology for Communications Satellites" published in *Astronautics and Aeronautics* in April, 1972 which goes very extensively in *current* trends of communication satellites ,that do not allow at all for particular Space Shuttle capabilities). The trends in communications satellites, using inputs such as those of COMSAT, do indicate that the mission model used for communications within our own analysis for the 1980's might be very low when compared to projections that are now already being made by individual companies for domestic as well as international communications systems for use in the 1980's. Planned future assignments for communication satellites in the higher frequency ranges (for example up to 30 GHz) invariably lead to a much expanded activity level for communication satellites in the 1980's and potentially for uses of the Space Shuttle System that, among others, could allow for "crude force" approaches to these higher frequency bands in communication systems. Yet, in our analysis no allowance was made for such potentials. As to the uselife of communication satellites, we did allow for the expansion of their physical life time of up to 7 years.

In conclusion, therefore, a mission by mission payload effect analysis was carried out, something that Dr. Lapp chooses to ignore, and with regard to particular technical statements on communications satellites, I do think Dr. Lapp's statements are not borne out by the historical facts and trends as well as possible projections into the future.

We did *not* reuse and refurbish satellites wherever this was shown *not* to be economic.

Points 28 and 29: These "results" are derived from Dr. Lapp's 7-page analysis. They represent a summary of "back of the envelope scratchings" of a nuclear physicist when compared to a major study taking nearly two years, costing over $2.2 million and undertaken by recognized experts in the aerospace and economics field. Of course, this "exercise" of Dr. Lapp's might still have been useful were it based on actual experience as well as understanding on how space programs are operated, by the different government agencies today in the United States or for that matter, in other countries. Yet, this understanding seems to be singularly lacking in this case.

Point 30: The finding of the Aerospace, LMSC and MATHEMATICA study effort is that a space program can be operated with the Space Shuttle for about 60% of the direct cost of operation using expendable vehicles.

As the price and use of gold, I might add that Dr. Lapp may be overstating the case for and value of gold.

As Dr. Lapp is kind enough to state, the space program cost of payloads using a Space Shuttle System average to about $8,000 per pound. The actual costs of payloads to date average between $20,000 and $40,000 per pound. The analogy chosen by Dr. Lapp is therefore particularly ill-suited for an understanding of the economics of the Space Shuttle System.

Point 31: Dr. Lapp makes a telling point when he suggests that NASA should recover what are now known as expendable launch vehicles with the same dexterity with which it proposes to recover the Space Shuttle boosters. As mentioned earlier, the Space Shuttle booster recovery is *not necessary* for an operational Space Shuttle System. It may be economically convenient. It could well be that when the design progresses to a further stage that this feature might be abandoned or it may be emphasized even more. The present Space Shuttle configuration chosen actually does not need to recover and reuse the boosters to be economically justified. It can do so, however.

In addition, I cited earlier an example where we hypothetically put the question of what the effects of a "zero cost" expendable launch technology would be with regard to using or not using the present Space Shuttle System. Of course, by having a "zero cost" expendable launch capability one has to incorporate the same technology also with regard to the *expendable* portions of the Space Shuttle as presently proposed by NASA. The astonishing and unique result is shown to be that the lower the expendable launch technology costs are, the higher the use and the usefulness of the reusable space orbiter now being developed by NASA will be with regard to its use in the 1980's. This is a unique feature of the new, mixed, reusable-expendable transportation system being proposed by NASA with its present Space Shuttle configuration. This example, of course, is hypothetical, but it shows the limit properties of the present Space Shuttle when compared to expendable systems within the overall space program of the United States in the 1980's.

Point 32: In conclusion, Dr. Lapp presents no substantial evidence based on facts to back up his "remarkable deviations." May I be allowed to observe at this point that if the "adversary scientist" concept is to fulfill any constructive and useful function, it has to be first based on a factual understanding on present operations as well as potential future operations being proposed by technological alternatives such as those represented by expendable versus reusable space transportation systems. Once this has been accomplished, it is then yet a very difficult task for the economist to go through the findings and results and inputs, adjust these for a suitable economic analysis and then to come up with conclusions that may hold up in the future, within a reasonable range of expected variations. This to the best of my knowledge, has been done by our study group which I was happy to direct and lead over the past two years in cooperation with Dr. Oskar Morgenstern. One of the most useful experiences for this Committee would have been if it had the opportunity to be present in some of many, many interchange meetings and discussions that took place between our research group, Aerospace Corporation, as well as Lockheed (LMSC) to assure independence and objectivity in this study effort.

There remain many areas with regard to the new Space Shuttle System that need further analysis, further confirmation, and further study. However, within the original two major questions, that is:

a. The value of a reusable space transportation system for the United States, and

b. The most economic Space Shuttle configuration to achieve the objectives originally posted by NASA.

I do not think that the economic analysis carried out for NASA is as conclusive as economic analyses ever can be in this area. The answers to both questions are:

a. Yes, a reusable space transportation system is economically advantageous to the United States, and

b. Among the many, many alternative Space Shuttle configurations analyzed by us, the parallel burn solid rocket motor 156 inch version of the thrust assisted orbiter shuttle is the most economic configuration.

As a result in part of the economic analysis performed on the Space Shuttle System, I do think that the original non-recurring cost for the Space Shuttle program was reduced by about $7 billion. This is a positive, constructive achievement within a rationally done economic analysis for the U.S. It is positive contribution in terms of determining a reasonable or economically justified level of non-recurring costs when balanced against potential future cost savings in the 1980's and beyond in the area of space transportation.

On the other side, I do think that the present economic analysis does show conclusively that no further savings in the non-recurring costs can be achieved without *substantially* reducing the national capabilities in performing space missions in the 1980's in the areas of science, of economic commercial applications, as well as in the areas of defense applications that presently are being done by the United States.

Even within the original objectives of the "adversary scientist" I do think that a much better performance and criticism could have been put forth that would lead to a constructive exchange in helping NASA to achieve the objectives within a national framework, the economic analysis does show conclusively the Space Shuttle to be a unique opportunity for the United States in the area of advanced technology with regard to space, space applications, and benefits to a wide range of areas that are in the interests of the United States.

Finally, in conclusion, let me repeat our often-stated willingness to present the results of the economic analysis, the methodology, as well as the inputs used for the economic analysis to any interested group of persons, be they critical or be they favorable to a Space Shuttle development. In this connection, it would be most useful to us to have alternative programs available for our further analysis. Yet, within reason, I do believe that these alternative programs might well be included in the many, many space programs analyzed by us when looking at a Space Shuttle in its relation to the present expendable transportation system.

BYRD SUPPORTS EQUAL RIGHTS FOR WOMEN

Mr. ROBERT C. BYRD. Mr. President, a recent column which appeared in the Beckley, W. Va., Post-Herald, under date of April 1, 1972, reflected an honest error inasmuch as it was based on earlier news media reports concerning my vote in the Judiciary Committee on the matter of equal rights for women. I responded to the column in a letter dated April 7, 1972, in which I stated a clarification of the committee vote. In order that the clarification may be made a matter of record, I ask unanimous consent that the April 1 column and my response thereto of April 7 be inserted in the RECORD.

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

BYRD DIDN'T VOTE ON RIGHTS BILL

(By Charlotte Fleshman)

West Virginia Sen. Robert Byrd must be in doubt as to whether his constituents favor or oppose equal rights for women.

He was not present and his position was not recorded when the Senate Judiciary Committee approved the Equal Rights Amendment to the U.S. Constitution so it could go to the Senate floor for action by all senators.

Byrd's supporters frequently comment that the thing they like about the Democratic senator is that he "says what he means and means what he says."

Well, perhaps he means what he says when he says what he means—to reverse the order—but obviously there are some things he contrives not to say and one of them seems to be how he feels about women's rights.

As one who believes strongly in equal rights for all Americans—regardless of race, color, creed or sex—and as one who believes that all legislators should vote—and how they vote be made public—on all bills, I find it disturbing that Byrd declined to stand up and be counted on this important issue.

I find it embarrassing, too. His failure to vote will be interpreted as his opposing equal rights for women. This will suggest to the rest of the United States that West Virginians don't want women to have equal rights.

There may be some West Virginians who feel this way, but I don't think that the majority of West Virginians are that unfair and prejudiced in their thinking. I resent Senator Byrd's contributing to our image as a backward state.

There are a few senators—perhaps Byrd is one—who view the Equal Rights Amendment as something desired only by a comparative handful of women activists.

This isn't true, of course. Women have fought for this constitutional amendment for 48 long years.

Equal rights for women have been sought even longer than that by the General Federation of Women's Clubs, which has never been accused of being radical!

Neither has the National Business and Professional Woman's Club and many other fine organizations to which hundreds of Beckley area women belong.

The Senate Judiciary Committee, except for the absent Byrd, voted 14–1 to permit a "pure" Equal Rights Amendment to go to the floor. The lone dissenter was Sam Ervin (D-N.C.), who has consistently opposed equality for women.

Of course he always claims to be "protecting" women, but in actuality the amendments he has proposed would render the Equal Rights Amendment meaningless.

Ervin's six destructive proposals were defeated in committee, but they and possibly other crippling amendments can be expected to be offered again on the Senate floor when debate begins any day now.

The only way that women will truly have equal rights is by Congress passing and three-fourths of the state legislatures passing an unadulterated amendment without any ifs, ands and buts attached.

The simple, concise and clear language of Senate Resolution 8 (identical to House of Representatives Resolution 208) is:

"Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

This is the way it was passed in the House by vote of 354–23 and this is the way it must be passed in the Senate if women are to have equal rights and become first class citizens.

Anyone who believes that this is "simple justice," as the late President Dwight Eisenhower put it, should urge senators to pass

the legislation in its exact present language, with no amendments tacked onto it, just as House members passed the Equal Rights Amendment.

Senators also should be urged to take a firm stand if a filibuster develops and to vote for cloture to end the filibuster.

The EDITOR,
The Beckley Post-Herald,
Beckley, W. Va.

DEAR SIR: I write to call attention to an error in the "Top O' The Morning" column of April 1, 1972, entitled "Byrd Didn't Vote on Rights Bill."

The column, written by Charlotte Fleshman, stated that it was "disturbing that Byrd declined to stand up and be counted" on the important issue of equal rights for women. According to the column, "He [Byrd] was not present and his position was not recorded when the Senate Judiciary Committee approved the equal rights amendment to the U.S. Constitution. . . . The Senate Judiciary Committee except for the absent Byrd, voted 14–1 to permit a 'pure' equal rights amendment to go to the Floor. . . ."

The column was correct about my absence, but it was in error in stating that I did not vote. When the Judiciary Committee voted, on February 29, to report the Equal Rights for Women Amendment, Senator Scott, Senator Kennedy, and I were not present. Both Senator Scott and I were at the White House attending a briefing on the President's trip to China. However, Senator Bayh cast Senator Kennedy's proxy in committee for the amendment, Senator Cook cast Senator Scott's proxy for the amendment, and, at the request of Senator Bayh, I was to be offered the opportunity of recording my vote later during the day—a courtesy often afforded by the Committee to members necessarily absent.

I was reached by a professional staff member of the Committee that afternoon when I returned from the White House and was informed of the rollcall vote and my ability to be recorded. I cast my vote for the amendment, and the official records of the Committee attest to this. The rollcall vote, therefore, which had previously been announced to the press as a 14–1 vote, was, in reality, 15–1.

I also voted for the Equal Rights for Women Amendment when it was passed by the Senate on March 22, 1972, by a vote of 84–8.

I can understand the honest error in Charlotte Fleshman's column, based, as it was, on earlier news media reports regarding the committee action. However, I shall appreciate your making this clarification of the committee vote available to your readers.

Sincerely yours,

ROBERT C. BYRD,
U.S. Senator.

CONCLUSION OF MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, is there further morning business?

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

The ACTING PRESIDENT pro tempore. Under the previous order, the Chair lays before the Senate the unfinished business, S. 3526, which the clerk will read by title.

The second assistant legislative clerk read as follows:

A bill (S. 3526) to provide authorizations for certain agencies conducting the foreign relations of the United States, and for other purposes.

AMENDMENTS NO. 1179

Mr. TUNNEY. Mr. President, I call up my amendments No. 1179.

The ACTING PRESIDENT pro tempore. The amendments will be stated.

The second assistant legislative clerk read the amendments, as follows:

On page 28, line 7, strike out "$77,000,000" and insert in lieu thereof "$88,027,000".

On page 28, beginning with line 21, strike out through line 5 on page 29.

Mr. TUNNEY. Mr. President, I ask unanimous consent that the Senator from Arizona (Mr. GOLDWATER) and the Senator from California (Mr. CRANSTON) be added as cosponsors of the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, my amendment is offered to restore $11 million to the authorization of America's Peace Corps. Mr. President, you will remember that the committee report provides for $77 million of the $88 million needed for the operation of the Peace Corps for fiscal year 1973.

As far as I know, no one died of smallpox in the United States last year. Only a few Americans know what smallpox means. It was eradicated from this country before most of us were born. But there are 17 Americans who know what smallpox means in Ethiopia. They have seen the broken families and the scarred faces that this terrible disease leaves in its wake. During the present month, these 17 Americans will return to this country after 2 years' service of testing for smallpox and vaccinating people against the disease. Ethiopia has requested new Peace Corps volunteers to take their places and continue this program.

If we cannot support the Peace Corps, this work may well come to an end.

After 22 years of professional experience in California, geologist Tom Hays joined the Peace Corps in June 1970, and was sent to Kenya. His core samples identify promising locations for wells which bring life-giving water to the developing crops of this arid East African country. The wells he has helped drill will stay behind him when he comes home—a permanent monument to his dedication and concern.

More importantly, he will say goodby to Kenyans who have benefited from his hard-earned knowledge. Like all Peace Corps volunteers, Tom Hays speaks the language of the people he works with and knows that the most important help he can give is to help people to help themselves.

If we cannot support the Peace Corps, Tom Hays may have to come home before his 2 years of service are completed. The investment America has made in him will be short-changed, but, more importantly, both he and the people of Kenya will have reason to question the seriousness of America's commitment.

In Colombia, campesino diets are short of protein because the people sell their chickens and their pigs at high prices for badly-needed cash. Eleven Peace Corps volunteers working with the Colombian Government have been trying to introduce the protein supplement, Colombiano. For a while their efforts met with failure. The staff member assigned to this project was Marcia Jaffe, who had been a volunteer herself in Colombia. From her experience with the life of the campesinos, she was able to demonstrate the use of Colombiano in the preparation of a dozen familiar dishes, which was the key to a successful nutrition project.

If we cannot support the Peace Corps, Marcia Jaffe and many like her may have to come home, and the Peace Corps work around the world will falter.

If we cannot support the Peace Corps, if we do not restore the $11 million cut from the Peace Corps budget, these illustrations will become reality around the world. Expressed in overall terms, the Peace Corps would be forced into some combination of the following alternatives:

First, reduce the number of trainees entering new and replacement programs from 5,500 to 3,875. This means that after January 1, 1973, Peace Corps will be unable to place any new volunteers in the field; or

Second, eliminate Peace Corps operations in five to eight large Peace Corps countries. This will result in the return of 700 to 1,200 volunteers and the elimination of 1,000 to 1,400 new trainees; or

Third, eliminate Peace Corps operations in 18 to 25 small to medium sized countries. This will result in the return of 700 to 1,200 volunteers and the elimination of 1,000 to 1,500 new trainees; and

Fourth, drastically reduce all program support operations below the minimum needed to sustain the volunteers.

I do not think any of us in the Senate would want to be the ones to make the choice among these alternatives, because they all will hurt. I know the American people do not want the Peace Corps diminished—a recent survey shows that only 5 percent of our citizens would agree with the action the committee has recommended. I cannot understand why this body would wish to take such action, and the committee offers, in its report, no explanation or justification for the cut. That is why I am asking today for full restoration of the moneys that were cut by the committee.

Mr. President, there has been an inordinate amount of concern and activity surrounding the Peace Corps budget in recent months. Only 6 weeks ago, we were toying with tiny amounts of money which would have had drastic consequences for Peace Corps operations in fiscal year 1972. Now we have before us authorizations for fiscal year 1973 and, again, we are toying with tiny amounts of money which will have drastic consequences for Peace Corps operations.

And truly, these are tiny amounts of money. May I quote to you today the gentleman from Alabama in the other body, who describes himself as a "fiscal conservative" and goes on to say that he hopes:

The Congress and the Committee will not be so pennywise and pound foolish as to fail

to take advantage of this wonderful kind of bargain with a tiny, tiny portion of the Federal budget.

Mr. BUCHANAN continues by suggesting that:

There might be some sentiment on the part of some of us to vote for an even higher level than the Peace Corps has requested in light of the number of volunteers there are who are willing to go and the number of requests there are which cannot be met.

Mr. President, these small amounts of money, relatively speaking, mean far more than the percentage of the Federal budget which they represent. For the Peace Corps is not just another program. The Peace Corps is not just millions of dollars, nor grants and contracts, nor "slots" and organization charts, nor interoffice memos, nor any of the all too familiar stuff of government here in Washington. The Peace Corps is, instead, 7,500 Americans at work today in 57 countries around the world. And the Peace Corps is the memory of almost 50,000 Americans who have been overseas, done their work, and returned.

The Peace Corps is, above all, a symbol of the commitment of this Nation and its people to helping others who have asked for our help. None of us would like to choose among the complex alternatives the $11 million cut will present to the Peace Corps, but we have an even harder choice before us today. If we allow the committee's action to stand, it cannot help but be interpreted by the peoples of the world, by Americans and by the volunteers themselves, as a vote of no confidence in the Peace Corps, both as an idea and as a program. This is a message I do not believe, I cannot believe, that the Senate would wish to convey.

Instead, I believe this body wishes to convey our full confidence in the Peace Corps and our full support for the work of the volunteers. By the amendment I am offering now with my cosponsors, Senator GOLDWATER and Senator CRANSTON, we will show the volunteers, our fellow citizens and the people of the world that we, too, believe in what the Peace Corps has done, and will do—with our help.

Mr. FONG. Mr. President, the Peace Corps has asked us for a modest increase in its fiscal 1973 budget so that it may send about 10 percent more volunteers to the developing countries who need our help to combat hunger, disease and ignorance.

Yet it is proposed here that the Senate authorize only $77 million for the Peace Corps—an $11 million cut for an agency which just recently had to absorb severe cutbacks in its 1972 funding. Most of us know about the valuable contributions of the Peace Corps; I am not sure everyone understands the drastic consequences this proposal will have.

With $11 million less, the Peace Corps will have to phase out its operations in up to a third of its host countries. Specifically, it will have to pull out volunteers from 15 to 20 smaller countries, or five to eight large countries—regardless of how urgently these countries need the skills and talents of the Peace Corps volunteers.

With $11 million less, the Peace Corps will also have to close its door in the faces of thousands of Americans who want to help others help themselves.

The Peace Corps plans to add 5,500 new volunteers in fiscal 1973 to fill the developing countries' requests for skilled manpower and to replace volunteers returning home after 2 years of service. With $11 million less, the Peace Corps could bring in only 4,000 new volunteers. Only one out of every eight applicants could be accepted into such a shrunken Peace Corps.

How shall the Peace Corps decide which 1,500 volunteers should not be sent? They are all needed for vital development jobs—nearly 2,500 to teach and to train future teachers, nearly 1,400 to combat hunger through agriculture and rural development programs, about 500 in health programs, and hundreds more in municipal and urban development, business and public management.

But let's say, for example, that the Peace Corps would be unable to send 1,500 education volunteers. This means that 1,500 schools would be deprived of Peace Corps volunteer teachers. Over a 2-year period—coinciding with the 2-year terms of service for volunteers—approximately 2½ million students would be denied the opportunity of being taught by Peace Corps volunteers skilled in teaching critical subjects such as science, mathematics and English.

In many countries there simply are not enough trained teachers to take the Peace Corps volunteers' places in the classrooms. If we deny the Peace Corps the funds it needs to send these teachers overseas, we are, in effect, condemning children to illiteracy for the next two school years—or perhaps their lifetimes.

This must not happen. I urge the Senate to assure the Peace Corps of the full $88 million it needs and deserves to carry out its work.

Mr. GOLDWATER. Mr. President, I am very happy to join with my colleague from California in presenting this amendment, and I sincerely hope that the Senate in its wisdom will accept it.

I have no concept of why the committee cut this sum. It was cut last year. It seems that the Peace Corps has a rather difficult time in Congress; but somehow or other they always seem to prevail, and I hope they will this time.

My friend from California mentioned a conservative Member of the House of Representatives being in favor of this proposal. I am a conservative Member of the Senate, and I have backed the Peace Corps ever since its inception. I would like to express the reasons, with which, I think, most Americans would agree.

First, I have been associated with an organization in Arizona that for years has been training people to do, at a higher level, precisely what the Peace Corps is doing at, let us say, a lower level—I am speaking of levels of pay—and has been extremely successful. We have established wonderful relations in every country to which those people have traveled, to work. We have had no complaints and no problems. The Peace Corps is patterned, to some extent, after that program.

Of course, Mr. President, at first some people thought of the Peace Corps as just another gimmick with a lot of political sex appeal, especially to younger people; but I assure the Senate that there are more older people in this program than younger people, and many more older people are wanting to work in it.

I think the concept is a perfect example of how this country was built and has come to be what it is. The country, from its very inception, has had people in it who wanted to help other people, not for monetary or material gain, but just for the satisfaction of teaching others how to use their hands, how to do things well that they cannot do so well at this time. That is precisely what the Peace Corps is all about.

I have traveled rather extensively in some of the smaller countries where the Peace Corps has been employed, and I find almost without exception complete agreement with what the Peace Corps is doing there, and a very happy feeling that they are there. I think, for example, of the efforts in one Central American country to teach the natives how to make concrete building blocks out of lava and concrete, and as a result they live better, and are going to live even better hereafter, because they are getting out of squalid straw huts and moving into strong, one-room or two-room buildings patterned after the buildings in our country.

I have been in other countries where the Peace Corps has been instrumental in teaching people how to use water. The use of water is not too important to many people in this country, but to one who comes from the desert, as I do, water and its use is most important; and I found in some of these countries people who had never realized that water could be applied to the soil; they felt the moisture had to be supplied by rain. It was a superstitious feeling, mostly; but now, through the efforts of the Peace Corps, they have become able to divert water for agricultural purposes.

In many small countries I have been in, the Peace Corps has taught people how to dispose of their sewage and waste water, making it possible for them to live better.

Mr. President, this is the kind of program I think the United States should follow. I have expressed this feeling negatively whenever I have voted against foreign aid. I would think it would behoove Congress to turn down this cut and to make the small addition that is requested, so that we can have an opportunity to improve our relations. Our relations abroad, where they are good, have been promoted more by American citizens working with the citizens of the particular country than by anything we have accomplished through the State Department or our ambassadors, our so-called emissaries of good will.

When we can, in effect, rub elbows with people in other lands, and show them how to do things with their hands that we do well and easily with ours, and how to figure things out that we do easily, so that as a result of the figuring they can live better, I see nothing but improved relations between that country and our own country—maybe not immediately,

maybe not at the top, but it starts at the bottom and bubbles up, and sooner or later our work with those people receives its dividend in the form of better relations.

I might cite as an example the Taiwan Chinese, who have been instrumental in teaching the people in some of the south African countries how to grow rice, something they did not know of before, and those in other countries how to grow rice better. As a result we have achieved at least four good friends in the United Nations, because of our association with the Taiwan Chinese, and the very fact that they took it unto themselves to take on this policy to, in effect, combat the efforts of the Red Chinese Communists who were beginning to infiltrate that part of the world.

I think this amendment is needed. I intend to do my utmost to see that it is passed by this body, and then I would hope that in any conference with the House of Representatives it could be retained.

I think we are making a big mistake in cutting out funds from one program that is working and has worked, and is producing for the United States those things that we have not been able to produce by the mere gift of money to other countries. You do not buy friendship; you earn friendship; and I do not know of a better way to earn friendship than to help somebody else, whether it be our own neighbors in our country or neighbors in other parts of the world.

Again I compliment Senator TUNNEY for having offered this amendment. I must say that, knowing his wonderful father as long as I have known him and the great respect I have for him, I am not at all surprised.

Mr. TUNNEY. I thank the Senator from Arizona for his very kind words.

As my father's son, I know the tremendous respect that my father has for the junior Senator from Arizona. I share his feeling of respect.

I know that all of us who have a concern about the increasing isolationist feeling in this country are deeply concerned about maintaining a high support level for a program such as the Peace Corps, which probably offers the very best in American aid abroad.

The Senator from Arizona talked about technical assistance. Yes, I think technical assistance is very important, too, and I support it.

It seems to me that the idea of young men and women dedicated to the principle of helping others and being prepared to go overseas, without significant financial remuneration, but just to give their time and their efforts for subsistence, represents an ideal that cannot be challenged. It represents the very best that our country can offer to the world.

I fear very deeply the neo-isolationism in this country which is emerging as a result of our involvement in Southeast Asia. I think that many people believe that we have so many problems at home that we should forget about some of the problems overseas; that we should just tend to our own knitting. I think that this attitude is a mistake. It represents an over-reaction to a severe crisis.

I think that to decrease the Peace Corps effort, which represents such a high American ideal of generosity and willingness to give of oneself and a willingness to allow the youth of America to furnish the regenerative quality that youth has to offer in the way of forming new ideals and new attitudes, would be shortsighted. It would not be in the interest of the United States.

I have had the opportunity, as has the Senator from Arizona, to visit Peace Corps men and women in outlying parts of the world, many of them living in very primitive conditions, many of them subject to the possibility of disease, many of them living in communities in which there is a certain amount of hostility to the United States; and I have had a chance to talk to them on location about the job they are doing.

Often, they are dissatisfied with the attitude of the government of the country in which they are working; they feel that perhaps not enough is being done for the people. Sometimes they feel satisfied that the government is doing everything it can with its limited resources. But always I have found, when I have talked to these young men and women, a sense of total commitment to give to the people of the areas in which they are working an opportunity to improve their lot in life.

I do not think there are any greater guardians of freedom and people who are more desirous of seeing those freedoms protected at home in the United States than are the Peace Corps men and women. More than 50,000 of them have come back from their duties overseas, and they have had an opportunity that perhaps they would not have had, if it had not been for the Peace Corps, to see the way peoples in foreign lands live. They have had the opportunity to contribute their own unique and individual capacity to improve the lives of these people in other lands. When they come back to the United States, these young men and women are able to contribute far more to the political process of this country because of that experience abroad.

I must say that I agree 100 percent with the Senator from Arizona when he says that he thinks that this is the best type of foreign aid program we could have. I sincerely appreciate the fact that he has cosponsored the amendment. I know of his very deep and long-abiding interest in the welfare of the Peace Corps.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SCHWEIKER. Mr. President, I rise in support of the amendment of the Senator from California. I believe that the Peace Corps is a worthwhile expenditure of American effort and resources.

I believe that too often our country is known for some of our military efforts, some of our military postures, some of our military actions. The Peace Corps is one of the important ways in which America can project an image, a profile, of some of its deep-rooted heritage, in terms of the individual American, his sincerity, his dedication to sacrifice, his belief in working for his fellow man.

I think our young people in this way project an image far better than any official action we could perform or any official program we could maintain. This person-to-person, man-to-man contact is one of the more effective things, albeit perhaps less sensational and obviously lower profile, than the many other things we do around the world. It is one of the best investments we can make.

I believe there are two advantages to this kind of activity. First, I think it lets the average American participate in foreign policy in a very small, perhaps fragmented, but very important way. It lets him put our best foot forward in a way that can only be received favorably by the people who are utilizing his help and support.

So I think this is a way of letting Americans express themselves individually, on a country-by-country basis. It can only add up as a plus, as an asset, and as a credit to our country.

Second, I think it shows that because it is not involved in something of an offense nature, because it is not involved in something of an intelligence activity, because it is not involved in the things with which Americans have become too familiar, it is a unique way, perhaps the only way, to convey honestly the feeling of many Americans about our world and the countries in which we live.

So I commend the Senator from California. I ask unanimous consent that my name be added as a cosponsor of his amendment, if he has no objection. I shall support his amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Who yields time?

Mr. TUNNEY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. TUNNEY. I ask unanimous consent that the time be equally divided.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FULBRIGHT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FULBRIGHT. Mr. President, this is not a new subject. I greatly appreciate the statement of the Senator from California and the Senator from Arizona, but I am bound to remark that what they have said about the Peace Corps is about 10 years out of date. The original idea of the program was, of course, for young men and women to go abroad, sacrificing their time and energies for an ideal. The program was initiated by President Kennedy, who was a symbol of youth, of devotion, and sacrifice to our country.

The fact is that the character of the Peace Corps has changed. Today it is just another technical assistance program manned, as the Senator from Arizona admitted, primarily by mature artisans and craftsmen. It is just one more technical assistance program.

Mr. President, I am a little bit tired of having everyone who seeks to do anything to bring about a saving of Federal expenditures, to do anything calculated to bring our budget back under control, being labeled as a neoisolationist. It has become fashionable for spokesmen for the administration and others to characterize everyone interested in restoring the integrity and the solvency of the United States as being a neoisolationist. That word is obviously a pejorative one. I resent its use in connection with efforts to try to reestablish some degree of solvency and responsibility on the part of the Government of the United States. I do not think that those interested in balancing the Federal budget are neoisolationists. I could just as well say of those who wish to perpetuate the war in Vietnam, the Peace Corps, or the USIA, that they are imperialists, if we want to bandy about bad words. These programs certainly contribute a form of intervention abroad.

Mr. President, the Peace Corps, which marked its 10th anniversary last year, bears little resemblance to the one that Congress established in 1961. I believe it is an idea whose time is past and Congress should face this fact this year, not next, as has been recommended.

The Peace Corps is no longer strong enough, either at home or abroad, to warrant its continuation, even as a lesser branch of a new agency. Except for a recent upturn, Peace Corps recruiting has been steadily falling off, showing a waning interest on the part of our citizens, especially our younger citizens, in this kind of activity. Yet, at the same time, the Peace Corps remains too visible a symbol of the American presence overseas and is suffering from that association. Last year, it was disinvited again from Guinea and, more ominously, terminated by Bolivia, Panama, and Guyana—the first Latin American countries to do so.

A more fundamental question, however, concerns the allocation of our resources. The maintenance of a Peace Corps volunteer costs the American taxpayer an average of $10,000 a year. That is a great deal of money per person. I seriously question whether a developing country, given a voice in spending such money on a trained AID technician, or on the education and training of its nationals in the United States, or for engaging a U.S. visiting professor, or getting a Peace Corps volunteer, would willingly opt for the latter.

Mr. President, I have long regarded the Peace Corps as primarily an educational program for young Americans. I supported it largely on those grounds in the early days, when it was first founded. Its accomplishments in the developing world have been intangible and probably insignificant. At a minimum, the Peace Corps has done no harm. At a maximum, it has returned more aware, involved, and sensitive citizens to us. Those were in the early days when young people were the principal recruits. But, in view of the demands on our financial resources and the many unmet domestic needs, that is no longer good enough. Not only the developing countries but we ourselves can use the funds authorized in this bill for more urgent tasks here at home.

It is time now, before the Peace Corps image becomes tarnished or so altered that it belies its name, to disband it with a pat on its back.

Moreover, the United Nations has elevated the idea of volunteer service to a higher level, giving our citizens the opportunity to enlist in truly multinational teams. To the extent that the Peace Corps idea still has any validity, that is the direction in which it needs to move.

Mr. President, as my colleagues know, the Peace Corps has been merged into an organization called Action. As I have already said, the character of the Peace Corps has, I think, substantially changed from what it was originally.

However, I recognize, just as in the case of the USIA, that the sentiment of this body is such that, for fear of being accused of being neoisolationist, the great majority, I suppose, will support it. It is the easy way of doing things, to go along with the recommendations of the administration and avoid any controversy about a decision to pull back from an established program.

Mr. President, personally, I see no reason for a record vote. However, I shall vote against it in either case, but I am quite sure that the Senate will support the amendment. I base that cn the actions of last Monday when the Senate refused to take away $45 million from an equally questionable and dubious program.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 8140) entitled "An act to promote the safety of ports, harbors, waterfront areas, and navigable waters of the United States," requests a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. GARMATZ, Mr. CLARK, Mr. LENNON, Mr. PELLY, and Mr. KEITH were appointed managers of the conference on the part of the House.

The message also announced that the House had passed the joint resolution (H.J. Res. 1174) making an appropriation for special payments to international financial institutions for the fiscal year 1972, and for other purposes, in which it requests the concurrence of the Senate.

HOUSE JOINT RESOLUTION REFERRED

The joint resolution (H.J. Res. 1174) making an appropriation for special payments to international financial institutions for the fiscal year 1972, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

The Senate continued with the consideration of the bill (S. 3526) to provide authorizations for certain agencies conducting the foreign relations of the United States, and for other purposes.

Mr. TUNNEY. Mr. President, I yield 5 minutes to the distinguished Senator from Illinois.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, I support the amendment to restore funds for the Peace Corps. I support the amendment without reservation. I support it enthusiastically, and I urge my colleagues to support it. Mr. President, I think the vote on this issue will give resounding evidence of the Senate's support for the Peace Corps.

The Peace Corps has long since proven its value, and for this reason it does enjoy wide public support. I cannot detect any degree of opposition to the Peace Corps. It does not matter whether I go to a college campus, a senior citizens' center, or a nursing home, I have always found universal support for the whole concept and idea of the Peace Corps.

If the Peace Corps is to continue to do its job effectively, it requires adequate funding. Compared with other agencies and programs in the foreign affairs field, the Peace Corps has asked for a relatively small budget, and is entitled by its performance to have this budget.

Not only does the Peace Corps offer a measure of hope and assistance to many developing countries, but it also shows the concern of Americans for the well-being of these countries.

A side benefit, which is very important to our own Nation, is the opportunity the Peace Corps provides to many idealistic Americans of all ages and all backgrounds to serve mankind in a practical manner. These Americans, after their period of Peace Corps service abroad, then return to the United States enriched by their experience and with greater understanding of the peoples of the developing countries. With their broadened experience in dealing with people, and with the determination to make some useful contribution to social, educational and economic development, large numbers of them choose to carry on their good work here in our own urban and rural areas. They become a great asset for progress and understanding here at home.

From my own State of Illinois, alone, there are now 443 men and women serving in such countries as Fiji, Tunisia, India, Malaysia, and Liberia, helping the people of these countries to improve their schools, increase their agricultural production, reduce disease, and generally build the basis for a more peaceful world society. Their work is vital—not only to the people of those countries—who see the volunteer as representing the concerns of all Americans for the betterment of their lives—but equally to the individual volunteer who finds purpose in helping others. It is significant to note that the most recent sampling of public opinion concerning the Peace Corps showed that 93 percent of Americans feel that volunteers become "more useful citizens" as a result of their service.

Probably no other Member of the Senate has visited more Peace Corps volun-

teers in the field over the past decade than I, having been privileged to study Peace Corps volunteers at work in many countries of Latin America, Asia, and Africa. I can personally vouch for their devotion and energy under conditions of severe hardship. They ask but little and they receive but little; but they give of themselves a great deal.

I know of no better investment that we can make abroad. I hope that my colleagues will join with me in a strong vote of confidence for one of the finest overseas efforts that our country has ever undertaken.

Mr. President, I would like simply to recount the experience of one young person I met in Uruguay who represented the Peace Corps in a remote village many miles from major urban areas. He was probably the first American that was ever in that locality. I asked him how he happened to join the Peace Corps.

He said:

I will have to admit that I did not join it essentially to help these people, but to find myself. I had not counted for very much at home, in my family, or in the community. I thought I might find myself in this program. And I surely have. Every day I get up and walk down the village path and the villagers look at me, and when I come back after 12 hours of work I realize that I am the United States of America as far as these people are concerned.

I think the experience of that young man is repeated tens of thousands of times. It does not matter whether it is a representative of the Peace Corps in India or in some other area of the world hundreds of miles from an urban area, where they have to walk for 7 days to get to their outpost. They are out there to help people. There is no glamour in this. This is work for very little compensation. However, the work of these young people is of great benefit to the United States of America and to the world. This is not a one-way street. We have enriched ourselves as a nation with the human resources we have developed equally with the benefits we have provided to other nations.

Mr. TUNNEY. Mr. President, I thank the Senator from Illinois for his statement. I think it is very clear that there is wide support for the Peace Corps all across this country.

Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. TUNNEY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The Senator does not have enough time remaining under the unanimous-consent agreement to have a quorum call.

Mr. TUNNEY. Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator from California has 13 minutes remaining.

Mr. ROBERT C. BYRD. Mr. President, how much time does the other side have remaining?

The ACTING PRESIDENT pro tempore. Thirty-four minutes remain to the other side.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time for the quorum call be equally divided between both side.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TUNNEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, I wish to make a few points in response to the remarks of the distinguished chairman of the committee, the Senator from Arkansas.

I have been advised that in the past no country has asked Peace Corps volunteers to leave, although in previous years on occasion there have been requests by host countries to have Peace Corps volunteers leave. In the past year no such request has been made. As a matter of fact, there are new countries asking for Peace Corps volunteers.

Mr. FULBRIGHT. Mr. President, will the Senator yield?

Mr. TUNNEY. I yield.

Mr. FULBRIGHT. The fact of the matter is, the young people are the ones who speak out and say what they think. These are nice, demure, pleasant craftsmen who are in the technical assistance program. So if you want to give them a good agricultural county agent, a tinsmith, or whatever, they will take them. I do not object to that. But we are already doing this under the existing technical assistance program.

The point I wish to make is that the Peace Corps program is costing $10,000 a person and our country cannot afford it any longer, because our needs at home are so urgent. Nobody is arguing that without regard to the cost to the United States it would not be acceptable or that it is objectionable. I supported this program in the beginning, but the budgetary situation is such that we cannot afford $10,000 a person to go over there to take ideas of the good life to underdeveloped countries. I think we need them here.

I do not like the idea of the Senator accusing anyone who wants to make a savings in the running of the program of being neo-isolationist, or in the case of USIA of being neo-isolationist.

Mr. TUNNEY. This Senator did not say that. I did not call the Senator neo-isolationist. I believe it would be most inappropriate to cut back on the Peace Corps, but I did not call the Senator neo-isolationist.

Mr. FULBRIGHT. The implication is clear that that is what the Senator meant.

Mr. TUNNEY. I meant no such implication, and the Senator knows that I have supported his position in Southeast Asia. I have been a consistent and strong supporter of that position. We have very similar positions on American efforts in Southeast Asia.

So I am in no way accusing the Senator of being a neoisolationist. I admire many of his views immensely, but this is one area in which I respectfully disagree.

Mr. President, I would like to add one last word with regard to the Peace Corps. The average age of the Peace Corps volunteer since 1961 has gone up only 1 to 2 years. My understanding of what the Senator said is that we are dealing with a lot of old men or middle-aged men and women in the Peace Corps. That is not true. I understand that the average age since 1961 has gone up only 1 or 2 years. In 1972, 34,000 applicants are anticipated. Only one-sixth of those applicants can be accepted. It is clear there has been marked enthusiasm for the Peace Corps by the young people in this country.

With the average age being only 1 to 2 years greater, we can see that the Peace Corps has a dramatic impact on young people and they are most desirous of being able to participate in Peace Corps activities overseas.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me for 1 minute?

Mr. TUNNEY. I yield, if I have time remaining.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

PERMISSION FOR COMMITTEES TO HAVE UNTIL 5 P.M. TODAY TO FILE COMMITTEE REPORTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees may have until 5 p.m. today to file committee reports.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NATIONAL INSTITUTE OF ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES

Mr. ROBERT C. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 13591, which I understand has been cleared on both sides of the aisle.

The ACTING PRESIDENT pro tempore (Mr. STEVENSON) laid before the Senate H.R. 13591, to amend the Public Health Service Act to designate the National Institute of Arthritis and Metabolic Diseases as the National Institute of Arthritis, Metabolism, and Digestive Diseases, and for other purposes, which was read twice by its title.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The bill was ordered to a third reading, was read the third time, and passed.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

The Senate resumed the consideration of the bill (S. 3526) to provide authorizations for certain agencies conducting the

foreign relations of the United States, and for other purposes.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time on the rollcall vote which is about to occur not exceed 30 minutes today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I think I should explain this request for the RECORD because it is a little unusual. If my calculations are correct, from the standpoint of mathematics we are just barely operating with a quorum today and if we stick with a 15-minute rollcall vote we may not have a quorum.

The ACTING PRESIDENT pro tempore. The Senate will resume consideration of the amendment by the Senator from California.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from California yield to me for 1 minute?

Mr. TUNNEY. Mr. President, I yield.

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, this rollcall vote which is going to occur will be the only rollcall vote today. The amendment by Mr. STENNIS then will again be the pending question before the Senate. No votes will occur thereon today.

There will be some statements today by Senators at least one of which will be somewhat lengthy. So the Senate will be in session for another 2, 3, or 4 hours today.

I thank Senators for their cooperation.

Mr. KENNEDY. Mr. President, I support the amendment by the junior Senator from California to provide for an increase in the level of authorization for the Peace Corps in fiscal year 1973.

Vietnam, the alienation of the Nation's youth, and the directions being taken by the Peace Corps under this administration all joined in decreasing Peace Corps attractiveness. Over the past 3 years, the result showed in the decline of volunteers and trainees. A partial reason for the decline may well have been the submersion of the Peace Corps into the new Action agency, its identity blurred by the reorganization.

But perhaps most important to the malaise of the Peace Corps has been the continual question of whether funds would be cut, whether salaries would be paid, whether the level of volunteers requested in each country would be met.

Last year, the Peace Corps had to live within a budget that was changed three times by the Congress.

The result was a confused and frustrating year for everyone concerned. It also meant a loss of morale, a question in everyone's mind of what programs could be maintained, what programs had to be reduced.

Now it is time to look at the Peace Corps in comparison to relations to the priorities of our relations with other nations. How does the $88 million compare to the more than $800 million requested for military grants? Which is more effective in promoting development, the $88 million for the Peace Corps or the more than $500 million in military credit sales?

This year's request of some $88 million compared to last year's authorization of $77.2 million represents a reasonable attempt to meet new requests from host countries and to meet the rising numbers of volunteer applications. And it should be noted that the request still is substantially below the fiscal year 1971 authorization of $98.8 million and below the previous 4 years' authorizations as well.

Essentially, the Peace Corps remains a positive force for change around the world and a positive force for change here at home, as well. Today, there are 50,000 returned volunteers in the United States. They understand what underdevelopment means, not in economic statistics solely but in the human terms of the families they know in the favelas and barriadas of the world.

They understand that we cannot, nor should we, close our eyes to the needs of others.

The Peace Corps continues to stir the sense of idealism in this Nation as no other program has been able to do. President Kennedy's greatest satisfaction with the Peace Corps was in permitting more young Americans to use their skills and their dedication in the cause of freedom and development around the world.

Also, I would urge the Peace Corps to consider ways in which it can strengthen the international role of the Peace Corps by participating in international development teams, by permitting Peace Corps volunteers to operate as part of international volunteer organizations of the UN. and by continuing its program of encouraging the volunteer to operate fully under the direction of host-country institutions.

President Kennedy was convinced more than a decade ago that the young people of this country were ready to "join in a worldwide struggle against poverty and disease and ignorance." The record of the Peace Corps during the 1960's justified his optimism. And I would hope that the Congress will give young Americans the same opportunity during the 1970's.

I urge the adoption of the pending amendment.

Mr. TUNNEY. Mr. President, I do not have anyone who wants to speak on this side of the aisle so I am perfectly willing to yield back the remainder of my time if the Senator from Arkansas is prepared to yield back his time so that we may get to the vote.

Mr. FULBRIGHT. I yield back my time.

Mr. TUNNEY. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from California. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alabama (Mr. ALLEN), the Senator from Indiana (Mr. BAYH), the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), the Senator from Missouri (Mr. EAGLETON), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. ERVIN), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Hawaii (Mr. INOUYE), the Senator from North Carolina (Mr. JORDAN), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Wyoming (Mr. MCGEE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Alabama (Mr. SPARKMAN), are necessarily absent.

I also announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Montana (Mr. MANSFIELD), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Georgia (Mr. TALMADGE) are absent on official business.

I further announce that if present and voting the Senator from North Dakota (Mr. BURDICK), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Georgia (Mr. GAMBRELL), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Kentucky (Mr. COOK), the Senator from Arizona (Mr. FANNIN), the Senator from Florida (Mr. GURNEY), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), the Senator from Iowa (Mr. MILLER), the Senator from Kansas (Mr. PEARSON), the Senators from Ohio (Mr. SAXBE and Mr. TAFT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Pennsylvania (Mr. SCOTT) is absent by leave of the Senate on official business.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from South Carolina (Mr. THURMOND) is absent because of illness in his family.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from New York (Mr. BUCKLEY), the Senator from Oregon (Mr. HATFIELD), the Senator from Ohio (Mr. TAFT), and the Senator from Texas (Mr. TOWER) would each vote "yea."

On this vote, the Senator from Iowa (Mr. MILLER) is paired with the Senator from South Carolina (Mr. THURMOND). If present and voting, the Senator from Iowa would vote "yea" and the Senator from South Carolina would vote "nay."

The result was announced—yeas 47, nays 9, as follows:

[No. 177 Leg.]

YEAS—47

Aiken	Church	Griffin
Anderson	Cooper	Hansen
Beall	Cotton	Hart
Bentsen	Cranston	Hruska
Bible	Curtis	Jackson
Boggs	Dole	Javits
Brock	Dominick	Jordan, Idaho
Case	Fong	Kennedy
Chiles	Goldwater	Magnuson

Mathias	Proxmire	Stevens
Metcalf	Randolph	Stevenson
Montoya	Roth	Symington
Nelson	Schweiker	Tunney
Pastore	Spong	Weicker
Pell	Stafford	Williams
Percy	Stennis	

NAYS—9

Allott	Byrd, Robert C.	Smith
Bennett	Ellender	Young
Byrd, Harry F. Jr.	Fulbright	
	Long	

NOT VOTING—44

Allen	Gurney	Mondale
Baker	Harris	Moss
Bayh	Hartke	Mundt
Bellmon	Hatfield	Muskie
Brooke	Hollings	Packwood
Buckley	Hughes	Pearson
Burdick	Humphrey	Ribicoff
Cannon	Inouye	Saxbe
Cook	Jordan, N.C.	Scott
Eagleton	Mansfield	Sparkman
Eastland	McClellan	Taft
Ervin	McGee	Talmadge
Fannin	McGovern	Thurmond
Gambrell	McIntyre	Tower
Gravel	Miller	

So Mr. TUNNEY's amendment was agreed to.

Mr. TUNNEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider a nomination which was reported earlier today by the Committee on Armed Services.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER (Mr. CHILES). The nomination will be stated.

U.S. AIR FORCE

The second assistant legislative clerk read the nomination of Lt. Gen. Russell E. Dougherty to be a general.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR).

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded

The PRESIDING OFFICER. Without objection, it is so ordered.

Now that the amendment of the Senator from California has been disposed of, the Senate will now return to the consideration of the amendment by the Senator from Mississippi (Mr. STENNIS).

HOUSE BILL PLACED ON CALENDAR

Mr. LONG. Mr. President, H.R. 13334 passed the House by a vote of 271 to 56. It creates one new position in the Treasury Department, the post of Deputy Secretary, and makes three other positions in the Treasury Department subject to confirmation by the Senate.

The Committee on Finance is presently working on H.R. 1, the administration's welfare expansion bill. Rather than turning aside to other matters, we are going to continue to work on H.R. 1. However this bill is needed and we believe that this matter should go directly to the calendar.

Mr. President, I ask unanimous consent that a summary of H.R. 13334 be printed in the RECORD.

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

SUMMARY OF H.R. 13334

Deputy Secretary.—The bill would establish one new position in the Treasury Department, the post of Deputy Secretary of the Treasury, to be compensated at level II in the Executive Pay Schedule ($42,500). This new position would be filled by Presidential appointment, subject to the advice and consent of the Senate.

Deputy Undersecretary.—It would also designate two positions in the Treasury as Deputy Undersecretary, compensated at level IV in the Executive Pay Schedule ($38,000). These are not new positions, but a redesignation of existing positions. In the future, however, they would be filled by Presidential appointment, subject to the advice and consent of the Senate, rather than being appointed by the Secretary.

Assistant Secretary.—The bill also would elevate the position of Assistant Secretary for Administration (presently level V, $36,000) and appointed by the Secretary under the Civil Service System to level IV ($38,000), appointed by the President with the advice and consent of the Senate.

Undersecretary.—The bill would authorize the present position of Undersecretary to be designated "Counselor", if the President so chooses.

Compensation.—Two of the positions being elevated involve pay increases. In addition, the present position of Undersecretary which would be vacated if the incumbent is designated Deputy Secretary may be filled from within the Department. The bill provides that the higher salaries associated with the new positions may not be paid to any incumbent prior to January 21, 1973.

Number of Executive level positions in various departments

State	41
Defense	50
Justice	24
Health, Education, and Welfare	23
Transportation	26
Interior	20
Commerce	20
Housing and Urban Development	20
Treasury	19
Agriculture	17
Labor	13

Mr. LONG. The Committee on Finance has authorized me to make the motion that the committee be discharged from further consideration of the bill so that it might be placed on the Senate calendar.

Mr. President, I move that the Committee on Finance be discharged from further consideration of H.R. 13334.

The motion was agreed to; and the bill was placed on the calendar.

SPECIAL PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS, 1972

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 748, House Joint Resolution 1174, with the understanding that there be a time limitation for consideration of this measure of not to exceed 30 minutes, the time to be equally divided between the two assistant leaders or their designees.

Mr. GRIFFIN. With the understanding that at the expiration of that time, the amendment of the Senator from Mississippi (Mr. STENNIS) will again become the pending business.

Mr. ROBERT C. BYRD. Yes, of course.

The PRESIDING OFFICER (Mr. CHILES). The joint resolution will be stated by title.

The second assistant legislative clerk proceeded to read as follows:

H.J. Res. 1174, making an appropriation for special payments to international financial institutions for the fiscal year 1972, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

The Chair hears none, and it is so ordered; and, without objection, debate will be limited to 30 minutes as requested by the Senator from West Virginia (Mr. ROBERT C. BYRD).

Mr. ROBERT C. BYRD. Mr. President, I yield 5 minutes to the able Senator from Virginia (Mr. HARRY F. BYRD, JR.)

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 minutes.

Mr. HARRY F. BYRD, JR. Mr. President, this legislation would appropriate $1.6 billion to adjust United States balances in international lending agencies to accommodate the recent devaluation of the dollar. The recipient agencies are the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Development Association, and the Asian Development Bank. In each, the United States commitment is stated in terms of gold, thus, when the gold price in dollars was raised, more dollars must be supplied.

Mr. President, this legislation results from the formal devaluation of the dollar. I did not oppose the formal devaluation of the dollar for the simple reason that the dollar already had devalued itself.

Over the years, and in recent months and weeks, the dollar has become a less valuable currency. As I have said, the dollar has actually devalued itself and the formal action taken by the President and Congress merely recognizes what has taken place.

The reason the dollar has devalued itself, and the reason it was necessary to devalue it formally, is due to the reckless and, in my judgment, irresponsible fiscal policies of the United States Government over a period of years.

Mr. President, less than 15 years ago, U.S. gold holdings were $22.8 billion. Total assets at that time, as of December 1, 1957, in the United States, were $21.8 billion. Liquid liabilities at that time, less than 15 years ago, were $15.8 billion.

What is the situation today?

The situation today is that the total assets of the U.S. Government available to apply against foreign demands are roughly $12 billion. Yet our liquid liabilities to foreigners total $65 billion.

During the past fiscal year, the Federal funds deficit of the U.S. Government was $30 billion. The Treasury Department estimates that for current fiscal year ending next month, the deficit will be $45 billion.

The PRESIDING OFFICER. The time of the Senator from Virginia (Mr. HARRY F. BYRD, JR.) has expired.

Mr. ROBERT C. BYRD. I yield an additional 3 minutes to the Senator from Virginia (Mr. HARRY F. BYRD, JR.).

The PRESIDING OFFICER. The Senator from Virginia is recognized for 3 minutes.

Mr. HARRY F. BYRD, JR. The projection for the upcoming fiscal year is that the Federal funds deficit will be at least $36 billion.

Mr. SYMINGTON. Mr. President, will the Senator from Virginia yield ?

Mr. HARRY F. BYRD, JR. I am glad to yield to the Senator from Missouri.

Mr. SYMINGTON. I congratulate the able Senator for his remarks on this subject. Is it not also true that any corporation which presented a balance sheet with a net current position of this character would be immediately considered, by any banker, to be totally insolvent?

Mr. HARRY F. BYRD, JR. The Senator from Missouri is totally correct.

Mr. SYMINGTON. Actually, I notice the committee report states:

> The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of $1 equals one thirty-eighth of a fine troy ounce of gold.

Inasmuch as the price of gold this past week on the London gold market was $50.70 per troy ounce at one time, is not that "new par value" a little theoretical?

Mr. HARRY F. BYRD, JR. It appears to me that it is.

Mr. SYMINGTON. Would not the able Senator, one of the true experts in this body on financial matters, agree that this development is just further emphasis, in any case, that we should not go back to convertibility, where we would buy and sell gold at a particular price, regardless of the true market price.

Mr. HARRY F. BYRD, JR. The Senator is correct.

Mr. SYMINGTON. I thank my colleague, agree fully with him that this is an extraordinary amount of money, $1.6 billion.

Mr. President, how many Americans will have to work more to get that kind of money, which we now add to those soft loan window banks which the distinguished Senator from Viriginia and I have felt was wrong for a long time. They are not really loans, rather gifts because of the terms. Therefore, we are adding another $1.6 billion as an albatross around the necks of American taxpayers, who are already plenty disturbed about the way our money is being expended abroad by this Government, especially when they look at all the problems currently facing us here at home.

I thank the Senator from Virginia very much.

Mr. HARRY F. BYRD, JR. I am very glad the distinguished and able senior Senator from Missouri (Mr. SYMINGTON) mentioned the soft-loan window of the World Bank to which a part of this $1.6 billion will go.

Mr. President, this is Friday. It was only Monday of this week that the Senate was called upon to vote $320 million as an additional payment to the soft-loan window of the World Bank.

The PRESIDING OFFICER. The time of the Senator from Virginia has expired.

Mr. ROBERT C. BYRD. I yield 5 additional minutes to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 5 additional minutes.

Mr. HARRY F. BYRD, JR. Mr. President, this amount being appropriated today, Friday, will be added to the $320 million which the Senate voted to appropriate only last Monday for the soft-loan window of the World Bank.

I am very proud to have stood side by side with the able senior Senator from Missouri in opposing the $320 million appropriation this past Monday, because I think the time has come—of course, it is way past time, really—when Congress and the Government must give some consideration to the American people and to the taxpayers of the United States.

The only place the money can come from for these tremendous appropriations that Congress is making is out of the pockets of the hard-working men and women of our Nation. The facts show, Mr. President, that the interest on the national debt—which will be $493 billion at the end of the next fiscal year—in the current budget is $22 billion. That $22 billion will come out of the pocket of the wage earners.

Mr. President, the facts also show that for every dollar of personal and corporate income tax paid into the Treasury by the American corporate and personal taxpayers, 13 cents goes for one purpose, to pay the interest on the national debt.

What we are doing here today in this $1.6 billion appropriation to the world financial organizations dramatizes once again just how deeply troubled the Federal Government's financial situation is.

Mr. President, I have had a tabulation prepared, the heading of which is: "U.S. Gold Holdings, Total Reserve Assets, and Liquid Liabilities to Foreigners." This table is for selected periods and is in billions of dollars. I ask unanimous consent that the tabulation to which I have just referred be printed in the RECORD.

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

U.S. GOLD HOLDINGS, TOTAL RESERVE ASSETS, AND LIQUID LIABILITIES TO FOREIGNERS

	Gold holdings	Total assets	Liquid liabilities
End of World War II	20.1	20.1	6.9
Dec. 31, 1957	22.8	24.8	15.8
Dec. 31, 1970	10.7	14.5	43.3
Aug. 31, 1971	10.1	12.1	59.9
Jan. 31, 1972	9.7	12.9	[1] 65.2

[1] Estimated figure.

Source: U.S. Treasury Department.

Mr. PROXMIRE. Mr. President, this joint resolution would appropriate such sums as are necessary—but not to exceed $1,600,000,000—to enable the Secretary of the Treasury to carry out the provisions of section 3 of the Par Value Modification Act, Public Law 92-268, approved March 31, 1972. This law authorizes and directs the Secretary of the Treasury to maintain the value in terms of gold of the dollars held by the International Monetary Fund—estimated cost, $525 million and the multinational development lending institutions of which the United States is a contributing member. These are the International Bank for Reconstruction and Development—World Bank—estimated cost, $560 million; International Development Association—estimated cost, $122 million; the Inter-American Development Bank—estimated cost, $370 million; the Asian Development Bank—estimated cost, $18 million. This breakout supports the total estimate of $1.594 billion necessary to fulfill the U.S. obligation to maintain the value of past and presently authorized subscriptions at such time as they may be appropriated.

The supplemental budget estimate for this appropriation was submitted in House Document 92-276, dated April 4, 1972, and requested an open-ended appropriation of "such amounts as necessary." The House wisely placed a ceiling of $1.6 billion on the request and the Senate concurs with this action.

The basic legislation—Public Law 92-268—authorizing this appropriation was passed by the Senate on March 1, 1972, by a vote of 86 to 1, and in the House of Representatives on March 21, 1972, by a vote of 342 to 43 and reads as follows:

SECTION 1. This Act may be cited as the "Par Value Modification Act."

SECTION 2. The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of $1 equals one thirty-eighth of a fine troy ounce of gold. When established such par value shall be the legal standard for defining the relationship of the dollar to gold for the purpose of issuing gold certificates pursuant to section 14(c) of the Gold Reserve Act of 1934 (31 U.S.C. 405b).

SECTION 3. The Secretary of the Treasury is authorized and directed to maintain the

value in terms of gold of the holdings of United States dollars of the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the International Development Association, and the Asian Development Bank to the extent provided in the articles of agreement of such institutions. There is hereby authorized to be appropriated, to remain available until expended, such amounts as may be necessary to provide for such maintenance of value.

SECTION 4. The increase in the value of the gold held by the United States (including the gold held as security for gold certificates) resulting from the change in the par value of the dollar authorized by section 2 of this Act shall be covered into the Treasury as a miscellaneous receipt.

The maintenance of value obligation directed by section 3 of Public Law 92–268 stems from a provision in the agreements governing each of these international financial institutions providing that each member country that devalues its currency must maintain the value of its contributions as measured by a common yardstick—in this case, gold. The committee is advised that these provisions have been applied routinely to all other countries devaluing their currencies and there has been no instance in which these obligations have not been fully discharged.

The Appropriations Subcommittee on Foreign Operations held hearings on the item on April 14 and the full committee recommended it without objection. Further information as to the basis of the estimate, the budgetary impact, and the reasons advanced for its earliest possible consideration is contained in the committee's report.

The PRESIDING OFFICER. The joint resolution is open to amendment.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time come from the time allotted to this side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I am prepared to yield back my time, if I have any remaining.

Mr. GRIFFIN. Mr. President, I yield back the time on this side.

The PRESIDING OFFICER. All time has been yielded back. The joint resolution is open to further amendment. If there be no further amendment to be proposed, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 1174) was read a third time and passed.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

The Senate resumed the consideration of the bill (S. 3526) to provide authorizations for certain agencies conducting the foreign relations of the United States, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is on the amendment of the Senator from Mississippi (Mr. STENNIS).

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Presiding Officer.

Mr. President, I ask unanimous consent that the Senator from Arizona (Mr. GOLDWATER) may now be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum without prejudice to the rights of the Senator from Arizona.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, I ask recognition.

The PRESIDING OFFICER. The Senator is recognized.

SECTION 701—THE KISS OF DEATH

Mr. GOLDWATER. Mr. President, it is my purpose today to try and make sure that each and every Member of the Senate realizes the enormous stakes involved in the possible adoption of an end-to-the-war proposal at this critical point in history.

Riding on the outcome of the proposal by Senators CASE of New Jersey and CHURCH of Idaho to cut off funds for all U.S. land, sea, and air combat operations in Indochina after December 31 is much more than an expression of senatorial opinion or legislative concern. Tied up in this crucial decision could easily be the hopes and dreams of millions of American allies, the hopes for stability throughout the strategic area of Southeast Asia, and more even than the honor of our Nation.

From repeated briefings which I have received from intelligence sources, it is apparent that the outcome of the struggle in Vietnam now hinges on whether the morale and determination of the South Vietnamese holds or whether it is broken to smithereens. If the South Vietnamese, our allies in this conflict, lose the remainder of their morale and refuse to fight, the whole effort into which we have poured so many lives and so much money is lost beyond redemption. However, if the South Vietnamese hold an element of steadfastness throughout this tremendous pounding, the continued terrific loss on the North Vietnamese will begin to tell, and the conflict will swing in the direction of freedom and away from Communist slavery.

At this point, I would remind my colleagues of President Nixon's assertion the other night that the enemy in Vietnam hopes to win its victory through the U.S. Congress and the American people. I say that they could do it right here in this Chamber if the Senate votes favorably on section 701 of this bill.

Mr. President, I know not how others might stand but I, for one, believe that Senate adoption of this end-the-war proposal at this time will be a "kiss of death" for many things that Americans hold dear. It certainly would prove to be the kiss of death for the hopes of the South Vietnamese people. It would serve notice that our support has a deadline and that the strings attached to it by the U.S. Senate would insure a victory for the North Vietnamese. I believe Senate passage of this proposal would destroy completely what remains of the South Vietnamese people's will to resist the Communist enemy. And as a U.S. Senator and as an American citizen, I do not want any part of that shame to hang over my head for the rest of my life.

Mr. President, I do not think many of my colleagues actually know what a vote in favor of section 701 could mean, not only to the embattled South Vietnamese, but to the respect with which future commitments by the United States will be held throughout the world.

This proposal at this time, Mr. President, is actually the kiss of death for almost everything we are trying to do. It could easily result in the collapse of the South Vietnamese and the annihilation of part of the 69,000 Americans still in that section of the world. It could bring about the liquidation of millions of South Vietnamese who, encouraged by us, have opposed Communist aggression for many years.

There can be no doubt that the adoption of this resolution would spell the kiss of death for our peace negotiations in Paris. Why would the enemy wish to engage in any meaningful negotiations at this time if the U.S. Senate was assuring it that almost everything they want will be handed them on a platter at the end of this year?

It could be the kiss of death for our hopes at the forthcoming summit meeting in Moscow. Enactment of this proposal would certainly weaken President Nixon's hand and render questionable any results that might come out of those important meetings.

Mr. President, I feel that because the President took the strong action he took against North Vietnam when the invasion began at the instigation of Hanoi, he goes to Moscow stronger than any American President has ever been when he visited another country. I am reminded of the tremendous strength gained by President Kennedy when he acted in a strong way in the Cuban crisis.

Mr. President, I beg of my colleagues to think this thing through. Just imagine the joy that it would bring to the headquarters of Mrs. Nuygen Binh, chief Vietcong negotiater at the Paris talks, who wrote to the Members of the Senate urging them to repudiate President Nixon. Passage of this proposal at this time would give Madame Binh exactly what she asked for while handing the President of the United States—the man the American people elected to run this country—a deliberate slap in the face.

Mr. President, this proposal is not

needed to inform the President that some Members of this body are unhappy with the events which their party caused to occur in Southeast Asia. I can assure you President Nixon needs no official announcement from the Senate of the United States that there is much unhappiness, frustration, and discouragement among the American people with the war which President Kennedy began and President Johnson escalated. He knows that perhaps better than anybody else. All this proposal would do would be to bring despair to the hearts of our allies and joy to the hearts of our enemies. Win, lose, or draw, I want no part of any such proposal.

Mr. President, I beg my colleagues to consider how their action here, if this section is approved, would appear to the rest of the world. It is a spectacle of a Senate of the United States refusing to consider a simple resolution condemning aggressive invasion and supporting the United States Government, while at the same time giving that Government orders on how it shall finally liquidate the mess which President Nixon's predecessors handed him.

In conclusion, Mr. President, this war has not been finally lost by the South Vietnamese, despite the impression created by a pessimistic communications media—a media which has been known to delight in the idea that the United States and its allies are being humbled. But if this Senate actually wants to do its best to destroy all hope rather than exercise a courageous patience, then all it has to do is to pass this proposal and spread the kiss of death throughout Southeast Asia.

Mr. President, I have become convinced myself through almost daily briefings I receive from Vietnam—and the same opportunity is available to other Senators—that the intelligence people in stating their position have put it in the way I would put it. When asked the question, What is going to happen in South Vietnam? I am convinced it is a matter of two points, and which one will happen first.

The first point would be the demoralization of the South Vietnamese Army to the point where they would no longer fight. That, of course, would end the conflict. The other point is: When the North Vietnamese make the decision they cannot stand the frightful losses that have been inflicted on them. The loss ratio, by the most conservative estimates, is about 4 to 1. How long can they continue to lose their Russian-made tanks, with their forces cut by one-half?

How long will the people of Hanoi be content with the tens of thousands of wounded and sick soldiers returning to that city, and how long will it be before they realize they have no reserve, that all 13 divisions, including two in Laos, from the Plain of Jars, are in conflict in Vietnam.

In other words, while I am not ready to stand up and say we are winning, I am ready to stand up and say that I feel within the next week or 10 days we are going to know the answer, and the answer is going to come on one of these two points. Will the South Vietnamese quit? I think if we pass the section that the Stennis amendment would knock out, this would add immeasurably to the chances they will give up. Mr. President, you cannot blame these people. There is not a living man in all of South Vietnam who has not been in a war. They have been fighting for over 25 years, either while the French were there or in the battle of the South against the North. These people are tired of war, and the people of North Vietnam are tired of war. We are learning through Japanese intelligence sources that they are about ready to quit. Their economy has suffered to the point that it would probably take five uninterrupted years to get it back on its feet. They suffer losses of food, and as in the case of all people, they have grown tired of conflict.

I would hope that over this weekend all of my colleagues would give this matter real study. I know how tempting it is to stand on the floor of the Senate and offer suggestions on how to end the war; I know how tempting it is to vote for these measures; but we are at a point in history where I think that even having this language spread on the RECORD and having this language contained in a bill will be detrimental to our efforts not only in Vietnam but around the world.

I think the least we can do is to take this language out and then after the conflict has been decided, have those people on this floor who want more control over the presidential war powers introduce an amendment to the Constitution that would change the intent of the Constitution which now, in my opinion, confers the exclusive right and power of war and peace to the President; but let us not act at this time on the matter that could be of embarrassment to the President, and I would say that if the President happened to be a member of the opposite party. After all, the President, is an office; he is not a man, he is an office created by our Constitution.

I think the least that we Americans, particularly those serving in the Congress, should do is show respect for that office and recognize the problems of that office at this particular time and recognize, too, that the President is about tc embark upon what could be a very meaningful visit to the capital of communism, and realize that he, through his actions, has reduced our forces in Vietnam from over 550,000 down to 69,000.

We have to think of those 69,000 men. As I said the other day, if they are trapped at Danang, that is an almost indefensible point. The airfield could be destroyed, in my opinion, from the surrounding hills without too much effort, and the embarkation of ships from the harbor could be controlled by the Communists at the narrow mouth of the harbor.

The same applies to the concentrations at Camranh, where we have billions of dollars worth of equipment that we want to protect and bring home as much as we can. This is also an indefensible area, different in nature from Danang, but nevertheless indefensible, and our men would be there at the mercy of the Communists should anything happen that would allow them to come down the country without any resistance.

I have more optimism than pessimism. I think Vietnamization of South Vietnam forces has been more successful than many people believe. I think in many respects their air force equals ours, their naval force, for practical purposes, does a better job than ours, and their communications are as good as ours. The question is how many divisions they have battle ready, and I think we are going to find that out in the next week or 10 days.

This is a weekend to do a lot of big thinking—thinking about whether we should be voting for something that could be of utmost damage to the United States, or should we be wise and not vote on this at all, but strike the language from the bill and allow the bill to pass in the form that would enable the State Department to continue to operate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT OF THE RAIL PASSENGER SERVICE ACT OF 1970

Mr. MAGNUSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 11417.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 11417) to amend the Rail Passenger Service Act of 1970 to provide financial assistance to the National Railroad Passenger Corporation for the purpose of purchasing railroad equipment, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. MAGNUSON. Mr. President, I move that the Senate insist upon its amendments and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. MAGNUSON, Mr. HARTKE, Mr. HOLLINGS, Mr. BEALL, and Mr. WEICKER conferees on the part of the Senate.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

The Senate continued with the consideration of the bill (S. 3526) to provide authorizations for certain agencies conducting the foreign relations of the United States, and for other purposes.

VIETNAM: IN THE EIGHTH YEAR OF THE AMERICAN ORDEAL

Mr. CHURCH. Mr. President, last month, still another voice was added to the chorus out of the past, when the current Secretary of State solemnly testified that the war in Vietnam had entered a new era. In an attempt to justify the resumption of massive American bombing of North Vietnam, Mr. Rogers argued that the Hanoi Government had now invaded its neighbor to the south; that its indirect aggression had become direct; and that the Vietnamese struggle could no longer be regarded as a civil war.

Thus was delivered up, in hearings before the Senate's Committee on Foreign Relations, the latest addition to our collection of myths concerning this misbegotten war. The mind boggles at our seemingly limitless capacity for self-deception.

It is no new war, it is the same war still. The introduction into South Vietnam of regular troops from the North began years ago, and their numbers have steadily increased. As early as 1969, for instance, North Vietnamese regulars comprised about 70 percent of the enemy forces inside South Vietnam. The magnitude of the present invasion may be greater, but the character of the war is no different than before.

The reasons for our intervention, grown hollow over the years, have long since been discredited. One by one, they have fallen of their own rotten weight. The latest excuse for the renewal of our bombing and shelling of North Vietnam is utterly unresponsive to the only sensible question left to be asked: Why are we still there?

Why has Congress supinely supported our part in this disastrous and divisive war, after three Presidents have failed either to end it or win it? Why do we keep on voting the money? Are we so timid that we dare not cross a President?

If so, we have sunk to the low estate of the British Parliament at the turn of the 19th century, when England and France were locked in protracted war. Charles James Fox arose to address the House of Commons on February 3, 1800. His words apart from the elegance of phrase which graced his period, are so uncannily relevant to our own predicament that they could be uttered in this chamber on this very day.

Listen to his words:

> Sir, my honorable and learned friend has truly said that the present is a new era in the war. The Right Honorable Chancellor of the Exchequer feels the justice of the remarks; for by traveling back to the commencement of the war, and referring to all the topics and arguments which he has so often and so successfully urged to the House, and by which he has drawn them on to the support of his measures, he is forced to acknowledge that, at the end of a 7-years conflict we are come but to a new era in the war, at which he thinks it necessary only to press all his former arguments to induce us to persevere.
>
> All the topics which have so often misled us—all the reasoning which has so invariably failed—all the lofty predictions which have so constantly been falsified by events—all the hopes which have amused the sanguine, and all the assurances of the distress and weakness of the enemy which have satisfied the unthinking, are again enumerated and advanced as arguments for our continuing the war.
>
> What, at the end of 7 years of the most burdensome and the most calamitous struggle that this country was ever engaged in, are we again to be amused with notions of finance and calculations of the exhausted resources of the enemy as a ground of confidence and of hope?
>
> Gracious God. Were we not told, 5 years ago, that France was not only on the brink, but that she was actually in the gulf of bankruptcy?
>
> Were we not told, as an unanswerable argument against treating that she could not hold out another campaign—that nothing but peace could save her—that she wanted only time to recoup her exhausted finances—that to grant her repose was to grant her the means of again molesting this country, and that we had nothing to do but persevere for a short time in order to save ourselves forever from the consequences of her ambition. . . .
>
> What! After having gone on from year to year upon assurances like these, and after having seen the repeated refutations of every prediction, are we again to be seriously told that we have the same prospect of success on the same identical grounds?
>
> And without any other argument or security, are we invited, at this new era in the war, to carry it on upon principles which, if adopted, may make it eternal? [1]

Despite the force and eloquence of this argument, the House of Commons lacked the resolution to break with the government's war policy. Fighting went on for another 2 years before the Peace of Amiens was negotiated at last, on terms less favorable to England than when Fox had pleaded for a settlement.

II

When it was decided in 1965 that an American Army should be sent to fight in Vietnam, we took up arms in an open-ended war being waged by an alien people in an Asian land. Our Presidents spoke of it as a "limited war," by which they meant that we had limited ourselves to the defense of the Saigon regime in South Vietnam. From the start, the conquest of North Vietnam was ruled out, prudence dictating that a counter-invasion of the North could easily set off a war with China. The Chinese, after all, had entered the Korean conflict after we converted the defense of the south into a counterattack upon the north and our troops had approached the borders of China.

Hence, from the moment of our intervention in Vietnam, we were constrained to fight on the enemy's terms of attack and attrition. No matter how doggedly we persevered, we could never outlast the Vietnamese in their own homeland. Having denied ourselves the victory that only the conquest of the north could bestow, we were caught fast behind the breastworks of a war we could not stop or win. As Vietnam expert Richard Holbrooke recently observed on the editorial page of the Washington Post:

> Vietnamize it, pacify it, democratize it, pull troops out, pour aid in, visit China, send Kissinger to Paris, change our rhetoric, drive it off the front pages for awhile—it still won't go away.[2]

The newest enemy offensive, now in full flower, is being compared with battles of 4 years ago when the ancient imperial capital of Hue was devastated during the Tet uprising. Hopefully, this offensive can be turned back like the last, though the issue is in doubt. But then, as surely as leaves wither in the fall, other attacks will follow.

Of the North Vietnamese and their partisans in the south, Holbrooke writes the stark truth:

> They simply will not stop fighting, after all these years, until they get what they want. That is, they will not stop fighting unless we can make them stop fighting. That was patently beyond our military ability when we had over 500,000 men in Vietnam. It is even less likely when we have less than 100,000.[3]

It was inevitable, I suppose, that Presidents who conceded the need to confine our ground troops to the defense of the South would be persuaded by an unquenchable war to strike at the North through the air. President Nixon has again taken to the air in the desperate hope that he can bomb the enemy into submission. Reason and past experience better sustain the desperation than the hope.

Indeed, the dynamics of the Nixon Vietnamization policy, in the absence of a political settlement, almost guaranteed that North Vietnam would eventually launch the type of full-scale offensive now underway." By refusing to declare a firm deadline for the completion of our withdrawal, by intimating that a residual force would be left in South Vietnam until such time as our demands for the release of prisoners, a cease-fire, and new elections under a caretaker government were met, President Nixon has maneuvered the United States into a highly precarious position. His mistake is not that he removed more than 450,000 of our troops, but that he refused either to remove, or to commit himself to remove, them all. As a result, the safety of nearly 70,000 Americans who remain in South Vietnam now depends on Saigon's army, upon its willingness to stand and fight.

President Nixon has played the role of Hamlet in the Vietnamese tragedy. "To leave or not to leave," that is the question on which he could never make up his mind. So we find ourselves today in the worst of all possible postures, half in and half out, left with no recourse but to hurl our thunderbolts from the air upon an advancing enemy determined to seize the ground.

---

[1] Quoted in *A Treasury of the World's Great Speeches*, edited by Houston Peterson. New York: Simon & Schuster, 1954, p. 288.

[2] *Washington Post*, April 5, 1972.

[3] *Ibid.*

Thus, the reason for the President's desperation is evident. But what is the basis for his hope of success? In the short run, we hope that the tactical support our air power confers on the defenders in the field will prove sufficient to halt this latest enemy attack; in the long run, there is little reason to believe that the President's decision to resume the strategic bombing of the North will prove any more successful than in the past.

In July of 1966, our Central Intelligence Agency and the Pentagon's Defense Intelligence Agency reported that 16 months of bombing North Vietnam "had had no measurable direct effect on Hanoi's ability to mount and support military operations in the South." Moreover, the intelligence estimate concluded that the situation was "not likely to be altered" by mining Haiphong harbor or adopting other military proposals then contemplated for expanding the air offensive.[4] When, nevertheless, President Johnson escalated the air offensive in the North, Defense Secretary McNamara reported that "there continues to be no sign that the bombing has reduced Hanoi's will to resist, or her ability to ship the necessary supplies south."[5]

After President Nixon took office, a comprehensive review of the war was prepared for him. National Security Study Memorandum No. 1—NSSM–1—a summary of which has now appeared in the public press, acknowledged that years of strategic bombing "did not seriously affect the flow of men and supplies to Communist forces in Laos and South Vietnam. Nor did it significantly erode North Vietnam's military defense capability or Hanoi's determination to persist in the war."[6]

It is truly said that those who cannot learn from the mistakes of the past are destined to repeat them. The strategic bombing will fail again, as it failed before. Darken their skies with clouds of bombers, rain down destruction upon them, spread the carnage far and wide, and they may scurry for cover but they will not yield. The bombing will only stiffen their spines; it will never bend their knees.

Who can doubt it? Before our latest air strikes against the north, we had already dropped more than 6 million tons of bombs on the enemy, three times the total tonnage dropped by American aircraft throughout the Second World War. Over half of this incredible bombardment had been ordered by President Nixon.[7] Still, the war has never been suppressed, the supply lines never severed, the enemy never subdued.

An indigenous war, a civil war, is the least susceptible to control by outsiders. President Kennedy once sensed this when he said of Vietnam:

> In the final analysis, it's their war. They're the ones who have to win it or lose it.[8]

Until we Americans, the foreigners, leave, this war will persist. The French finally learned that lesson and left. One day we shall have to do likewise. The only question is how much longer we shall insist on staying, and how many more American lives we shall sacrifice before we leave.

The awful tragedy is that we are still there. Mr. Nixon's withdrawal, which could have been completed at any time within 9 months, has been dragged out instead over 3 and a half agonizing years, during which 20,000 young Americans have died and more than a hundred thousand have been maimed and wounded. Now, with nearly 70,000 men still remaining, we find ourselves caught up once more in the grizzly embrace of another enemy assault.

III

It will be said that the President is unaccountable for the prolongation of our ordeal in Vietnam, since, from the beginning of his term, he has striven diligently to negotiate a peace. The fault, it will be said, lies with an intractable Hanoi.

Here in the United States, that proposition would seem incontestable. From our point of view, the terms Mr. Nixon has offered appear unprecedented in their generosity. He has said, let the people of South Vietnam decide by free elections who shall govern them. What could be fairer than that? What could be more reasonable?

Yet the likelihood remains that the North Vietnamese and the Vietcong will continue to reject even the most "reasonable" proposals. They have been at war for over 20 years. They believe themselves to have been betrayed before by Western governments: by the French in 1946, who promised a referendum and then refused to hold it; by the United States in 1956, when the Eisenhower administration upheld Ngo Dinh Diem in his refusal to hold the elections called for in the Geneva accords. These are not experiences to encourage reasonableness. Even the most painstaking arrangements for a fair, internationally supervised election—if that were possible—could well be regarded with implacable mistrust.

Besides, when was a civil war ever decided by a cease-fire and elections? If this seems unreasonable, we might ask ourselves how, during our own civil war, the Union Government would have taken to being branded an aggressor for invading the Confederacy, or how, indeed, it would have responded to a British proposal for an internationally supervised plebiscite in the Southern States on the question of secession.

Nonetheless, the President protests, he has bent as far as honor permits in seeking a settlement at the conference table.

I would accept that as his honest judgment.

He insists that he must not yield to what he describes as Hanoi's demand that we throw over the Saigon regime, or implicate the United States in any stratagem, other than elections, which would either undercut Thieu's government or facilitate a Communist takeover.

I agree that the President of the United States could not honorably accept such terms or ever be a party to a sell-out.

For these reasons, I have long doubted that the talks in Paris would ever bear fruit. Conceiving themselves to be the eventual winners on the battlefield, it is hardly to be anticipated that the North Vietnamese would agree to terms at the conference table less favorable to the realization of their ultimate goal. That goal, steadfast and unchanging through the years, remains twofold: driving out the foreigner and reunifying the two halves of Vietnam, North and South, under the revolutionary government in Hanoi.

This being what the war is all about, our "generous terms for peace" must seem irrelevant to our adversaries. When President Nixon declares, as he did to the Nation on April 26, 1972:

> The only thing we have refused to do is to accede to the enemy's demand to overthrow the lawfully constituted government of South Vietnam and to impose a Communist dictatorship in its place.[9]

He states a position from which we cannot honorably recede. At the same time, in the eyes of the enemy, it is a position they cannot honorably accept, for to do so means forfeiting the very purpose for which they fight.

And when the President repeats, in the course of the same address, that all we seek at the conference table is "peace with honor for both sides—with South Vietnam and North Vietnam each respecting the other's independence,"[10] the outcome he describes, however laudable it may appear to us, is nothing other than the enemy's definition of defeat.

We are poles apart at Paris. To reconcile such contradictory positions would seem to call for the black arts of Merlin the Magician than the diplomatic skills of Henry Kissinger, impressive as they may be. I can see little prospect for a negotiated settlement of this war.

IV

If neither our bombing in Indochina nor our talks in Paris hold out plausible hope for stopping the war, then what are we to do? Mr. Nixon's familiar refrain is that we must persevere. "If we now let down our friends," he warns, "we shall surely be letting down ourselves and our future as well."[11]

After all the blood and treasure we have spilled in the jungles of Indochina over the past 7 years, are we permitted to ask just how we could possibly let down our friends? Have we not long since fulfilled, many times over, all our commitments to them? Have we not amply furnished them with the weapons and wherewithal to carry on for themselves? After all, we did not promise to fight in their place forever.

Show me a nation that ever before, in defense of another, offered up its sons on the altar of war in such prodigious num-

---

[4] *Jason Study, Institute of Defense Analysis*, Summer, 1967, quoted in *The New York Times*, April 19, 1972.

[5] *Ibid.*

[6] *Washington Post*, April 25, 1972.

[7] Information Office, Department of Defense. (Cf. *New York Times*, September 29, 1971).

[8] Press Conference, President John F. Kennedy, Hyannis Port, September 2, 1963.

[9] Address, President Richard Nixon, April 26, 1972.

[10] *Ibid.*

[11] *Ibid.*

bers, or spent so profligately of its wealth. Never in history has one government given so hugely to insure the survival of another.

The President says:

The facts are clear. More than 120,000 North Vietnamese are now fighting in the South.[12]

But he refrains from saying that there are 10 times that many men under arms in the South, trained and equipped to defend their country against the attackers. He refrains from mentioning that we have supplied the Saigon Government with what Defense Secretary Melvin Laird recently described as:

The fourth largest air force in the free world.[13]

And nothing at all is said about Saigon's navy, the biggest in all of Asia.

Instead, administration officials speak of the "flagrant, massive invasion"—an all-new war—made possible by a great influx of sophisticated weapons from the Soviet Union. To listen to these lurid descriptions, one would think that a giant were pouncing on a pygmy. In truth, just the reverse has occurred.

At one point, we had over half a million Amercan fighting men actively engaged in war on behalf of South Vietnam. No Chinese or Russian soldiers have ever fought for the North. For every spoonful of aid Hanoi has gotten from Communist countries, we have given a bucketful to Saigon.

R. H. Shackford, writing in the April 24 edition of the Washington Daily News, sums it up:

Russian and Chinese economic and military aid to North Vietnam during the last seven years is so small that it would barely pay one year of interest on the more than $100 billion the United States has spent on the war in Southeast Asia.[14]

And that $100 billion covers only the direct costs of the war to the Armed Forces of the United States. It does not include the $11.64 billion military assistance program with which we armed Saigon's forces, or the $5.7 billion given in economic support, or the vast quantities of surplus materiel and installations transferred to the South Vietnamese as American forces have departed. Even the Pentagon's computers can only guess at the mammoth totality of it all.

If, at this late date and after such unprecedented largesse, we must still interpose our Air Force and Navy to shield South Vietnam against each new attack from the North, then when will our pilots and sailors ever be freed from the bondage of this war?

One searches in vain to find an answer to that question in the latest Presidential message to the American people. If the enemy offensive is turned back, Mr. Nixon observes, "the South Vietnamese will then have demonstrated their ability to defend themselves on the ground against future enemy attacks." Beyond that, the President justifies the escalated American role in the air war by quoting from the report of General Abrams:

Our air strikes have been essential in protecting our own remaining forces and in assisting the South Vietnamese in their efforts to protect their homes and their country from a Communist takeover.[15]

There is nothing in the President's speech to suggest when American air strikes will no longer be "essential." No reference is made as to when the American Navy will be withdrawn from Vietnamese waters. The entire emphasis is placed on a further reduction—this time 20,000 men—in the American ground forces still remaining in South Vietnam. Of course, I am gratified that another contingent of our ground troops will be coming out, but they should all have been out long ago.

In fact, the more one studies the Nixon Vietnamization policy in Indochina, the more it resembles the Nixon Doctrine, meant for the rest of Asia. As that policy has been explained to us, the United States will keep its treaty commitments to its Asian allies. But should a new Vietnam-type war develop, "we shall look to the nation directly threatened to assume the primary responsibility of providing the manpower for its defense."[16] The American role will be to furnish the government under attack with arms, not soldiers, but to give it such direct American air and naval support as the circumstances may require.

I submit, upon all the evidence before us, that the much-touted Vietnamization policy turns out to be no more nor less than an application of the Nixon Doctrine by a different name. I suspected as much years ago, after the policy was first unveiled. In an article written in 1969 and published in the December issue of the Washington Monthly, I wrote:

"Vietnamization" is not really a formula for disengaging from Vietnam; it is, rather, a formula for leaving American forces engaged in Vietnam indefinitely. Its purpose is not to get us entirely out, but to keep us partially in.[17]

Now, 2½ years later, I see no reason for changing that assessment. What is wrong with the policy is that it fails to live up to its name. This defect in the policy could be cured if the President would only go through with it, if he would only consummate it by disengaging all American forces—land, naval, and air—from further involvement in the war.

That is my proposition, not to linger, but to leave; not to retain "protective cover" for our remaining troops, but to recover our troops that remain. My proposition is to do what the President's policy purports to do, Vietnamize the war. Give henceforth to South Vietnam, as long as the war persists, the same kind of help that the Russians and Chinese give to the North, weapons and materiel. But give them our men no longer.

V

Commonsense has long since called for the disengagement of American forces. The American people have long wanted out of this winless war. Three times last year the Senate voted its approval of the Mansfield amendment, a modified version of which was written into law. Congress thus endorsed a policy for ending our participation in the hostilities, subject only to the release of all American prisoners of war and an accounting of all Americans missing in action. Included in the fiscal year 1972 Defense Procurement Authorization Act, as section 601 of title VI, and captioned "Termination of Hostilities in Indochina," the Mansfield amendment clearly enunciates congressional policy. It speaks for itself:

It is hereby declared to be the policy of the United States to terminate at the earliest practicable date all military operations of the United States in Indochina, and to provide for the prompt and orderly withdrawal of all United States military forces at a date certain, subject to the release of all American prisoners of war held by the Government of North Vietnam and forces allied with such Government and an accounting for all Americans missing in action who have been held by or known to such Government or such forces. The Congress hereby urges and requests the President to implement the above-expressed policy by initiating immediately the following actions:

(1) Establishing a final date for the withdrawal from Indochina of all military forces of the United States contingent upon the release of all American prisoners of war held by the Government of North Vietnam and forces allied with such Government and an accounting for all Americans missing in action who have been held by or known to such Government or such forces.

(2) Negotiate with the Government of North Vietnam for an immediate cease-fire by all parties to the hostilities in Indochina.

(3) Negotiate with the Government of North Vietnam for an agreement which would provide for a series of phased and rapid withdrawals of United States military forces from Indochina in exchange for a corresponding series of phased releases of American prisoners of war, and for the release of any remaining American prisoners of war concurrently with the withdrawal of all remaining military forces of the United States by not later than the date established by the President pursuant to paragraph (1) hereof or by such earlier date as may be agreed upon by the negotiating parties.[18]

Before signing this bill, President Nixon explained how he viewed the troop withdrawal amendment. Here are his words, uttered on November 17, 1971:

To avoid any possible misconceptions, I wish to emphasize that Section 601 of this Act—the so-called Mansfield amendment—does not represent the policies of this Administration. Section 601 urges that the President establish a "final date" for the withdrawal of all U.S. forces from Indochina subject only to the release of U.S. prisoners of war and an accounting for the missing in action. Section 601 expresses a judgment about the manner in which the American involvement in the war should be ended.

However, it is without binding force or effect and it does not reflect my judgment about the way in which the war should be brought to a conclusion. My signing of the

---

[12] *Ibid.*

[13] *Testimony, Secretary of Defense Melvin Laird,* Senate Foreign Relations Committee, April 18, 1972.

[14] The *Washington Daily News,* April 24, 1972.

[15] Nixon. *Op. Cit.*

[16] *Press Conference,* President Richard Nixon. July 25 1969.

[17] Senator Frank Church, "The Only Alternative," *The Washington Monthly,* December, 1960.

[18] Military Procurement Authorization Legislation, Fiscal Year 1972, Public Law 92-56, 92nd Congress, First Section.

bill that contains this section, therefore, will not change the policies I have pursued and that I shall continue to pursue toward this end.[19]

A century ago, it is inconceivable that a chief executive would have disregarded a statute, let alone dismiss its provisions in such an abrupt and peremptory way. That Mr. Nixon felt no compunction in doing so is a reflection of the low estate to which the Congress has fallen.

Did the Senate intend, when approving the Mansfield amendment by a vote of 57 to 42, on June 22, 1971, that its provisions should be ignored? Were we engaged in an idle exercise, when, by a somewhat larger margin, a vote of 57 to 38, the Senate reconfirmed the Mansfield amendment on September 30, 1971? And when, by voice vote, we again ratified the amendment on November 11, 1971, were we serious or engaged in a shameless charade?

That is the issue posed by the Senate Foreign Relations Committee in adopting, by a vote of 9 to 1, with 2 abstentions, the Case-Church amendment to this year's State Department-USIA Authorization bill. The issue, bluntly put, is whether we shall lay down and suffer the President's rebuke, or whether we shall stand up and insist that Congress be respected. The issue is whether we shall give teeth to the Mansfield amendment by backing it up with the power of the purse, or whether we shall acquiesce in the President's disavowal of the amendment as being "without binding force."

The Case-Church provision, if enacted into law, would give the Mansfield amendment binding force. It would close the purse strings on any further involvement of American forces, ground, sea, or air, in hostilities in Indochina, after December 31, 1972, subject only to the release of our prisoners of war and an accounting for all Americans missing in action. The provision, which forms section 701 to title VII of the authorization bill, reads as follows:

TITLE VII—TERMINATION OF HOSTILITIES IN INDOCHINA

Section 701. Notwithstanding any other provision of law, none of the funds authorized or appropriated in this or any other Act may be expended or obligated after December 31, 1972, for the purpose of engaging United States forces, land, sea, or air, in hostilities in Indochina, subject to an agreement for the release of all prisoners of war held by the Government of North Vietnam and forces allied with such Government and an accounting for all Americans missing in action who have been held by or known to such Government or such forces.[20]

The Case-Church amendment has been drafted in a manner calculated to reach every Senator who seriously voted for the Mansfield amendment. By invoking the purse strings, it would use the power of Congress to enforce the policy objectives of the Mansfield amendment. Congress has done this before, in the enactment of the several Cooper-Church amendments that relate to Laos, Thailand, and Cambodia. These amendments utilized the purse strings. As a result, they have been observed by the executive branch.

The same principle must be applied if Congress is to play its role in bringing about an orderly termination of American participation in this war, already the longest by far in our history. The time has come to place a date certain on our further involvement in the fighting. Unless a definite deadline is fixed, South Vietnam will keep relying on us to carry the burden of its defense indefinitely.

The Case-Church amendment would employ congressional power over the public purse to bring our direct involvement in this endless war to a close. It allows reasonable time for the orderly withdrawal of the balance of our forces from Indochina and for South Vietnam to assume the full responsibility for its own defense. It takes effect after December 31, 1972, provided there is a satisfactory agreement for the release of our prisoners of war and an accounting for all Americans missing in action.

No "precipitous withdrawal," about which the President has so often warned, would be involved. The amendment allows an ample 6 months to remove the 50,000 troops who, the President says, will still remain in South Vietnam after July 1 of this year. Actually, the amendment gives the President a little more time to complete our withdrawal than the schedule he himself has been observing—a rate that has averaged about 10,000 men a month.

To those who argue that we must not quit the war until all American prisoners of war are freed, the answer is written plainly in the amendment itself. The fund cutoff would not occur until next year, and then only if a satisfactory agreement on releasing the prisoners is entered into.

To those who reverse the argument and contend that the amendment might somehow prolong our stay in Vietnam by making total withdrawal contingent upon the release of prisoners, the answer is equally plain. Nothing in the amendment forces us to remain in Vietnam. If the President should decide that getting out—lock, stock, and barrel—is the best way to assure the return of the prisoners, the amendment would not stand in his way.

But the amendment, if enacted, would hold out a powerful incentive to Hanoi to free our men. For the first time, the Government of North Vietnam would be put on notice, as a matter of law, that release of our prisoners of war would bring an end to further American participation in the fighting, on the land, at sea, and in the air.

It has been contended by opponents of the Case-Church amendment that its retention in the bill would somehow constitute a vote of no confidence in the President of the United States. This is the same shopworn argument used to intimidate Senators every time Congress is challenged to share responsibility with the President for ending our part in the war. The Senate, on certain occasions before, has mustered up the courage to reject this argument for what it is; essentially, a plea for congressional abdication. I fervently hope we will do so again.

For, in a larger sense, the Case-Church amendment is not an attempt to thwart the President's policy of Vietnamization, but an effort to assume our part of the responsibility for carrying it out. If enacted into law, it would implement authentic Vietnamization by writing an orderly end to further direct American involvement in the war, thus completing the process of turning the struggle back to the Vietnamese, from whose hands we should never have lifted it in the first place.

VI

It is not easy to plead for the retention of an end-the-war amendment at a time when the enemy is pressing his attack on the battlefield. We are told, "This is not the right time," or, "This is not the right bill."

Well, perhaps not. But we are now in the eighth year of the American ordeal in Vietnam. When will the "right time" ever come? When will we ever find the "right bill?"

One of the tragedies of this war is the profound misconception each side has had of the other. If Hanoi understood the United States, it would release our prisoners of war and declare a cease-fire, while the balance of our forces withdrew from Indochina. Instead, they heat up the battle at the very time our remaining forces are most vulnerable.

If, on the other hand, we understood either the North Vietnamese or the nature of the war into which we blundered, we would stop branding them "aggressors" for invading a land they believe to be their own, and we would stop relying upon our bombers to make them quit.

Hanoi's army fights more fiercely than Saigon's because the Northerners see themselves as the true patriots. They despise Saigon's soldiers whom they regard as contemptible puppets hired to fight with American money.

No doubt, they are blinded by their passions, they are moved to strike even when their own interest would be better served by a show of restraint. Perhaps, like Billy Budd in Herman Melville's famous tale, they have come to place all of their faith in their blows. When Billy Budd was tried for the murder of his accuser, the young man declared:

If I could have found my tongue, I would not have struck him . . . I could say it only with a blow.[21]

Two years ago, I urged the Senate to use the purse-strings in order to set the outer limits of American participation in a widening war. I said then, what I must sorrowfully repeat today:

Too much blood has been lost—too much patience gone unrewarded—while the war continues to poison our whole society.[22]

Again the time is upon us for the Congress to act. If we fail now to erect a framework for completing our disengagement from this war, if we continue to acquiesce in a policy which leaves us

---

[19] *Congressional Quarterly*, November 20, 1971, p. 2371.

[20] S. 3526, *Title VII*, lines 1 through 12, 38.

[21] Herman Melville, *Billy Budd and Other Prose Pieces*, London, 1924.

[22] From an address, "War Without End," delivered in the U.S. Senate, May 1, 1970.

partly in and partly out, we shall move inexorably closer, day by day, to that which the policy purports to avoid: a grim rendezvous with disaster and defeat.

Mr. CASE. Mr. President, will the Senator yield?

Mr. CHURCH. Yes, I am happy to yield to my distinguished colleague, the Senator from New Jersey, who is a cosponsor of the amendment.

Mr. CASE. The Senator has made a strong speech, a speech which measures up to the high standards which he has set in this body and in his forensic achievements in other forums. Beyond that, he has come very directly to the heart of the issue.

One does not have to agree with every statement that the Senator has made, and I do not in all respects. But on the essential point that we are faced with the necessity for stopping a war without end, I agree with him completely. I believe that the American people instinctively recognize that we have been taking the wrong approach and that now the Congress should follow their lead.

As a matter of fact, I ask the Senator, Is it not true that the American people have indicated their agreement with our amendment in response to a recent Gallup poll question on complete withdrawal of U.S. forces from Indochina by the end of the year?

Mr. CHURCH. Yes. The latest Gallup poll, which sets out the formula contained in the Case-Church amendment—a cutoff of funds after the end of the year contingent on the release of all American prisoners of war—is favored by 71 percent of the people, 25 percent are opposed, while 4 percent are undecided. Here is a situation where three-quarters of the American people, using their commonsense, have concluded that the time has come to set a definite date for the completion of our withdrawal, provided our prisoners of war come out safely.

Mr. CASE. And is it not true, as it seems to me, that the only prospect for the success of Vietnamization in its best sense—that is to say, of leaving the South Vietnamese in a position to defend themselves—is the course which our amendment has suggested? Has it not now been demonstrated beyond possibility of doubt that until the United States has indicated that on a date certain the South Vietnamese will be on their own, they will never be ready to take the responsibility for their own defense.

Mr. CHURCH. I concur completely with the Senator. Indeed, I would go further. Two things have become evident: First, that the North Vietnamese will never be willing to give up our prisoners of war until we are willing to give up the war; second, the South Vietnamese will never be willing to rely on their own arms, abundant as they are, for the defense of their country until we can make it plain, through the setting of a date certain, that we are in fact withdrawing from further participation in the war.

This is not a new adventure. We have been waging this war for 8 long years, and for 5 years we undertook with our own manpower to fight the war for the South Vietnamese. We assumed the heaviest part of the fighting. During this period, we built up an immense army for the South Vietnamese, more than a million strong; we built up a formidable air force, described by the Secretary of Defense as the fourth largest in the free world; we built up a South Vietnamese navy which is now, I am told, the largest of any navy in Asia.

We have furnished the tools. But, until we are willing to say that the time has come for Saigon to assume a full responsibility for its defenses, it is clear that the Saigon government will continue to rely indefinitely upon the United States, on our air power, on our naval power.

Mr. CASE. The Senator recalls, I am sure, that though it has not been made officially public, we have read accounts of a memorandum prepared for the President at his request upon his coming to office in 1969. This memorandum called NSSM–1 summarized, among other things, the views of the highest officials in the State and Defense Departments and the CIA as to how long it would be before the South Vietnamese would be able to pacify their own country.

I have not read the memorandum, but I read newspaper summaries of it. As I recall, the estimates ran from the most optimistic of something about 8 years to a pessimistic 13 or more years before South Vietnam could be pacified. As these matters go, this means no end at all.

Does not the position of those who oppose the Senator from Idaho, the Senator from New Jersey, and others who support our point of view, rest in large measure upon an indefinite continuation of the use of American airpower? And does not the Senator feel that the American people will not—as I know he feels they should not—support for any indefinite period such as this the continued destruction by these mechanical means of life in South Vietnam and the risk of American lives in the process? Is their revulsion not a factor which everyone must recognize as a further indication of the impossibility of success of the course which, in the absence of the approach the Senator from Idaho and I are proposing, is already foredoomed?

Mr. CHURCH. I agree wholeheartedly with the Senator. He knows, I know, and the American people know, that there is no such thing as "surgical bombing" or "precision bombing" when directed at ground targets 35,000 feet below. These bombing strikes inflict terrible loss of life and limb to the civilian population. At least we should stop deluding ourselves about the heavy toll we take of civilian life in these operations.

If there were any evidence to indicate that such bombings are effective, if the past 8 years had given us any basis for believing that the bombing could somehow force the enemy to pull out of South Vietnam, then, of course, a case could be made for it as a cumbersome and bloody, but nonetheless necessary, aspect of the war.

I submit that there is no evidence to sustain that conclusion. As I indicated earlier, we have already dropped more than 6 million tons of bombs on Vietnam, Laos, and Cambodia—far more than we have dropped on all previous enemies in all previous American wars combined. But it has not stopped the Communist supply lines. It has not broken the spirit of the North. It has not forced them to withdraw from the South. It has not even had any apparent effect upon diminishing the ferocity, or the effectiveness with which they fight. Indeed, just the opposite seems to be the case.

Now, after all of that bombing, all of the death, all of the destruction that we, in command of the air, have been able to pummel down upon the enemy they have mounted the largest and most dangerous offensive of the war.

I understand the President's use of bombers, now that the enemy has launched so formidable an attack: That is all he has left. I understand the desperation: He has left 70,000 Americans in South Vietnam with nothing, but the South Vietnamese army to protect them. But I see no reason, on the basis of the evidence, to conclude that the bombing will now succeed when it has always failed before.

Mr. CASE. It seems to me that this is very close to the heart of the matter. In fact, I think it probably is the heart of the matter.

I do not know whether the following story is apocryphal, but an American officer is supposed to have said, in regard to the 1968 devastation visited upon the city of Ben Tre in South Vietnam:

> We had to destroy the city in order to save it.

Whether or not that actually was said, we seem to be faced with the same problem now in Vietnam. Do we want to destroy Vietnam in order to "save" it? I think not. And to accept that fact is, it seems to the Senator from New Jersey, scarcely a sign of weakness either of intelligence or of moral fiber. To refuse to accept that fact seems intolerable for us as responsible Members of the Congress of the United States.

I will say one more thing and then I shall not keep the Senator from Idaho on his feet any longer, because he has done a stupendous job: Is not the effort that he and I are making on this occasion, with many supporters, one to provide the Nation and its leaders, including the President, a way by which all of us may join in a common effort to conclude a war which otherwise is a hopeless situation and an endless one?

I cannot too strongly express my hope that our amendment will be accepted in that fashion—if not today, then in the very near future. I have come to the conclusion that there is no other way out and that the only alternative is indefinite continuation of intolerable destruction. We are physically capable of continuing this destruction but we cannot much longer continue and still retain the national confidence in our rightness that is essential for a country and its leaders to hold.

Mr. CHURCH. I again concur in everything the Senator has said.

Two arguments are made against our amendment, not so candidly here on the Senate floor as in the cloakrooms and in private conversation.

One argument comes down essentially to this: The Senate should do nothing. We should continue to follow our leader. This is advice the Senate has heard frequently before and, sadly enough, Congress has accepted that advice, almost without exception, whenever it was challenged to assume its part of the responsibility for our war policy. Follow our leader.

Three leaders we have followed—two Democrats and one Republican—for 8 years of anguish, none of whom was either able to win the war or end it. Where are we today? We are at the brink of disaster in South Vietnam, and our forces there are in a more precarious position than ever before. Follow our leader. That is what we have been admonished to do; and it has been an easy way out for Congress.

Now the hour is very late, but we have a final opportunity, perhaps, to share with the President the responsibility that the Constitution vests in Congress: To make public policy, to establish a program for coming out of this war in an orderly and dignified way, with our honor intact.

But there are others in the cloakrooms who say, "Well, the President has made his bed; let him lie on it. Why should we, at this late date, get ourselves involved?"

The Senator from New Jersey and I do not believe that either argument has any validity. From the beginning it has been the duty of Congress to assume its share of the responsibility both for the war and for its termination. I do not want to let the President lie alone in the bed he has made, even though he might prefer it that way. I do not want to see Congress abdicate, even at this late hour. It is a part of our responsibility to the people we represent to help formulate an end-the-war policy and share with the President the responsibility for that policy. In essence, that is the argument that the distinguished Senator from New Jersey and I make today, on behalf of the Case-Church amendment.

Mr. SYMINGTON. Mr. President, will the Senator yield?

Mr. CHURCH. I yield.

Mr. SYMINGTON. Mr. President, I rise to congratulate the distinguished Senator from Idaho for one of the finest addresses it has been my privilege to hear since becoming a Member of this body. The able Senator was kind enough to send me an advance copy, and I read it, and read it again. Let us hope that not only every Senator but every American as well will have a chance to gage for himself the logic—the effective logic—contained in the words of this speech.

I was glad to note that he, too, in this convincing presentation of his case, emphasized that the only real authority the Congress has lies in the power of the purse.

I have been to Vietnam seven different times since 1960, including a visit this year. Each time I come back from one of those visits, I am more impressed with the futility of our gigantic expenses out there, and even more with the sadness of the killing—not only the killing of those young Americans who are ordered by many people, including Members of this body, to fight and die, but also the killing of civilians, especially little children. The mutilated and burned children, perhaps more than anything else, make you wonder, what this is all about.

I say with great respect that, having spent more than a quarter of a century directly or indirectly connected with the Military Establishment of this country, no one can convince me that it was or is important to the security of the United States for this killing to continue. If it was, I would be for it. It is not, so I am against it, and the tragedy should be stopped as soon as possible. Why must we continue to take the side of the South Vietnamese in their fight with members of their own country—they all were members of their own country, Indochina, before that country was arbitrarily partitioned by the major powers?

Mr. President, today, by voice vote, the Senate passed a bill for $1.6 billion so we could add that gigantic sum to our international commitments. There was little argument against it. The Senator from Virginia (Mr. HARRY F. BYRD, JR.) and I spoke against it.

Now, just how much is $1.6 billion?

I would hope someone would try and estimate just how long the American taxpayers, already being so unfairly treated by their Government, would have to work to provide that $1.6 billion to equalize in theory, our international position.

That is nothing, however, compared to the money we continue to pour down the drain in Indochina.

These are also my convictions, but I am not expressing them nearly as well as has the able Senator from Idaho.

I would make another observation, and would hope the Senator would give this thought serious consideration, as well as the other distinguished author of the amendment, now in the Chamber, the able Senator from New Jersey (Mr. CASE).

There will never be a time that is not the wrong time by those who oppose for this type of legislation to go through. Year after year, while we have been spending billions of dollars and witnessing the killing of tens of thousands of Americans. it has never been quite the right time.

Now those opposing this amendment may say "The President of the United States, when a Democrat, was going to go here or there and make an arrangement. The President of the United States, a Republican now, is going somewhere and make an arrangement. Perhaps he will succeed and, in any case, this will hurt his chances." The people who are even more practical politically will say, "He will then blame it on us."

Everyone thinks about many such possible developments, but few think about the young Americans who continue to fight and die in a cause universally agreed upon as not capable of victory.

Right now, the President is planning a trip to Moscow, and there will be people who will say, "Don't do this now, because it might affect the success of his trip."

But, Mr. President, if we do not pass this Church-Case amendment now, when the President gets back, win or lose, these same people will say, "Well now, there really is a chance. They are really looking into it all. Let us not be hasty. Let us wait. Let us give the President a chance to put over some kind of arrangement that will protect our honor."

And all this after 8 long years of fighting and dying on the other side of the globe.

Whose honor? Whose honor?

I have just had a pleasant lunch, and expect to have a pleasant evening. Let us think less about our own honor and more about the honor of those young people in Indochina, many of whom will be killed today while we are on this floor.

What does the Christian religion stand for if it does not stand for love and for the value of a human life?

When I came back from Vietnam after my fourth trip, 1967, and switched my position on the war, I presented my reasons to a Junior Chamber of Commerce group in my State, said that I thought we should call then for a ceasefire. That was the fall of 1967. One young man got up and said, "Are you trying to say that 14,000 young Americans have died in vain?"

My reply was: "I would answer your question with another question: Would you rather kill 14,000 more than admit we made a mistake?"

Now we have killed over 45,000, with over 300,000 wounded; and today there is no one, from the President down, but who admits no military victory is possible.

Mr. President, I intend to speak more on this subject from another angle at a later time; but again, I congratulate the able Senator from Idaho (Mr. CHURCH), a thoughtful, reasoned, and intelligent American, with a great war record of his own, a Senator who won a scholarship for excellence from the American Legion. I congratulate him on one of the finer addresses, I am especially glad he delivered it on the floor of the Senate because of my conviction that what he has said is right from the standpoint of what is best for the future security of our country.

Mr. CHURCH. Mr. President, I want to express my very sincere thanks to the distinguished senior Senator from Missouri (Mr. SYMINGTON) for his generous remarks about the address I have given today.

I want to say to him that, though the timing of the vote is a matter of judgment, I have made the same argument he has made. I know, as I stand here on the floor of the Senate today, that whenever it is decided to bring our proposition up—because it will be brought up for a vote—there will be many who will say that it is untimely. Those who say it, of course, are those who would oppose the amendment at any time. They have made that same argument for the 8 long years we have engaged in this futile and foolish war.

But I want to say something else to the Senator from Missouri. If I remember correctly—and I want the Senator to correct me if I am wrong—in the early stages of the war, the Senator from Missouri supported the war effort. He accepted the reasons that were then offered, but he wanted to survey the situation for himself. He traveled to South-

east Asia to examine tne case in the field in order to determine whether it substantiated the arguments being made in Washington. In the course of that personal pilgrimage to the theater of war, the Senator from Missouri changed his mind.

That takes courage, particularly among public men. It is always safer to hold to a consistent point of view, no matter how tragically wrong it may be, than to change one's mind. But it is part of the bigness of Senator SYMINGTON that he changed his mind and became one of the most effective and influential critics of our Southeast Asia war policy.

Mr. President, would that our Presidents had shown the same capacity to look at the evidence and change their minds. But our Presidents—like Czar Nicholas II of Russia—sit in the White House surrounded by the trappings of the high office they hold, treated with a deference and respect which we were unaccustomed to giving our Presidents in the simpler days of this Republic and which are traditionally accorded to emperors. Despite the fact that every calculation has proven wrong, that every optimistic prediction has been undone by events, despite all assurances, events in Asia have played tricks upon them, and these Presidents have shown no capacity to adapt our policy to reality.

That was Czar Nicholas II's problem until finally the monarchy collapsed in 1917.

Mr. President, the senior Senator from Missouri has mentioned that Vietnam was not historically divided into two sovereign nations, that this is a war between the North and the South, even as our own war between the States was between the North and the South. It is a war to determine what? To determine whether Vietnam is going to be run as one country, under one government, or whether it is going to be divided into two countries, one run by Hanoi in the North, and the other by Saigon in the South.

That was the issue in our own Civil War, whether the United States was going to be one country run from Washington, or two countries, one run from Washington and the other from Richmond. Our civil war was not settled by a plebiscite. And I do not think that Mr. Lincoln would have been much impressed if he had been labeled an aggressor for sending his northern armies into the South.

What are we hearing from the administration concerning this latest invasion? Let me quote the words of President Nixon in his address on April 26, 1972:

> It is a clear case of naked and unprovoked aggression across an international border.

What international border? What are the facts of the case? The border was established as the result of the Geneva talks of 1954 in which the French negotiated for an arrangement whereby they could withdraw from the country, ending the French colonial rule following the French defeat at Dienbienphu.

This was what was said about the border in the agreement, reading from the agreement on the cessation of hostilities in Vietnam, July 20, 1954:

Article 1

> A provisional military demarcation line shall be fixed, on either side of which the forces of the two parties shall be regrouped after their withdrawal, the forces of the People's Army of Viet-Nam to the north of the line and the forces of the French Union to the south.
>
> It is also agreed that a demilitarized zone shall be established on either side of the demarcation line, to a width of not more than 5 kms. from it, to act as a buffer zone and avoid any incidents which might result in the resumption of hostilities.

Mr. President, in another part of the agreement it is specifically stressed that the provisional military demarcation line is not to be considered a political boundary.

The Accords also specifically provided that elections would be held throughout Vietnam within 2 years so that the people might determine whether the people wanted the country reunited or left divided.

Mr. President, I ask unanimous consent that paragraphs 6 and 7 of the final declaration of the Geneva Conference, July 21, 1954, to which I have just referred, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, those elections were never held. They were never held because Mr. Diem, whom we supported in Saigon, refused to go through with them, and we concurred. Those of us who read the passage will remember that in President Eisenhower's memoirs, he explained why we concurred. His advisers at that time, he said, believed that had the elections been held, Ho Chi Minh was likely to get 80 percent of the vote.

That is the history of the case.

Yet President Nixon now tells us, so many years later, that in the present instance "we have a clear case of naked and unprovoked aggression across an international border."

Mr. President, it is this kind of self-delusion that has led us to miscalculate this war from the outset, to misconceive its purpose, to misunderstand the motives of the Asian people involved, to misjudge this little country so far from our shore, a little country that cannot reach us nor possibly constitute a threat to the American people. But there we are, locked into this mistaken war, still misreading the record, still misinterpreting the history, still deluding ourselves that the cause for which we fight is just, and that a struggle among the Vietnamese is our affair.

That, of course, has been the weakest reed of all. It was not our affair to start with. It is not now. It never will be. We used to tell the French it was not their affair. After billions of dollars expended and thousands of French lives lost, they finally woke up one day to the fact that they were not wanted there, that the indigenous people who lived in that land, were fighting to secure independence, fighting to drive the foreigner out, even as we fought in our own Revolutionary War to achieve our independence nearly 200 years ago.

We told the French to leave, to settle the war, to give the Vietnamese their independence. Then, we turned around, a few short years later, and intervened in a country where we had no substantial interest, where we had no historical connections, and where we owed no post-colonial responsibility, and we made the war there an American engagement on the continent of Asia. We did it against the best advice of the American generals who had fought in Korea, who told us after that struggle:

> Never again engage American men in an Asian war, for to do so will mean an endless attrition in a struggle that bears no real relationship to the security of the United States or to our vital interests as a Nation.

Mr. President, there is no need to recount any further that sad story. The need now is to end our involvement in the war. We have done all we can for the faction we support, the Theiu regime in Saigon. We have given it the weapons to defend herself. Now is the time to set a date for completing our withdrawal and for making Vietnamization what its name implies, a policy for returning the war to the Vietnamese.

That is what we would accomplish with the Case-Church amendment. The American people, in their good commonsense, know that is what we ought to do, nearly three-fourths of them, in the latest Gallup poll, endorsing the formula contained in the amendment. I hope we find the will to do it. I hope the Senate will not vote to strike this amendment from the bill.

Mr. President, I yield the floor.

PARAGRAPHS 6 AND 7

> 6. The Conference recognizes that the essential purpose of the agreement relating to Viet-Nam is to settle military questions with a view to ending hostilities and that the military demarcation line is provisional and should not in any way be interpreted as constituting a political or territorial boundary. The Conference expresses its conviction that the execution of the provisions set out in the present declaration and in the agreement on the cessation of hostilities creates the necessary basis for the achievement in the near future of a political settlement in Viet-Nam.
>
> 7. The Conference declares that, so far as Viet-Nam is concerned, the settlement of political problems, effected on the basis of respect for the principles of independence, unity and territorial integrity, shall permit the Viet-Namese people to enjoy the fundamental freedoms, guaranteed by democratic institutions established as a result of free general elections by secret ballot. In order to ensure that sufficient progress in the restoration of peace has been made, and that all the necessary conditions obtain for free expression of the national will, general elections shall be held in July 1956, under the supervision of an international commission composed of representatives of the Member States of the International Supervisory Commission, referred to in the agreement on the cessation of hostilities. Consultations will be held on this subject between the competent representative authorities of the two zones from 20 July 1955 on wards.

Mr. STENNIS. Mr. President, I shall not detain the Senate at any great length. I hope the Senator from Idaho will remain in the Chamber long enough for me to pay him a very highly deserved compliment and also to comment on his

consistency in connection with this problem.

I am not given to talking about myself, I hope, but so many times, especially in this field of activity, if the press takes any note of me, they refer to me as "the hawkish chairman of the Senate Armed Services Committee."

The title of the Senator's very fine speech refers to the prolongation of 8 years. Long before I was chairman of the Committee on Armed Services, in 1954, I was pleading in this Chamber that we not go into Vietnam with military men. The first move was to send 200 airplane mechanics in there. They were in American uniform and, therefore, they represented the American Government. My argument was that no one was going in with us and war was going on there, and if we got in, we most likely would have to carry most of the burden. I claim no credit for that.

I just note that because the element of time has been mentioned. It is said the argument is against Congress passing such a provision as the Church-Case amendment; not now, not this time, this is not the bill.

I have further background on this problem. I challenged very seriously, repeatedly, on the floor of the Senate in 1954 the SEATO Treaty. We are not in Indochina because of the SEATO Treaty but it relates to the neighborhood. I asked: If we are going in, what is going to touch this off? Will there have to be a declaration of war by Congress? I was assured over and over again that such was the position of the document. That would be the procedure that was threshed out here when we had the debate on the so-called war powers. So this is not a new subject for me and it is not a new subject for the Senator from Idaho.

I remember when the Senator from Idaho came here he was impressed with this problem. I remember he appeared repeatedly in this Chamber and discussed the entire Indochina problem and argued about the Laotians. That is the first problem that I remember him discussing, and that was as early as 1959 or 1960. He has been very helpful to the Senate and very able, as he always is, in the way he handles this subject. I always pay attention to what he says. As a matter of fact, I have encouraged him to dig into a few things I learned he was prodding into. So I completely appreciate what he has said.

I think the great tragedy is that there were not more Senators present to hear what the Senator from Idaho had to say—the very fine presentation of his viewpoint—and the facts he has mentioned. The attention of others will be brought to what happens here this afternoon because it will appear in the RECORD and go throughout the country. It was a very worthy speech.

But, Mr. President, with all deference, I do not believe the sentiment of the Senate is now such that a majority of the Senate will pass this provision cutting off these funds. I believe that the majority of the Senate, on second thought, does not want that to be done. This is for a reason that the Senator from Idaho gave little attention to in his prepared remarks, although he did refer to it in his later extemporaneous remarks. There is no real recognition, though, in the main argument with reference to Vietnam. There is recognition in the argument presented.

I refer to the fact that our Chief Executive—and regardless of who it is because that is incidental—in a few days will be on his way to Moscow where there can be the most far-reaching agreement, beneficial to us. I am not talking about beneficial to someone in Asia or Europe, but to us, the American people—it can be the most helpful and beneficial agreement that has been entered into by us since World War II. I believe that no Member of the Senate would want to hinder the President, and I believe the majority of them will decide that this provision, which we are trying to take out of the bill by my amendment, is detrimental and hurtful to the interests of our people and our country at this conference coming up.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. STENNIS. Yes, sir; I yield briefly to the Senator.

Mr. CHURCH. It will be brief.

Mr. STENNIS. I know the Senator does not wish to interrupt the remarks.

Mr. CHURCH. First, I thank the able and distinguished Senator for his generous reference to me. I appreciate it very much. Second, I want to say that it is tragic that the Senator's good advice back in 1954 was not followed. I know he did take that position before we got involved.

If a decision is made to defer the vote on this proposition to a later date, it will be because of the forthcoming trip that the President is making to Moscow.

All of us share the hope that his trip can prove fruitful, and that understandings can be reached of great consequence to the future.

I want the Senator to know that his argument on that score is being very carefully weighed by those of us who favor this amendment. Should it appear that there is any possible way that the provison might interfere with that trip, then the Senator knows we will try to work out a deferral of the vote to a more appropriate time.

I thank the Senator.

Mr. STENNIS. I thank the Senator very much for his remarks. My argument now does not relate solely to that. I am just saying that I believe, when this matter is voted on, the majority will have the judgment to strike this provision from the bill, and the main reason I am citing here is this trip.

Let us not write it off as old hat that something might come from this conference with respect to the SALT talks. I am not an expert in this field, but I am generally familiar with it. It was to the Committee on Armed Services that the nomination of the Ambassador of the United States to the SALT talks, Ambassador Smith, was referred. So we have a special responsibility there. I was greatly impressed with him. Then we have a subcommittee, headed by the Senator from Washington, which has held regular hearings on the subject of the SALT talks, where it is very much hoped that we can get some kind of agreement on arms limitations—not disarmament, which is just a fancy word, but arms limitation. We have followed the progress of all those talks for the more than 3 years that they have been in progress.

I am not prophesying what is going to happen, because I do not know, but I say seriously there is a very fine chance that out of that summit conference in Moscow will come the culminating and finishing touches to an agreement that will at least be a beginning toward limitations by Soviet Russia and the United States in the nuclear weapons field. How far it will go, no one knows, but if it makes a start, an appreciable start, that will be going a long way, because time is running out. Technology has far outdistanced statesmanship or diplomacy—by whatever name it is called—and it is high time that we made a start now if we are going ever to have an arrangement.

Mr. President, there is no way to overemphasize the importance of that development, but that is not the only thing that is going on. I referred to this the other day. The war in Vietnam is rising to a high pitch, a very threatening part of it. It may be the climatic part. I am not making a firm prediction about what is going to happen there. I have no way of knowing. I have no great wealth of added information as compared with what other Members of this body have, but I do know it is considered to be a very critical situation. Anyone who reads and listens can tell that. This is happening in spite of the fact that we have done everything we possibly could have done with respect to air cover and air power for the battlefield.

It has been no rout, and reflects no discredit to the South Vietnamese armies. They have done exceptionally well in many respects and in many parts of more recent battles. They have fought with valor and effectiveness, but, on the whole, they are certainly not winning the battles. They are losing them in the northern area and, although I am far from predicting they are going to lose the war, and I do not think they are going to lose it—this is a critical time.

I believe this same meeting in Russia has a chance—might furnish something good—to improve our situation on the Asiatic side of the world.

The last few weeks we also have had the peace talks going on in Paris. They are suspended again. They are off again and on again, but they are not entirely abandoned and they could come back into the forefront.

Anyway, in the next 2 or 3 or 4 weeks—of all the time to handshackle, and undercut, or restrict, or embarrass the President of the United States—this is the last month of the year to pick to do it.

That is why I say, with emphasis and some confidence, that I believe the second thought of the membership of this body is going to stay the hand with respect to the section we are attempting to strike out, all of section 701, page 38.

After all, Mr. President, under these conditions and circumstances, in modern

times at least—with such a conference and in a critical time in two places in the world—when has any President been so hamstrung, so to speak, or had a choker put on him with reference to such matters? I do not believe there is any parallel in history where Congress has passed a law under such conditions, and has totally cut off money for military men in a great area where they were operating, I know Lincoln was under attack during critical times in that unfortunate war—and I do not mean in the South. His policies were under the most serious attack, and the effort was made to cut off and restrict his power as the Union's leader in that war. The move was not successful, but if it had been, and had made more serious progress, he could not have continued as the effective leader, and the Union would not have been saved at that time.

I think I am competent to comment on that point. We in the South were on the other side, and we have studied some of the history a little closer, I find, than some in other areas of the country. We remember better, and somewhat longer, that that was one of the big issues of the time. But the move did not prevail then, and I do not think it should or will prevail now.

What country is this that is talking about restricting our leader under these circumstances? We all want to get out of war, and I think we will. We want to anyway, and we are trying—everyone from the President on down. But what country is this that is talking about restricting the Chief Executive on the eve of a conference? Is this the country that took the lead in forming the United Nations, and is still backing it, even though we have been disappointed in what it has been able to accomplish?

We took the lead in covering the entire free world with what we called mutual security treaties, and that is what we meant: The first was one to protect Western Europe. I think it was very timely and has been very effective, and was well worth the effort. I shall always be proud of those achievements, and I believe they are going to continue to be effective.

This is also the country that put the protective umbrella over Japan after those 4 years of terrible war with them. and is still protecting them. We reached away over into Korea, and fought a war there, even, and are still standing guard for those people, even though it is on the other side of the world.

We came in and saved Formosa from oblivion, you might say, with the Southeast Asia Treaty Alliance that I have already mentioned—SEATO. And the same concept for South America.

That is not consistent with the position, now, that we should stop because we are a little embarrassed, maybe, the idea that we should be so small as to hobble and stifle our Chief Executive on his way to a highly important conference with our main adversary, under circumstances that have been worked on for years by his predecessors and by this Chief Executive. It is a conference that really holds out promise for results that will benefit us—and the world, of course. I would think its importance is to be measured by the extent of an initial agreement, as well as by the fact that if we get an agreement that has some meaning, I believe that that meaning will grow.

This resolution would take foreign policy away from the President in this troublesome area of the world, and pass a legislative mandate, not calling on him to set a date, but saying on the floor of the Senate, "We have set a date, a time certain." Would that make him look good, with that wrapped around his neck?

Suppose a peace conference were still going on. He would look good, if he stopped in for conference in Paris; he would feel fine, sitting down at the conference table in Moscow, if it should be the deliberate judgment of this body that such a provision should be passed.

It is totally inconsistent, I respectfully submit, Mr. President, with commonsense, with the experience of our policy, and with the human nature side of this entire problem.

Let us not say it will not make any difference. No one knows any better, I am sure, than the President of the United States himself how it could adversely affect him and his position. I just do not believe we are going to let this happen, and I hope that we can get a vote on this matter, maybe as early as next Tuesday. I do not hope it wins by a small margin; I think it should win big and I believe it will win, under the circumstances, by a very high, substantial majority of the votes of this body, because that is the judgment of commonsense.

So I rest the entire case for my amendment to strike out this proposition. I am glad to yield to the Senator from Wyoming.

Mr HANSEN. Mr. President, I compliment the distinguished Senator from Mississippi for his characteristic astuteness, his honesty, and his candor. I am sure there is no one in America today who does not wish that Vietnam were not there, that not a single American life had been lost, or any other life lost.

I am old enough to remember full well, though, the long days of World War II and the tragedy that was visited upon a great many American homes during the worldwide conflict. I have heard my nearest neighbors say that they would be willing to pay any price, to go any distance, to do anything, in order to avert world war III.

Out of the overwhelming unanimity that existed in America at that time, the United Nations came into existence. I did not have the hope for that organization that some people had, because I could remember, in my early youth, when the old League of Nations was still being talked about, and the disappointments and frustrations that were expressed by many as they contemplated what had happened to the noble ideal that had failed to come to fruition.

I state this, not to recall past disappointments, but rather simply to remind us of the lesson history holds for us. I think it is pretty clear that following the close of World War II there were, not only in America but throughout most of the world, many millions of human beings who wanted to see if there were not some way that we could put out small brush fires, if there were not some way that we could establish the principle of arbitration, of giving people a sounding board, so that nations feeling aggrieved could appeal to a rather enlarged sense of decency and respect for law that hopefully would help persuade aggressors that there might be a better way.

I think that our involvement in Vietnam also underscores another fact of life; namely, that this country has for a long time exhibited a willingness to intervene on the side of the victim of aggression. That is exactly why we are in Vietnam. I am not trying to defend what has been going on over there all too long. Rather, I think the distinguished Senator from Mississippi has put the situation in the proper perspective when he says, "Let us see where we are today, and, without trying to make any judgments of assessments on the past, let us now, in the month of May, of the year 1972, decide what will serve best the purposes of America."

Trying to view the whole situation, worldwide, from that perspective, I certainly do agree with him that it makes little sense, at this moment, to undercut the great chance that I believe the forthcoming visit to Moscow that the President intends to undertake will have in order to bring peace out of the present situation.

But more than that is involved, Mr. President, because we have our NATO Alliance friends, and, as the Senator from Mississippi has pointed out, we have been active in many parts of the world, trying to lend our weight and our influence and the respect in which we are held by people throughout the world to the side of the victims of aggression, to the smaller countries, which may be right but which do not have the power otherwise to stand up to a more forceful adversary. That, too, is at stake.

I remember approximately 2 years ago when an effort was being undertaken to spell out in an appropriation bill a restriction against the further use of funds in Southeast Asia because, it was being contended, we should not be getting into other people's arguments; and our beloved colleague, the distinguished senior Senator from Delaware at that time said, "Let us broaden this and make the application of this restriction worldwide." Well, it did not take very long for several Senators to be on their feet immediately, saying, "We don't mind cutting things off in Southeast Asia, but we don't want to disrupt what is going on in the Middle East; we don't want to disrupt what is going on in other parts of the world." They very quickly and very quietly exerted their pressures and their efforts to get that sort of change made so as not unnecessarily to hold or stay the President's hand in the Middle East. That, too, is involved.

I think it is involved because, in a sense, what we do in Southeast Asia, the posture we continue to present to the world, will be a part of the basis on which we are judged in other parts of the

world. We have a great deal at stake in other parts of the world. I do not know how the whole thing is going to come out, but I can say this: I think that if we look back over the years since the close of World War II, despite the tragic loss of life that America has sustained as she has tried to stand on the side of what she felt was right and just; and if we compare the period of time since, say, 1946 with any other period during the 20th century, we have to admit that, despite the losses we have had—I agree that they are tragic—in an overall sense there has been less loss of life. I am not trying to equate something so tragic as this in numbers. But because we have been willing to try to keep all the dominoes from toppling, I think it probably can be suggested, at least, and submitted at the very least, that to an extent we have been successful in preventing a bigger war from following in the footsteps of smaller wars.

I hope, as I know every other Senator hopes, that this involvement in Vietnam can come to an end very shortly; and I think the chances of that coming about are best if we adopt the Stennis amendment to strike this particular part of the bill so as not unnecessarily to weaken the President's hand as he journeys to Russia.

I thank the Senator from Mississippi.

Mr. STENNIS. I thank the Senator from Wyoming. I am impressed with his remarks.

Mr. President, I am ready to yield the floor, but first I should like to say this: We hear much talk about the South Vietnamese being in hasty retreat, and there is much in the newspapers about those who ran. What about those who did not run? What about those who stood their ground and sacrificed their lives? What about those who stopped the enemy at terrific cost to the enemy? They need every encouragement we can give them. Say what we will, the passage of the bill with that provision in it—unless my amendment to strike it is adopted—would be a tremendous encouragement to the leaders of the North Vietnamese, even to their rank and file. In turn, it would bring great discouragement and almost despair to those who are holding the line and are carrying on in a highly responsible way.

With respect to the President of the United States I am not talking about an individual; I am talking about the Chief Executive. The responsibility in this matter rests directly on him now, and I say that we should keep that responsibility on him. That is where it belongs, under our system of government.

Do not hobble him; do not throw impediments in front of him and block the way as he tries to carry out that mission.

I trust and believe that this will be the will and the judgment and the action of a great majority of this body.

I yield the floor, Mr. President.

Mr. BROCK. Mr. President, as part of S. 3526, the State Department authorization bill, this body is being asked to impose upon the State Department a detailed procedure for handling any grievances which State Department employees may have. I want to address myself to that provision because I think we are being asked to enact an arrangement which is unworkable—and could be disastrous.

What is at stake in this measure is the ability of the Secretary of State to maintain a disciplined and effective diplomatic establishment for the United States. What this measure would do is to transform the Department of State from a department of diplomats to a department of litigants.

The bill as it now stands places no limits on what an employee of the Department of State can complain about. He could complain about his assignment if he did not like it. He could complain about the assignment of another employee to a post which he wants and considers himself qualified to fill. He could complain about not being promoted. He could complain about someone else being promoted who he thinks is less deserving than himself. He could complain about the foreign policy of the United States if he felt that policy was injurious to his career prospects. He could complain about the over-all management policy of the Department of State. He could complain about any reprimand he might receive from his superior, or, indeed, about any criticism of his work by his superiors.

Mr. President, S. 3526 would not permit the leadership in the Department of State to deal with such complaints on the basis of their merits. Instead, it would set up an outside body to hear these complaints. Open hearings would be mandatory on virtually all such complaints.

Moreover, the findings of this outside board would be mandatory upon the Secretary of State in most instances, and would be binding in all instances except where the Secretary was able to formally declare that to carry out the decision of the board would be injurious to the national security and foreign policy interest of the United States.

Mr. President, bad as the provisions I have mentioned would be, there are other provisions in this legislation of an even more objectionable nature. The bill provides that complaints can be made retroactive back to the creation of the Foreign Service in 1924. Complaints will be judged by a board completely outside the Department of State and sets aside the authority of the Secretary of State, it deliberately creates a board of an adversary nature rather than of an objective nature. It would call upon the Secretary to name one member of the three-man board, and the employee's group to name the second member. The third member, with what is obviously intended to be the swing vote, would have to be agreed on by the Secretary and the employee's group. If they could not agree, the third member of the board would be named by the chief judge of the U.S. court of appeals. Mr. President, that is the same court before which litigation stemming from the board's action would come. The provision, therefore, is of dubious constitutionality as well as being singularly inappropriate by involving the judiciary in the decisionmaking of the executive branch.

The bill would also require the Department of State to make available to the board and to the complainer any and all officers of our diplomatic establishment who may be connected with the complaint. These people would have to drop what they are doing here and abroad in the interest of American foreign policy and return to Washington to play their part in the complaint hearings.

Finally, this bill gives the board the power to enjoin the Secretary of State from proceeding with any action related to an employee complaint. If the complaint involved an assignment, the Department of State would be paralyzed from filling the position until disposition of the complaint. If the complaint concerned promotion, the Department of State would be enjoined from proceeding with promotion lists until such time as the board ruled.

Mr. President, this is a formula for paralyzing the Department of State. It removes the Secretary's authority to run his Department effectively. It encourages dissidents and complainers to concentrate on their own desires rather than on the needs of the U.S. Government for a disciplined diplomatic establishment. It prevents the Secretary of State from assigning the right man to the right job, unless the right man wants that job, and unless there is no wrong man who would also like the job.

Mr. President, the proponents of this provision have admirably publicized past inequities in the State Department's handling of some personnel problems. The Department has recognized this fact. Last year it put into effect new grievance procedures and established a board of distinguished citizens to give a fair and impartial hearing to employees with a grievance. This system is working well. Moreover, the Department has pledged itself to negotiate new grievance procedures with whatever organization is chosen by the employees of the Department to represent them in an election which will be held soon.

Mr. President, the grievance provision of S. 3526 does not solve a problem. It creates one. It is not and should not be the business of this body to impose upon the Secretary of State detailed provisions for the handling of grievances by his employees. It is not the business of this body to undercut the authority of the Secretary of State over the organization for whose conduct he is responsible.

There have been many complaints made by members of the legislative branch about the declining importance of the Department of State in the foreign policy machinery of the executive branch. This bill will make that problem worse. It will undercut the Secretary's authority. It will prevent the effective management of the Department and the Foreign Service. It will destroy the discipline and cohesion of the Foreign Service of the United States. It will divert the senior officers of the Department of State and our Embassies abroad from the foreign policy problems which

are their responsibility, to the care and feeding of their most recalcitrant and self-centered employees.

There is no substance to claims that the bill is not as bad as it looks because the employees of the Department of State will not fully avail themselves of the provisions of the law. To be sure, most of the employees of Department will not do so. But this bill is written in such a way that only a handful of malcontents could tie the Department in knots and frustrate the effective conduct of American diplomacy.

Mr. President, I am told that some of the supporters of this legislation have had second thoughts about some of the objectionable features of this provision. I am told that they will attempt to make amendments on the floor to "perfect" the bill. Mr. President, it cannot be perfected. The fact that last-minute efforts may be made to correct some of its more glaring weaknesses simply proves that this measure is ill considered, inadequately digested, and faulty in its conception.

Mr. President, the Foreign Relations Committee is offering the Senate a strange brew in this authorization bill. Early this week we refused to drink the potion which would have destroyed the effectiveness of the U.S. Information Agency. I urge this body to give the same wise and prudent treatment to section 109(a), which would, if passed, destroy the effectiveness of our diplomatic establishment.

QUORUM CALL

Mr. HRUSKA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HANSEN). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from Nebraska (Mr. HRUSKA).

NOTICE CONCERNING FILING OF SUPPLEMENTAL REPORT BY JUDICIARY COMMITTEE ON NOMINATION AND CONFIRMATION OF RICHARD G. KLEINDIENST TO BE ATTORNEY GENERAL

Mr. HRUSKA. Mr. President, concerning the filing of the supplemental report by the Committee on the Judiciary on the nomination and confirmation of Mr. Richard G. Kleindienst to be Attorney General, the Judiciary Committee approved the motion of the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD), which was supplemental to that part of the supplement pertinent here, that the supplemental report would be filed no later than midnight tonight and proceeding to print it.

Request was made yesterday that the time for additional individual views be granted. There has been communication between the chairman, who is out of the city, and members of the committee. The following arrangement has been agreed to.

First, that the supplemental report on the nomination and confirmation of Mr. Kleindienst will be filed today, together with several individual views. They will proceed to print it, pursuant to the motion, as part I of the supplemental report.

As to any additional views that may be proffered by any member of the committee, the time for filing of such additional individual views will expire at 5 p.m. on Tuesday next, May 9, 1972. Such individual views as will be filed in the meantime—during that period of time—will be printed as part II of the supplemental report.

I ask unanimous consent, therefore, Mr. President, that any additional individual views on this subject may be filed on or before 5 p.m. on Tuesday next, and shall be printed as part II of the supplemental report.

Mr. ROBERT C. BYRD. Mr. President, I have no objection.

The PRESIDING OFFICER (Mr. HANSEN). Is there objection to the request of the Senator from Nebraska? The Chair hears none, and it is so ordered.

Mr. HRUSKA. I thank the Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the Senator from Nebraska.

REMOVAL OF INJUNCTION OF SECRECY—EXECUTIVE K, 92D CONGRESS, SECOND SESSION

Mr. GRIFFIN. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and certain amendments to the International Convention for the Prevention of Pollution of the Sea by Oil of 1954, relating to tanker tank size and arrangement and the protection of the Great Barrier Reef—Executive K, 92d Congress, second session—transmitted to the Senate today by the President of the United States, and that the convention and amendments, with accompanying papers, be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Supplementary to the International Convention on Civil Liability for Oil Pollution Damage of 1969), done at Brussels of December 18, 1971. The United States and eleven other nations signed this Convention on that date, subject to ratification. For the information of the Senate, I am also transmitting the report of the Department of State on the Convention.

I transmit also, with a view to receiving your advice and consent to acceptance, certain amendments to the International Convention for the Prevention of Pollution of the Sea by Oil of 1954, relating to tanker tank size and arrangement and the protection of the Great Barrier Reef. Both the tank amendments and the Barrier Reef amendments were recommended by the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (IMCO). The Assembly of that Organization adopted the tank amendments on October 15, 1971 and the Barrier Reef amendments on October 12, 1971.

The Convention and the tank amendments are indispensable measures in the programs of both the United States and the IMCO to create a widely accepted international system for the prevention of pollution of the seas by oil and for the payment of compensation for damages resulting from such pollution. The Compensation Fund Convention more than doubles the amounts available for compensating oil pollution damage under the 1969 Civil Liability Convention, expands the Convention's coverage, and makes the operation of provisions benefiting shipowners conditional on their compliance with pollution prevention requirements. The tank amendments establish tank size limitations and construction requirements which will minimize damage to the environment from oil spills in the event of collision or stranding. The Barrier Reef amendments increase the protection from oil discharges under the requirements of the 1954 Oil Pollution Convention in the area of the reef.

I urge the Senate to give early and favorable consideration to the Convention and the amendments submitted herewith.

RICHARD NIXON.

THE WHITE HOUSE, *May 5, 1972.*

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Monday next, after the two leaders, or their designees, have been recognized under the standing order, there be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE UNFINISHED BUSINESS, S. 3526, TO BE LAID BEFORE THE SENATE ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when morning business is closed on Monday next, the Chair lay before the Senate the unfinished business, S. 3526.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN RELATIONS AUTHORIZATION ACT OF 1972

The Senate continued with the consideration of the bill (S. 3526) to provide authorizations for certain agencies conducting the foreign relations of the United States, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, what is the pending question before the Senate at this time?

The PRESIDING OFFICER. The amendment of the Senator from Mississippi (Mr. STENNIS), No. 1175.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, at the time the Chair lays before the Senate the unfinished business on Monday next, amendment No. 1175, offered by the distinguished Senator from Mississippi (Mr. STENNIS), will be the question pending before the Senate.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I thank the Chair.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Monday is as follows:

The Senate will convene at 12 o'clock noon. After the two leaders have been recognized under the standing order there will be a period for the transaction of routine morning business for not to exceed 30 minutes with statements limited therein to 3 minutes.

A resolution authored by the distinguished Senator from New York (Mr. JAVITS), submitted during morning business today, will go over under the rule, and will be placed before the Senate at the close of morning business on Monday. If debated until the hour of 2 p.m., that resolution automatically will then go on the calendar. It may be that the distinguished Senator from New York (Mr. JAVITS), would be willing on Monday to agree by unanimous consent that the resolution be placed on the Calendar, which would save the time of the Senate. But, in any event, Senators could debate that resolution if they wish to do so until the end of the morning hour.

Of course, there possibly could be a rollcall vote on that resolution on Monday, but I doubt that Senators will want to act on it that day.

When the unfinished business is laid before the Senate, the pending question will be on the adoption of amendment No. 1175 of Mr. STENNIS. It is impossible, at this point, to say whether or not there will be rollcall votes Monday on the unfinished business. Of course, any motion to table an amendment or the bill itself would be in order, and rollcall votes could occur in such event.

Conference reports, if and when ready, are privileged matters and may be called up at any time.

ADJOURNMENT TO MONDAY, MAY 8, 1972

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock noon on Monday next.

The motion was agreed to; and at 3:21 p.m., the Senate adjourned until Monday, May 8, 1972, at 12 noon.

CONFIRMATION

Executive nomination confirmed by the Senate May 5, 1972:

IN THE AIR FORCE

The following officer to be assigned to a position of importance and responsibility requiring the rank of general, under the provisions of section 8066, title 10, United States Code:

Lt. Gen. Russell E. Dougherty, xxx-xx-xxxx XXXX (major general, Regular Air Force) U.S. Air Force.

EXTENSIONS OF REMARKS

SHALL THE SWORD DEVOUR FOREVER?

HON. JACOB K. JAVITS

OF NEW YORK

IN THE SENATE OF THE UNITED STATES

Friday, May 5, 1972

Mr. JAVITS. Mr. President, quoting from the Book of Samuel in the Bible—"Shall the sword devour forever?"—Dr. Isaac Lewin, distinguished Yeshiva University professor, spoke before the United Nations Commission on Human Rights on behalf of the Agudas Israel World Organization making a strong appeal for peace in the Middle East.

The quotation cited by Dr. Lewin has implications beyond the turmoil in the Middle East:

Abner called Joab and said: "Shall the sword devour forever? Knowest thou not that it will be bitterness in the end? How long shall it be then until you bid the people to return from fighting their brethren?"

I ask unanimous consent that Dr. Lewin's remarks be printed in the RECORD.

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

STATEMENT BY DR. ISAAC LEWIN ON BEHALF OF THE AGUDAS ISRAEL WORLD ORGANIZATION BEFORE THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS, MARCH 22, 1972

My organization—the Agudas Israel World Organization—is no stranger to the Commission on Human Rights.

For many years it has been our great honor and privilege to enjoy consultative status with the Economic and Social Council, and we have not failed to assiduously attend the sessions of the Commission on Human Rights during the past years and to endeavor to contribute constructively to its work.

It is in this tradition that I now address the Commission.

The Agudas Israel World Organization, now almost sixty years old, is primarily a Jewish organization. It represents an important segment of world Jewry and looks at life and the world with the eyes of an ancient people whose roots are deeply imbedded in the history of our people and its Biblical origins.

In this respect we have been the carriers of an abiding ethic and of moral principles which have been the source of our concept of human rights in the most universal dimensions. Every violation of human rights, anywhere, to any people, is a matter of great concern and deep sorrow to our people.

For this reason we reject categorically such concepts as racism and apartheid, which manifest themselves so flagrantly today in many parts of the world. Our people have always supported and will continue to support all United Nations efforts to eradicate this anachronism from a world that is surely moving to greater humanity and justice in the relations of all men.

It is also natural for us as Jews to have our own concerns in this area, having been the victims of discrimination for many centuries.

Now, in this forum, the State of Israel is accused of practicing discrimination against Arabs. We heard the representative of Israel deny such allegations. Allow me to say a few words on this problem.

For many centuries, Arabs and Jews understood each other thoroughly. In the Middle Ages—and even in modern times—when Jews were exiled from European countries, Moslem states accepted them as brothers. Through the common efforts of Jews and Arabs, a Judeo-Arab culture developed which was, and remains today, the pride of both the Judaic and Moslem traditions.

When, in 1947, the United Nations established the State of Israel, we hoped that it would be built on a solid foundation of Arab and Jewish friendship.

To the United Nations and to all governments, Israel is just one more state. To the Jewish people it has meaning beyond this merely political concept. Biblically and traditionally our people have viewed the emergence of this state as a historic symbol. We have seen it as reflective of a triumphant renaissance—as an emergence from the despair that engulfed our people during the abysmal period of World War II.

We have always believed that this state can make a great contribution to the international community, and I know that that is its profoundest aspiration.

But we also know that this hope of ours cannot be realized but with peace in the entire Middle East.

Peace—as we all know—is the indispensable condition of all human rights. During a period of war and truce, such rights become the first casualties. We submit this thought to the distinguished members of the Commission on Human Rights regarding the difficult task that confronts them.

I would like to remind you, for a moment, of a Biblical story.

The Second Book of Samuel (II:26) tells of how two great generals who were brotherly enemies, Abner the son of Ner and Joab the son of Tzeruya, confronted each other on a battlefield. And the Scriptures report as follows:

"Abner called to Joab and said, Shall the sword devour forever? Knowest thou not that it will be bitterness in the end? How long shall it be then until you bid the people to return from fighting their brethren?"

These words—"Shall the sword devour forever?" (in Hebrew: *"Halanetzach tochal herev?"*)—I place now on the table of this distinguished Commission on Human Rights.